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ENVIRONMENT DEPARTMENT

EXTENSION OF PERIOD OF VALIDITY OF THE URBAN AREA PLAN (REVIEW NO.1) AND THE RURAL AREA PLAN (REVIEW NO.1)

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

28th April 2015

Dear Sir

Executive Summary

1. In February 2012, the States resolved to extend the validity of the Urban Area Plan (Review No.1) until the 2nd December 2015, or such earlier date when the States formally adopts a revised Development Plan (Billet d'État No. IV of 2012).

2. The current Strategic Land Use Plan (SLUP) was approved by the States in November of 2011 (Billet d'État No. XIX of 2011). The adoption of revised strategic land use policies required the Environment Department to prepare proposals to replace the Urban Area Plan and Rural Area Plan with a new Plan that reflects the revised strategic framework set by the SLUP. The period of extension of validity of the Urban Area Plan requested in 2012 until the 2nd December 2015 was intended to allow sufficient time for the formal review of the Development Plans and additionally enabled the Urban Area Plan expiry date to harmonise with the Rural Area Plan (Review No.1) which also expires on that date.

3. On the 16th February 2015, the Environment Department published the Draft Island Development Plan (IDP). Publication of the draft IDP was delayed by approximately five months from a previously estimated publication date. If adopted by the States, the IDP will replace the Urban and Rural Area Plans as the principal policy document for determining how and where development can take place in Guernsey. The draft IDP has been prepared so as to be consistent with the SLUP.

4. The Public Inquiry into the draft IDP is presently being held. The Public Inquiry process involves opportunities for Initial Representations, Further Representations and the holding of Inquiry Hearings, the latter stage being currently scheduled for October 2015. It is estimated on this basis that the

Planning Inspectors' report is likely to be submitted to the Environment Department by the end of February 2016.

5. The current Development Plans have been formally amended since their adoption in order to respond to changing circumstances and they remain adequate to deal with development proposals for a further interim period, pending the Plan inquiry process and the States consideration of the IDP.

6. The purpose of this report is to request the extension of the period of validity of the Urban Area Plan and the Rural Area Plan by one year to the **2nd December, 2016** to allow for the completion of the public inquiry into the draft IDP, receipt of the Inspector's Report and subsequent consideration of recommendations and approval by the States, resulting in replacement of the current Development Plans, and to ensure that there is no gap in planning policy in the interim.

Legal Background

7. The Land Planning and Development (Guernsey) Law, 2005 came into effect on 6th April 2009 and specifies in Section 8(1)(a) that it is the duty of the Environment Department to secure that the whole of Guernsey is covered by a Development Plan or two or more such Plans taken together.

8. The Land Planning and Development (Plans) Ordinance, 2007, which also came into force on 6th April 2009, specifies in Section 13 that a Development Plan has effect for 10 years from its date of adoption by the States subject to extension of that period at any time by resolution of the States in which case it shall have effect until the date specified in that resolution. Section 14 of the Plans Ordinance requires that a Plan must be reviewed at least once every 10 years but an alteration or replacement is only required if it appears necessary following the review.

Development Plan Review

9. In February 2012, the States resolved to extend the validity of the Urban Area Plan (Review No.1) until the 2nd December 2015, or such earlier date when the States formally adopts a revised Development Plan (Billet d'État No. IV of 2012).

10. The current Strategic Land Use Plan (SLUP) was presented to the States in November 2011 (Billet d'État No. XIX of 2011). The SLUP forms part of the States' overarching Strategic Plan (SSP) and provides general guidance and specific directions to the Environment Department when preparing the more detailed planning policies contained in the Island's Development Plans. The adoption of the revised strategic land use policies required the Environment Department to prepare proposals to replace the Urban Area Plan and Rural Area Plan with a new Plan that reflects the revised strategic framework set by the SLUP.

11. The period of extension to the validity of the Urban Area Plan (Review No.1) until the 2nd December 2015 was intended to allow sufficient time for the formal review of the Development Plans, including research, consultation with stakeholders and the general public, the publication of draft proposals, a public inquiry, receipt of the Inspector's Report and subsequent consideration of recommendations and consideration by the States. Furthermore, the period of extension until the 2nd December 2015 enabled the Urban Area Plan expiry date to harmonise with the Rural Area Plan (Review No.1) which also expires on that date.

12. On the 16th February 2015, the Environment Department published the Draft Island Development Plan (IDP). If adopted by the States, the IDP will replace the Urban and Rural Area Plans as the principal policy document for determining how and where development can take place in Guernsey. The draft IDP has been prepared so as to be consistent with the SLUP and has been certified by the Strategic Land Planning Group as consistent with the SLUP in accordance with Section 5 of the Land Planning and Development (Plans) Ordinance, 2007.

13. Publication of the draft IDP was delayed by approximately five months from a previously estimated publication date. This delay was caused partly because the Department was unable to recruit suitably qualified and experienced personnel on a temporary basis to assist its staff in preparing the draft Plan, and partly because of the extensive consultation which the Environment Department carried out on the draft Plan, which included two rounds of full public consultation.

14. The Public Inquiry for the draft IDP is presently being held**.** The Public Inquiry process is split into three separate and distinct stages:

- *Initial Representations* – an opportunity for comments to be made on the policies in the draft IDP and the related Environmental Statement during eight weeks from 16th February 2015 to 13th April 2015.

- *Further Representations* – an opportunity for comments to be made on the representations made during the Initial Representations stage during a six week period from 18th May 2015 to 3rd July 2015.

- *Inquiry Hearings* – a series of public hearings where the Planning Inspectors will take evidence on the issues raised during both the Initial and Further Representations stages. The provisional date fixed for the start of the inquiry hearing stage is Monday 5th October 2015.

15. It is estimated that the Planning Inspectors' report is likely to be available by the end of February 2016.

Interim Amendments

16. The current Development Plans have been formally amended since their adoption in order to respond to changing circumstances and both remain adequate to deal with development proposals for a further interim period. For example, in February, 2007, the Visitor Accommodation policies of both of the Plans were amended in response to a change of strategic direction on the visitor economy. In April, 2010, further amendments were approved to both the Rural Area Plan and the Urban Area Plan to respond to needs for low key industry and open yards and the Urban Area Plan was amended to provide a policy gateway for small-scale infrastructure and essential development. Therefore, the ability to bring forward Plan amendments has allowed the Department to respond to emerging issues that require a shift in policy direction, keeping the Urban Area Plan and Rural Area Plan relevant to the strategic objectives of the time.

17. In this context, the reasons for the five month delay in publication of the draft IDP and its implications were fully explored by the Policy Council in 2014 and the conclusion of this work was that the delay resulted in no significant impact to the economy of Guernsey. The current Development Plans continue to provide opportunities for development across a broad range of activities and on a broad range of sites throughout the Island.

Environmental Implications

18. There are no direct environmental implications arising from this report, but the extended validity of the Urban Area Plan and Rural Area Plan will provide a continuing planning policy framework for determining planning applications in the urban and rural areas in an environmentally sustainable manner, pending States consideration of the IDP.

Legislative Implications and Consultation

19. There is no requirement for new legislation as the legislation allows for the effective period of a Development Plan to be extended by resolution of the States. The Law Officers have been consulted and their comments taken into account in this report.

Human Rights Compliance

20. There are no identified human rights implications arising from this report.

Costs/Resources

21. There are no identified financial or resource management implications arising from this report.

Principles of Good Governance

22. The Department 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).

23. The Department believes that the Report conforms with the overarching strategies (fiscal and economic, social, environmental and infrastructure) set out in the States Strategic Plan.

24. This report is required as the Environment Department is required to secure that the whole of Guernsey is covered by valid Development Plans under Section 8 of the *Land Planning and Development (Guernsey) Law 2005*. As the effective period of the current Development Plans, the Urban Area Plan (Review No.1) and the Rural Area Plan (Review No.1), is due to expire in December 2015, an extension of the effective period is required under the legislation.

Recommendation

25. The Environment Department recommends the States to extend the effective period of the Urban Area Plan (Review No.1) and the Rural Area Plan (Review No.1) until the **2nd December, 2016** or such earlier date when the States formally adopt a revised Development Plan replacing the Plans in question.

Yours faithfully

Y Burford
Minister

B L Brehaut
Deputy Minister

J A B Gollop
P A Harwood
A R Le Lièvre

(N.B. As there are no resource implications in this Policy Letter, 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 report complies with the Principles of Good Governance as defined in Billet d'État IV of 2011.)

The States are asked to decide:-

XVI.- Whether, after consideration of the Policy Letter dated 28th April, 2015, of the Environment Department, they are of the opinion to extend the effective period of the Urban Area Plan (Review No.1) and the Rural Area Plan (Review No.1) until the 2nd December, 2016 or such earlier date when the States formally adopt a revised Development Plan replacing the Plans in question.

HOME DEPARTMENT

REVIEW OF GAMBLING LEGISLATION - SUPPLEMENTAL STATES REPORT

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

27th April 2015

Dear Sir

1. Executive Summary

1.1 In November 2007, the States of Deliberation approved a range of proposals which sought to modernise and regularise the Island's gambling regime, including relaxing some of the current restrictions on local charities, removing some of the restrictions on local bookmakers including permitting the introduction of Fixed Odds Betting Terminals, and repealing and replacing the existing gambling legislation. The instigation of the proposals has not progressed as quickly as the Home Department (the "**Department**") initially envisaged due to competing priorities within the Department.

1.2 Considering that the extant Resolutions are now seven years old, the Department has used this opportunity to consider whether some of the proposals remain fit for purpose at this time. In doing so, and after further consultation, it has identified a number of areas where it believes that further direction from the States is required. The Department is also in a position to update the States on a number of related matters.

1.3 This Report sets out proposals to amend the existing gambling legislation in order to:

- Enable certain types of gaming machines to operate locally subject to a licensing regime;
- Remove the restriction that currently requires Crown and Anchor to be principally held outdoors;
- Modernise the arrangements surrounding local bookmakers and their agents, including allowing Sunday Opening, and premises to be located downstairs;
- Modernise the legislation surrounding gambling for charitable purposes to ensure that the future regime is proportionate, consistent and transparent.

1.4 Additionally the Report provides an update in respect of:

- The Department's intentions to ensure that help and support is available to individuals who experience problems with gambling;
- The Department's further consideration of the introduction of Fixed Odds Betting Terminals and the robust regulatory regime required locally.

2. Background

2.1 The current gambling legislation dates back to the early 1970s and is reflective of the Island's attitude toward gambling at the time. The States Gambling Investigation Committee's work was based on a *de minimus* principle, seeking only to legalise those activities already taking place locally. The quote below from the States Report dated 29th August 2007 entitled "Review of Gambling Legislation" included within Billet d'État XXII of 2007 (the "**2007 Report**") illustrates the Committee's thoughts of the time:

> *"With very few exceptions gambling of some sort is inherent in the human race. Though it may be suppressed it seems unlikely that it can ever be eradicated and politics being only an art of the possible the majority of the Committee feel that is seems politic to recognise gambling's existence and mitigate its evils by control rather than well intended but inevitably ineffective prohibition. Even the dissenting members of the Committee accept that prohibition has generally failed. It behoves us therefore to recommend to the States some form of limitation or control which will allay the evils and as far as practicable canalise the fruits of gambling activities in beneficial directions."*

The Committee's work culminated in the implementation of new primary legislation, the Gambling (Guernsey) Law, 1971.

2.2 Following the formation of the Department in 2004, the Department launched a comprehensive review of the gambling legislation in Guernsey designed to consider whether it remained fit for purpose in the current age. A small working party, the Gambling Review Working Group, was created which oversaw a comprehensive consultation progress which culminated in the 2007 Report.

2.3 Following consideration of the 2007 Report, the States of Deliberation approved (under resolution X.1 of Billet d'Etat XXII of 2007) the Department's 27 proposals as set out and summarised in paragraph 20 of the 2007 Report, premised on –

(a) the key aims and objectives of –

- Keeping gambling crime free and ensure that gambling operators are subject to rules on money laundering and financial probity;
- Ensuring the gambling is fair and transparent; and
- Protecting children and vulnerable adults;

(together the "**Key Objectives**"); and

(b) the underlying principles of -

- Increasing regulation and scrutiny of commercial gambling and betting activities;
- Reducing bureaucracy and costs for charitable (not-for-profit) gaming, lotteries and raffles;
- Ensuring fees reflect the commercial value of the licence; and
- Providing support for those affected by gambling addiction, debt etc

(together the "**Underlying Principles**").

2.4 Specific recommendations within the 2007 Report included relaxing some of the current restrictions on local charities, providing them with increased opportunities to raise funds through gambling, removing some of the restrictions on local bookmakers including allowing the introduction of Fixed Odds Betting Terminals, repealing and replacing the existing gambling legislation, and ensuring that fees reflect the commercial value of licences.

2.5 Unfortunately, until relatively recently, the Department had been unable to progress the changes to the gambling legislation due to the need to prioritise other Departmental work streams.

2.6 Since the 2007 Report technology has continued to develop at a considerable rate and people are now able to participate in a variety of forms of online gambling through their TVs, personal computers and mobile phones, which is having an adverse effect on the local gambling trade.

2.7 The Gambling Review Working Group, now known as the Gambling Subgroup, has continued to operate, most specifically to act as a conduit between the local bookmaking trade and the Department. Throughout these meetings, a common concern expressed by local bookmakers has been their ability to survive in light of the legislative restrictions placed on them and the increased competition that they are facing from online gambling.

2.8 In preparing this States Report, the Department has been mindful that whilst for many individuals gambling is a legitimate leisure activity, for others it can cause significant difficulties in their lives.

- Gambling addiction is a type of impulse-control disorder where gamblers are unable to control the impulse to gamble;
- Problem gambling is any gambling behaviour that disrupts the individual’s life.

3. Proposals

Legislative Framework

3.1 In 2007, the States approved the following recommendation from the 2007 Report–

> ***"23.*** *Repeal of the existing gambling legislation and the introduction of new enabling legislation, modelled on the existing liquor licensing legislation, to provide for issue and/or variance of licensing conditions, including powers to suspend and revoke licences where the Royal Court is satisfied that there is evidence that any of the three key principles has not been adhered to and/or Codes of Practice complied with.."*

Repeal and Replace Legislative Framework

3.2 The 2007 Report expressed concern over the large number of Laws, Ordinances and regulations which have been enacted in respect of gambling, and the difficulties that this causes in determining which activities are lawful and which activities are unlawful. To address this difficulty, recommendation 23 of the 2007 Report proposed that all of the current gambling legislation be repealed and replaced with a new Law, Ordinance and such regulations as may be needed.

3.3 The Department is conscious that plans to create new legislation are already seven years old and realistically the introduction of new primary legislation will be a number of years away. In the meantime, local bookmakers and charities are being hindered by the restrictions under the current legislation. The Department recognises that although a new legislative framework would be the ideal solution for the future, a more pragmatic solution at this time is to implement the 2007 proposals together with the proposals set out in this Report by amending the existing legislation. Certain transitional provisions may be required within the legislation, particularly where new licensing conditions or frameworks are introduced.

3.4 Discussions have taken place with representatives from the Law Officers of the Crown who concur that amending the existing legislation is a practical solution as it will expedite the implementation of the proposals approved in 2007. The States is therefore asked to endorse this revised legislative approach. The Department will continue to review whether an entire new gambling legislative framework is necessary and will report back to the States with its findings.

Role of the Royal Court

3.5 Recommendation 23 of the 2007 Report also proposed that responsibility for the granting of bookmaker and Crown and Anchor licences should be transferred from the Department to the Royal Court. The justification for this was to

demonstrate that the procedure was fair and transparent. After careful consideration and consultation with the Royal Court, the Department believes that moving this responsibility to the Royal Court is not necessary or proportionate at this time. The Royal Court has raised no objections to this.

3.6 The Department is confident that the licensing process as it currently stands is suitably fair and transparent under the Gambling (Betting) Ordinance, 1973, as amended, ("**Betting Ordinance**") and the Gambling (Crown and Anchor) (Guernsey) Ordinance, 1983, as amended. Under the current system, applicants for licences are required to submit documentation prior to attending, or being represented by their advocate at, a hearing before Department representatives. Notice of a bookmakers licence application and the details of the hearing are made available to the public via *La Gazette Officielle*, where persons are invited to write to the Department should they have any objections regarding the bookmakers licence application. Reports from the relevant Constables and Douzaines (in relation to bookmakers' licences only) and information furnished from the Chief of Police (in relation to both bookmakers and Crown and Anchor licences) are considered prior to the Department making any decision relating to a licence application. Comprehensive notes of the hearing are recorded by Department staff, and applicants are informed in writing of the Department's formal decision. Unsuccessful applicants are sent a notice in writing setting out the reasons for the refusal and are advised of their right of appeal to the Royal Court.

3.7 The Department is of the opinion that the current licensing arrangements are demonstrably transparent and fair, and importantly are in keeping with the Good Governance Principles. The Department therefore recommends that the part of the States resolution which adopted recommendation 23 of the 2007 Report and which suggests that responsibility for the granting of bookmaker and Crown and Anchor licences should be transferred to the Royal Court is rescinded.

Departmental powers

3.8 Recommendation 23 of the 2007 Report also recommended that the gambling legislation should be modelled upon the liquor licensing legislation so as to provide appropriate powers for the review, amendment and addition of conditions, and the suspension or revocation of a licence where it has evidence indicating that any of the Key Objectives have not been adhered to and/or the Codes of Practice have not been complied. The Department considers that there is considerable merit in the proposals referred to in Recommendation 23 being implemented, but for the reasons stated above, the Department proposes that (a) the powers should be granted to the Department in its capacity as the relevant licensing authority, rather than the Royal Court; and (b) that the suspension or revocation powers may also be used where a licence condition or licence requirement is breached.

Gaming Machines

3.9 As set out in the 2007 Report, there is no provision for gaming machines[1] outside of a casino facility, and at the time the Department recommended that no change be made to the current restrictions other than in respect of fixed odds betting terminals[2]- a particular type of gaming machine detailed in section 4 of this report. In 2007 the States therefore approved the following recommendation

> "***4.*** *No change to the current restrictions on electronic games of chance, other than in respect of Fixed Odds Betting Terminals.*"

3.10 However, since 2007 it has come to the Department's attention that a number of premises licensed under the Liquor Licensing Ordinance, 2006, as amended ("**Liquor Licensing Ordinance**") have introduced machines within their premises, which enable patrons to participate in tournament based competitions. It is likely that some of these machines offer a combination of skill based games with an element of chance. The Department has not received any complaints from the public regarding these machines and their operation locally. The Department would therefore like to clarify the legal status of those machines currently in operation.

3.11 Machines which combine skill based games with an element of chance come within the ambit of the definition of a gaming machine. Gaming machines outside of a casino facility are not lawful under the existing gambling legislative framework. The Department proposes publishing guidance to help assess whether machines are gaming machines or not.

3.12 The Department proposes that specific provision is made within the gambling legislation to allow specific types of gaming machines which allow patrons to participate in tournament based competitions (and as detailed in paragraph 3.10) in premises licensed under the Liquor Licensing Ordinance and the Betting Ordinance.

3.13 Any persons wishing to import such machines will be required to notify the Department. The intention would be that licensed premises under the Liquor Licensing Ordinance and the Betting Ordinance wishing to operate such machines on their premises would have to apply to the Department for a licence, which would include the payment of an annual licence fee to the Department. The Departments recommends that the annual licence fee is set in accordance with the Policy Council Fees and Charges Policy Guidance.

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[1] Under the Gambling (Gaming and Lotteries) Ordinance, 1991, as amended a gaming machine is a machine for playing a game of chance, being a game which requires no action by any player other than the actuation or manipulation of the machine. A "game of chance" includes a game of chance and skill combined.

[2] The introduction of fixed odds betting machines in licensed bookmakers' offices was approved in 2007. See recommendation 18 of the 2007 States Report.

3.14 Licensees would be responsible for ensuring compliance with any conditions prescribed by order of the Department, relating to the conduct, control of, and any necessary limitations in relation to, and for matters of administration in connection with the use of, such gaming machines, including the compliance with any Code of Practice established by the Department. Conditions are likely to include matters such as -

- any necessary safeguards to protect vulnerable persons, including age restrictions;
- a limit on the number of machines per licensed premises;
- where such machines may be situated within licensed premises;
- any external validation that the machines should be subject to;
- the value of prizes;
- the nature of prizes;
- the amounts paid in respect of the use of the machine; and
- the nature of the gambling for which the machine can be used (including, without limitation, the games available on any such machines) .

3.15 The Department proposes that it is provided with the necessary powers to act (including the power to suspend or revoke a licence) should there be a breach in any of the licence conditions, including any Code of Practice, or if any of the Key Objectives have not been adhered to.

3.16 The Department intends that a proportion of the income generated by the gaming machines will be invested into initiatives designed to help and support problem gamblers locally. The Department will ensure that there is a transitional period in place to enable licensed premises to apply for licenses.

3.17 The Department proposes that the part of the 2007 States resolution which adopted recommendation 4 from the 2007 Report is rescinded and that the States agree to the introduction of the specific types of gaming machines detailed in paragraph 3.10 above which allow patrons to participate in tournament based competitions (and any licence conditions, controls or limitations in relation to any such machines, or games available on any such machines) as determined by the Department by way of Order in premises licensed under the Liquor Licensing Ordinance and the Betting Ordinance.

Football Pools

3.18 Currently, there is no regulation of agents operating football pools in Guernsey. In the 2007 Report, the Department proposed that a registration scheme should be introduced whereby the promoters of football pools would need to provide to the Department a police check and registration fee at £50 per person per annum. In 2007 the States approved the following proposal –

"***6.*** *Introduce a registration scheme and for the person nominated as "promoter" to provide police check certificate and set the registration fee to cover administrative costs at £50 per person per annum."*

3.19 Whilst conscious of the desire at the time to ensure some level of oversight of football pools locally, the Department no longer believes that the introduction of a registration scheme is a necessary measure at this time. The Department has not received any reports of abuse of football pools, and understands that the majority of football pools operators are already registered with UK based organisations.

3.20 The Department recommends that a registration scheme for promoters of football pools is not established at this time but that this is kept under review for the future. The Department therefore recommends that the part of the 2007 States resolution which adopted recommendation 6 from the 2007 States Report is rescinded.

Crown and Anchor

3.21 Under the Gambling (Crown and Anchor) (Guernsey) Ordinance, 1983, as amended, Crown and Anchor is currently only permitted to be played at the following events:

- agricultural or horticultural shows,
- horse-racing meetings,
- regattas,
- other events held principally out of doors, where:-
    - the event includes participation in, or support of, sports, games or cultural activities or
    - the main objective of the event is to raise proceeds which are devoted to purposes other than purposes of private gain.

3.22 The Department is increasingly receiving requests from charities wishing to operate a Crown and Anchor table at a greater range of events, most particularly events which are not principally held out of doors. The Department believes that there is no reason why this restriction should remain and recommends that the reference to "principally out of doors" is removed from the legislation.

Commercial off course betting

Agents

3.23 The Department is conscious that the ability for bookmakers to issue authorisations to third parties to act as their agent is an arrangement unique to Guernsey, and enables betting transactions to take place in a range of locations. The majority of bookmaker agents are licensed premises, but they also cover

some corner shops, garages and sporting locations. The Department has been mindful that such an arrangement is not without its risks, but is conscious that agents have operated in Guernsey for a number of years with very few complaints or incidents. Additionally, the actions carried out by agents are the bookmaker's responsibility, and should the agent's actions continue the Department could ultimately refuse to renew the bookmaker's licence on the basis that the bookmaker's business has not been conducted properly.

3.24 However, the Department believes that there should be established Codes of Practice to more closely govern the operation of agents. In addition, in order to provide the Department with more oversight, the Department believes that the Betting Ordinance should be amended so that, instead of the current 48 hour notification period set out in the Second Schedule to the Betting Ordinance, there is a requirement for a bookmaker to notify the Department not less than two weeks before the first date when he intends the agents to start negotiating bets. In that period, the Department would consider the application, have the power to request further information and ultimately accept or reject the application for an authority to be issued to an agent by the bookmaker. The Department further recommends that the Betting Ordinance be amended so that an authority issued to any agent can also cease to be in force upon a notice issued by the Department where the Department has evidence indicating that any of the Key Objectives have not been adhered to and/or the Codes of Practice have not been complied with.

3.25 The Department is mindful that a strict interpretation of the Ordinance is that only the individual named in the Authority is able to negotiate bets on behalf of the licensed bookmaker. In practice however, in many cases, the manager of a premises may be granted an Authority, but bets are in fact received by their staff. The Department believes that such an arrangement is inevitable, and therefore proposes that the Ordinance is amended to clarify that such arrangements are lawful. However the bookmaker should have a legislative responsibility to satisfy himself of the suitability of the agent's staff since the responsibility remains with the bookmaker.

Sunday Opening

3.26 The First Schedule to the Betting Ordinance prohibits the effecting of betting transactions by bookmakers and their authorised agents on Sundays.

3.27 However, in preparing this Report, an oversight within the 2007 Report has come to light in relation to the Sunday opening of bookmakers. Within paragraph 7(h) of the 2007 Report, the Department stated:

> *"It is further noted that bookmakers could not open their premises on a Sunday but, following the change in Sunday opening for licensed premises, bets could be accepted by licensed agents on licensed premises and believed that this presented an anomaly. The consultation responses*

showed that the respondents were either opposed to Sunday opening or expressed no firm view. Further, in its discussions with the licensed bookmakers the Department noted that there was no strong desire to open on a Sunday. The Department is therefore recommending no change to the Sunday opening restrictions."

3.28 In 2007 the States approved recommendation 14 from the 2007 Report as follows–

> *"**14**. Whilst there is an anomaly in that somebody can place a bet on a Sunday via an authorised agent the Department recommends that this restriction on Sunday trading should remain."*

3.29 The Department's recommendation, whilst reflective of the custom and practice that has arisen over time is not in fact legally correct, and for the avoidance of doubt under the Betting Ordinance, 1973 neither bookmakers nor their authorised agents are able to accept cash bets on a Sunday. The only exception to this was agreed by the States in 1998, following the consideration of a Gambling Control Committee Report dated 16th September 1998, whereby bookmakers are permitted to trade on a Sunday provided that they are operating only as a credit betting office. Credit betting offices can effect betting transactions on their premises provided that persons do not visit the betting office to effect such transactions.

3.30 Despite the clear spirit of the original States' decision, there appears to have been a misinterpretation of the legislation and local bookmakers have been accepting bets on a Sunday via their authorised agents for a considerable number of years.

3.31 The Department has considered this anomaly carefully and is keen to address the matter as soon as possible. The Department believes that in a time where any individual can place a bet via the internet at any time, on any day, it is no longer appropriate to prohibit either bookmakers or their authorised agents from opening and accepting cash bets on a Sunday. To do so, only places local businesses at a disadvantage and diverts money out of the local economy. The Department feels that any attempt to distinguish between bookmakers and their authorised agents would be arbitrary and potentially unjust.

3.32 The Department therefore recommends that the current legislation is amended to remove the restriction on Sunday opening for both bookmakers and their authorised agents (albeit that the current restrictions should remain when Christmas Day falls on a Sunday). The Department therefore further recommends that the part of the 2007 States resolution which adopted recommendation 14 from the 2007 Report is rescinded.

3.33 In making this recommendation, and following consultation with the Commerce and Employment Department, the Department notes that betting office staff would not be protected under the existing employment protection legislation which affords those employed in retail statutory rights for refusing to work on Sunday. The Commerce and Employment Department has advised that such an extension to the existing Sunday trading legislation would be beyond its legislative intention and may have wider implications. The Department is satisfied that the deregulation of Sunday opening for betting offices may be progressed in the absence of statutory protection for employees on the basis that the number of staff members involved are limited and the current legislative protection does not currently extend to the service industries with apparently little problem. The Department will however keep this matter under review, including Commerce and Employment's general report on Sunday trading later this year.

Location of Premises

3.34 Under section 18(2)(c) of the Betting Ordinance the grant or renewal of a betting office licence shall be refused if the licence is applied for in respect of ground floor premises used or designated for use as a shop. The Department is of the opinion that the 2007 Report implied, but did not directly recommend, that the current prohibition on ground floor premises should be removed from the legislation, believing that this restriction was "*at odds with other provisions in the law*". The Department now formally recommends that this restriction under section 18(2)(c) of the Betting Ordinance on licensed betting offices being located on ground floor shop premises is removed from the legislation.

3.35 In making this recommendation, the Department has been mindful of the possible impact on the local environment. However, it should be noted that the current legislation only prevents a betting office being established on ground floor premises which have been used or designed for use as a shop, and does not prevent bookmakers more generally opening premises on the ground floor. Additionally, the Department has issued licences to approximately 100 ground floor agents, mainly pubs and licensed premises. Since the advent of television advertising and the internet, individuals are already exposed to gambling on a daily basis, and the Department feels that it is no longer appropriate for bookmakers to effectively be "hidden" upstairs.

3.36 Notwithstanding the above, the Department is conscious of the visual impact that the proliferation of betting offices has had on many UK high streets and indeed in Jersey, but believes that such problems will be avoided in Guernsey by the restriction of the number of betting offices locally[3]. As is currently the case,

[3] The number of betting office licences is currently limited under legislation to 7. Please note that in 2007 the States resolved (see recommendation 15 of the 2007 Report) to allow the Department to fix the number of licences (which would remain initially at 7) and have the power to increase or decrease the number of licences, after having held a public consultation in relation to any proposed change. [4] Fixed odds betting terminals use a random number generator to decide the outcome of representations of games such as horseracing, greyhound racing, and roulette. Within the UK, customers can place a maximum stake of £100, with the possibility of winning £500.

the Department would refuse to grant a licence should it feel that the presence of a betting office would be detrimental to the character of the local area or negatively impact on local residents. In making this assessment the Department would seek the advice of the Parish Douzaine and the Environment Department. In addition, the proximity to any other betting offices coupled with the demand in the area would be taken into account when considering the grant of a licence.

3.37 Although it is intended that the advertising restrictions currently placed on licensed bookmakers will be removed, as was approved by the States after consideration of the 2007 Report, the Department intends to implement Codes of Practice for bookmakers which will cover matters such as the type and potentially the size of advertising that bookmakers are able to display. In drafting these Codes of Practice, the Department will be particularly mindful of the additional complexities of ground floor betting offices when considering the potential restrictions. The Department believes that moving the advertising restrictions from the legislation to the Codes of Practice will enable the Department to more quickly respond to any particular concerns.

Apparatus used for making information available in licensed betting offices

3.38 The Rules for licensed betting offices are established under the First Schedule to the Betting Ordinance. Paragraph 5 sets out the rules in relation to the apparatus that can be used for making information or other material available in the form of sounds or visual images which includes restrictions on the footage or material that can be made available and the size of television screens in licensed betting offices.

3.39 Paragraph 5(1) of the First Schedule to the Betting Ordinance restricts bookmakers to showing or playing footage, information or material which relates "*to a sporting event or coverage thereof*". The Department acknowledges that the public now gamble on a range of outcomes far wider than simply relating to sporting events and therefore believes that this restriction should be removed from the First Schedule and that footage, information or material should be able to relate to any betting event.

3.40 Paragraph 5(2)(a) of the First Schedule to the Betting Ordinance restricts the screen of any apparatus for receiving visual images to 30 inches in width. The Department believes that this restriction should no longer be included within the legislation but should instead be incorporated into Codes of Practice in order to afford the Department the flexibility to amend this restriction in the future.

3.41 The Department therefore proposes that the provisions under the Betting Ordinance which relate to the apparatus that can be used for making information or other material available in the form of sounds or visual images in licensed betting offices is amended so as to remove the restriction on the size of screens and the current requirement that coverage must relate to sporting events and instead allow coverage to relate to any betting event.

Support for problem gamblers

3.42 The Department is aware of the need to provide help and support for Islanders who experience problems with gambling. It recognises that problem gambling can have a detrimental effect on individuals' lives, and whilst there is little evidence to suggest that gambling addiction is a major problem in Guernsey, it firmly believes that appropriate support and advice should be available locally.

3.43 The Department wishes to support problem gamblers locally. Under the existing 2007 proposals, the implementation of Codes of Practice will help the Department achieve the Key Objectives. For example, the Codes of Practice will require all licensed bookmakers to display within their premises promotional material regarding the help and support available locally for individuals suffering from gambling addiction, and offer a self-exclusion scheme to patrons.

3.44 Currently there is no formal support mechanism for problem gamblers, in addition to the recommendations approved under the 2007 Report, the Department will divert a proportion of gambling fees received into assisting with problem gamblers. This amount will be reviewed by the Department annually and will not exceed any additional income from fees generated by the introduction of Fixed Odds Betting Terminals and licensing of gaming machines. This will be co-ordinated with other agencies and relevant strategies and include working with local stakeholders to help fund a dedicated counselling service locally, for islanders experiencing difficulties as a result of gambling addiction. This support mechanism will importantly be available to individuals experiencing problems with on island gambling and those using internet based gambling providers.

3.45 The proportion of fees diverted will be dependent upon the level of income generated by the Department from gambling fees and the identified demand for the initiatives and services described in paragraph 3.43.

Charitable/ Not for Profit Gaming, Lotteries and Draws

3.46 Under the current legislation, charities must apply for a permit in relation to:

a. ***Lotteries conducted for charitable, sporting or other purposes*** under the Gambling (Gaming and Lotteries) Ordinance, 1991 ("**Gaming and Lotteries Ordinance**") (permit cost £50);

b. ***Cinema racing*** under the Gambling (Cinema Racing) Ordinance 1988 (**"Cinema Racing Ordinance")** (permit cost £40).

3.47 Charities are however exempt under the Gaming and Lotteries Ordinance from applying for a permit under the following circumstances

a. ***gaming***.

b. ***lotteries incidental to certain events*** (e.g. raffles/lotteries which are incidental to a charity/sporting event (e.g. bazaars/fetes) provided that certain conditions are met (e.g. tickets not more than £1, prize no more than £100, tickets sold at event etc).

c. ***amusements with prizes at bazaars, dances, dinners, fetes, sales of work, sporting or athletic events, and other events of a similar character***.

3.48 In 2007, the States approved recommendations 1, 2 and 3 from the 2007 Report as follows –

1. *"Replace current system with an annual registration fee to cover administrative costs- £25 per charity per annum;*
2. *Activities to be covered under this approach to include all activities currently permitted but to also provide the Department with the power to amend the list of approved activities;*
3. *Remove the value of individual prizes and the price of tickets and permit the Department to require a lottery promoter to provide it with documentary evidence to show that the draw would take place on the date stated on the tickets and the prizes would be available regardless of how many tickets are sold and that, where appropriate, the promoter be required to provide evidence that the lottery was underwritten."*

3.49 The underlying principle behind these proposals was to reduce the level of regulation and scrutiny on small charity draws. However, it has now been identified that by introducing an annual registration process, the Department may inadvertently be removing the current exemptions and therefore would be broadening the range of activities that require registration. This would in turn increase the number of charities locally who need to register. The Department feels that such an approach would be overly burdensome, and a pragmatic regulatory balance needs to be reached based on a clear risk assessment. In doing so, it hopes to establish a regime which is proportionate, consistent and transparent.

3.50 The Department has started with the assumption that the vast majority of charities are well run organisations organised by altruistic individuals wishing to raise invaluable funds for the benefit of our community. These endeavours should be welcomed and supported by the States, and efforts should be made to ensure that they are not unnecessarily disadvantaged.

3.51 The Department has therefore considered how best to proceed, and has determined that the risks associated with charitable gambling are low, and therefore a "light regulatory touch" is appropriate in the vast majority of cases. However, in the case of high value lotteries, the Department believes that it is prudent for the Department to have oversight of such events, to require the promoters to evidence to the Department that the lottery is appropriately underwritten and to continue to require that a permit is obtained from the Department together with the fulfilment of other existing conditions. The

Department believes that this is in the best interests of the general public and, importantly, the charities involved.

3.52 The Department considers that the current distinction between lotteries incidental to an event and the high value lotteries conducted for charitable, sporting or other purposes is no longer appropriate and a revised approach be adopted whereby the majority of lotteries, along with cinema racing, should be exempt from requiring a permit, irrespective of whether tickets are sold at a single event on a single day or over a period of time. The Department considers that in terms of regulatory risk, there are no significant grounds for distinguishing between events where tickets are sold at a single event or to a wide audience over a greater period of time. The Department is also conscious that the thresholds for ticket price and individual prize value, £1 and £100 respectively, are relatively low, and there is an acknowledged risk that such limits may be inadvertently exceeded. The Department considers that merely uplifting these values would not address the Department's primary concern in relation to the current distinction between the two types of promotion. The Department recommends that the distinction be between high value charitable lotteries (that require a permit) and small charitable lotteries (that do not require a permit). The Department therefore proposes that small charitable lotteries will no longer need to be "lotteries incidental to events" in order to qualify as a lottery that does not require a permit.

3.53 The proposals would allow staff time and efforts to be appropriately directed at large scale lotteries.

3.54 Accordingly, it is now recommended by the Department that:-

a. The part of the States resolution which adopted recommendations 1, 2 and 3 of the 2007 Report be rescinded;

b. The Gaming and Lotteries Ordinance be amended so that –

i. small charitable lotteries will no longer need to be "lotteries incidental to events" in order to qualify as a lottery that does not require a permit. The concept of "lotteries incidental to events" will therefore be removed from the legislation and replaced with the concept of "small charitable lotteries". "Small charitable lotteries" will be exempt from the requirement to hold a permit (rather than "lotteries incidental to events");

ii. the majority of the conditions that are currently set out in section 11 of the Gaming and Lotteries Ordinance in relation to "lotteries incidental to events" will continue to apply in relation to "small charitable lotteries" except any conditions that are specific to "lotteries incidental to events" which would become otiose if the

Department's proposals are approved. For example, the following conditions would no longer apply –

- the requirement for a lottery to be promoted as an incident of an event organised by a society consisting of a bazaar, dance, dinner, fete, sale of work, sporting or athletic display or competition, or event of a similar character, or the tickets or chances are sold only to members of the society or to persons resorting to premises or land used by the society,
- the requirement that a ticket or chance is sold or issued only on the premises on which the event is being held whilst it is taking place to persons present,
- the requirement that the facilities afforded for taking part in the lottery, gaming, cinema racing or the opportunity to win prizes at amusements, shall not be the sole or a substantial inducement to persons to attend an event.
- In addition, the current restriction on ticket price (£1) and lottery prize (£100) will need to be amended so as to reflect the definition of small charitable lotteries.

iii. small charitable lotteries under the Gaming and Lotteries Ordinance are defined as lotteries where the ticket price is £10 or under and no prize exceeds £10,000 in value. In the case of monthly lottery clubs, events would be assessed by their aggregate total prize fund over the course of the year to assess whether the £10,000 limit is exceeded. This would enable the vast majority of charitable lotteries to take place without the need for an application for a permit to be made to the Department. It is also recommended that the Department have the power to prescribe the financial levels of the price of a ticket and the value of the prize by Regulation in order to ensure legislative flexibility in the future.

iv. The Department is given the power to require the promotor of the lottery to evidence to the Department the charitable lottery is appropriately underwritten upon request; and that the Department may impose a condition that the lottery be underwritten in order for the lottery to be lawful.

c. The Cinema Racing Ordinance and the Schedule thereto be amended as to –

i. remove the –

- requirement for an application for a permit from the Department to be made, and a permit to be granted and displayed at the venue of the event, in order to conduct a cinema racing event,
- restriction on the public advertising of cinema racing events,

- restriction on the number of events per year per charity (currently set at 4),
- requirement for the promoter of the event to submit a return subsequent to the event (which shows (i) the total amount of proceeds raised from the event, (ii) the sums appropriated for expenses and for prizes respectively, (iii) the purposes to which the proceeds were applied; and the amounts applied for each purpose), and the obligation for the Department to preserve such returns for at least twelve months so that they are available for inspection by the public,
- requirement for the promoter to pay a fee (currently £40) to the Department,

ii. require that a promoter of an event who has been convicted of an offence under the Gambling (Guernsey) Law, 1971, or of an offence punishable with imprisonment in Guernsey, Jersey or the United Kingdom, notify the Department in advance of any promotion of the event and the event itself. The Department proposes that it be given the power, at its sole discretion, to impose a restriction on the event being promoted by that individual (currently the Department may refuse a permit to promoter who has been convicted of any such offences),

iii. grant the Department the power to impose additional conditions as it considers necessary or expedient in respect of an event,

iv. grant the Department the general power to prescribe by regulation a condition which limits the amount of individual stakes payable and the value of the prize available at all cinema racing events.

d. It is clarified that a lottery or cinema racing event to raise money for charitable purposes may raise money for more than one charitable / not for profit organisation and that the money raised may be for a charitable organisation that is different to the organisation promoting the lottery or cinema racing event.

Sale of lottery tickets online for charitable lotteries

3.55 The Department has been approached by a number of charities in recent years wishing to sell lottery tickets online. The Department believes that such a move in charities' preference is inevitable as technology develops and this should be accommodated within the legislation. The current legislation predates the advent of internet and therefore the possibility of online sales was not considered at the time of the initial States Report or the subsequent drafting. The Department recommends that in order to facilitate the sale of lottery tickets online for charities, the Gaming and Lotteries Ordinance is amended so as to clarify that the sale of lottery tickets online for both small and high value charitable lotteries

to persons present in the Bailiwick of Guernsey is lawful, including, without limitation –

a. removing the current restriction under section 11 of the Gaming and Lotteries Ordinance which requires tickets to be sold or issued in person on the premises on which the charitable event is being held (in relation to small scale charitable lotteries),

b. removing the current restriction under section 6 of the Gaming and Lotteries Ordinance which only permits tickets to be sent through the post to members of the society (in relation to high value lotteries), and

c. clarifying that the sale of a lottery ticket online under section 6 and/or 11 of the Gaming and Lotteries Ordinance does not fall foul of section 17. Section 17 of the Gaming and Lotteries Ordinance states that nothing in the Ordinance makes gambling by means of a gaming machine lawful.

The Department considers that the current restriction preventing the sale of tickets to individuals under 16 is retained and therefore the responsibility would be on the promoters of online lotteries to have appropriate age verification systems and processes to identify and prevent under aged individuals from purchasing tickets. Further, in relation to the high value charitable lotteries, the Department can use its existing powers under the Gaming and Lotteries Ordinance to impose such conditions on the permit, on a case by case basis, as it thinks may be necessary or expedient due to the online element of the gambling.

3.56 It is important to highlight that the Department's recommendations in relation to the issue and sale of online tickets by charitable lotteries will only permit the issue and sale to individuals who are present in the Bailiwick of Guernsey. This is due to the current prohibition of gambling with strangers under section 8 of the Gambling (Guernsey) Law, 1971. The Law defines "stranger" as a person who is not actually present in the Bailiwick of Guernsey and includes a body corporate whether incorporated in the Bailiwick of Guernsey or elsewhere. The Department intends to review these provisions and will revert to the States if it has any further proposals on this subject.

4. Update

Fixed Odds Betting Terminals

4.1 The States approved in principle the introduction of Fixed Odds Betting Terminals[4] ("**FOBTs**") in 2007 as follows –

[4] Fixed odds betting terminals use a random number generator to decide the outcome of representations of games such as horseracing, greyhound racing, and roulette. Within the UK, customers can place a maximum stake of £100, with the possibility of winning £500.

"**21.** *Agree, in principle, to the introduction of FOBTs subject to consideration of the potential negative impacts of such terminals on gambling addiction. Introduce separate codes of practice and other regulatory practices as may be necessary to ensure that the terminals are not misused. To restrict the terminals to licensed bookmakers' offices and to permit a maximum of two terminals to any one bookmaker's office.*

22. *As set out in Recommendation 21 above if such terminals are permitted there would need to be a robust regulatory régime. It is recommended that the minimum fee should be £1,000 per terminal per annum, subject to the qualifications set out above, plus the costs of any additional regulatory regime as may be required."*

4.2 Since 2007, the Department has been mindful of its obligation to consider the potential negative impact of FOBTs locally. In doing so, the Department has been conscious of the often emotive opposition to FOBTs in other jurisdictions, and has been keen to ensure that its recommendations are evidence based. In particular, the Department has spoken at some length to the Jersey Gambling Commission to gauge the impact that machines have had in a comparable jurisdiction.

4.3 The Department has been mindful in its considerations to deliberately limit its thoughts to whether there is evidence available that the introduction of FOBTs will have a negative effect on the community and whether this negative impact would be any greater than the impact of other forms of gambling activity already available, including online. The Department firmly believes that a pragmatic approach needs to be maintained; all forms of gambling present opportunity for harm for some individuals but for the majority of the public who participate in gambling, it is a responsible leisure activity. The UK Responsible Gambling Strategy Board has previously identified this regulatory dilemma of balancing the enjoyment of the majority who gamble without experience of harm with the protection of a minority who are at risk.

4.4 As a result of this further work and consultation, the Department fully recognises that concerns remain in respect of the operation of FOBTs and would concur with the Department for Culture, Media and Sport's comments as published in October 2013[5] which recognised that:

- FOBTs have caused significant public concern and controversy;
- Some problem gambling charities have indicated that a significant proportion of those presenting have experienced problems with FOBTs;
- The operating parameters of FOBTs are such that the potential for harm is high;

[5] Gambling Act 2005: Triennial Review of Gaming Machine Stake and Prize Limits: Government responses to Consultation on Proposals for Changes to Maximum Stake and Prize Limits for Category B, C and D Gaming Machines

- There are “knowledge gaps” in the UK’s understanding of the player behaviour on the machines and any associated harm caused. The Responsible Gambling Strategy Board has recently reported that the relationships between correlations and associations between gaming machines and gambling-related harm are poorly understood.

4.5 Additionally, the Department recognises that:

- Under the Gambling Control Bill 2013, Ireland have banned FOBTs reflecting concern there in respect of the harmful effect of terminals;
- FOBTs have been linked to a “dramatic proliferation” in bookmakers within the UK;
- There have been calls in the UK to reduce the maximum stake to £2, with both the Labour Party and Liberal Democrats establishing this as a policy. Additionally, Newham Council, on behalf of 93 councils in the UK, have lodged a proposal with the Department for Communities and Local Government, demanding that the maximum stake be reduced to £2;
- The 2010 British Gambling Prevalence Survey indicated that a relatively high percentage of those who reported playing FOBTs at any time in the last 12 months provided answers which put them above the internationally recognised threshold for 'problem gambling' (9% compared to, for example, 1% for lotteries, between 2 and 3% for scratchcards and bingo, and 4% for other kinds of gambling machine). For those reporting playing FOBTs at least monthly, problem gambling prevalence rose to 13%;

4.6 However, the Department feels that this needs to be balanced against:

- A recognition that the causes of problem gambling are complex with age, gender and income all possible factors with the method of gambling only one consideration;
- FOBTs are located in licensed premises so access is strictly limited to adults who are able to make informed decisions about how they wish to spend their money. For individuals who may be experiencing difficulties with problem gambling, advice will be available within the premises on the support and help available;
- A recognition that there has been a general shift in customer preferences in recent years towards technology, and that betting is no different. If there is a demand from customers to participate in more advanced forms of gambling rather than traditional betting, such options should be available subject to the appropriate safeguards and regulatory regime;
- A recognition that similar betting activities are available online without such safeguards;
- Jersey has introduced a licensing regime to allow FOBTs in Betting Offices for some time and has not reported an increase in the number of individuals with gambling problems. Indeed, the Jersey authorities have

indicated that the machines have been a valuable source of income for bookmakers and have helped to counteract the dwindling trade caused by online gambling competition;

- Guernsey bookmakers have reported similar challenges competing with online providers and the Department feels that it is appropriate that local businesses are supported.

4.7 On balance, the Department believes that whilst controversial there are not sufficient grounds which would justify it now recommending to the States that the 2007 Recommendations should be rescinded. The Department believes that there is opportunity to learn from the experiences of other jurisdictions and ensure the appropriate safeguards are imposed in order to mitigate any potentially negative consequences. The Department has therefore focused its efforts on how it believes that FOBTs can be introduced to the Island in the most responsible manner and within a suitable regulatory framework so as to effectively mitigate against any negative impacts that FOBTs may have.

4.8 Conscious of the current concerns in respect of FOBTs, the Department considered the appropriateness of including, at this stage, definitive details on the proposed regulatory framework. However, as the reports and research on the implications of FOBTs continue to be published with relative frequency, and it is possible that the framework governing the FOBT machines in the UK will change after the UK's General Election, the Department will require a certain amount of flexibility in order to shape the regulatory framework so that it reflects established good practice at the time of its enactment.

4.9 In accordance with recommendation 21 of the 2007 States Report, and having now considered the potential negative impacts of the FOBTs, the Department intends to introduce a separate code of practice and regulatory practices that may be necessary to help ensure that the FOBTs are not misused. An indication of some of the elements that will make up the FOBT regulatory framework include:

- encouraging significant staff interaction when an individual is playing on a FOBT;
- ensuring that limits are in place in respect of the length of the game cycle and time between plays;
- ensuring that customers have the ability to set voluntary monetary limits (e.g. maximum stakes) and time limits (e.g. time between plays) so as to help protect vulnerable persons;
- clear licensing conditions regulating the licensed activity with appropriate sanctions (including, without limitation, suspension and revocation);
- robust reporting requirements for bookmakers;
- restriction in the number of FOBTs to two per licensed betting office[6];

[6] This means that even if all seven betting offices decide to apply for FOBT licences, the total number of FOBTs would still only be fourteen.

- regular inspections by Departmental staff;
- expert inspections funded by the licence fee;
- investing a proportion of the licence fees obtained by the Department into initiatives designed to support problem gamblers;
- a limit on the maximum stake that can be imposed on a single bet on a machine in the region of £10.

4.10 The exact details of the regulatory regime will be determined by the Department so as to ensure that the regime best reflects established good practice at the time of its enactment. The Department can confirm that the FOBT restrictions locally will at least match those of the UK and where considered appropriate will be stricter. By way of example, within the UK, up to four machines can be sited on betting premises. The Department feels that allowing four machines per premises is not appropriate within Guernsey and intends to introduce a limit of just two per machine. The Department is equally concerned that the current UK maximum stake on a single bet on a machine of £100 is not appropriate locally and the limit should be set significantly lower. At this time, the Department is minded towards a limit in the region of £10 which falls below the average stake in the UK which has been calculated as £14.08[7] (although it should be noted that the UK average stake is affected by the variation over the course of the day and peaking after 10pm). The Department at this stage believes that such a limit is a pragmatic balance in the regulatory dilemma – enabling the majority to gamble without experiencing harm whilst protecting the minority who are at risk. The Department acknowledges that there has been some suggestion within the UK that the maximum stake should be set at £2, and should this be progressed further or research evidencing the benefit of such a reduction be published, the Department would look to mirror the proposals locally. The Department would similarly look to the UK in terms of the length of play.

4.11 The Department intends to commit resources to undertake a comprehensive evaluation of the impact of FOBTs two years after their introduction locally.

4.12 The Department asks States Members to note the update in respect to Fixed Odds Betting Terminals and by majority the Department recommends that the States reaffirm paragraphs 21 and 22 of the 2007 States Report which agreed the introduction of Fixed Odds Betting Terminals locally in licensed bookmakers' offices and the introduction of separate codes of practice and other regulatory practices as may be necessary to ensure that the terminals are not misused. In taking forward this recommendation, the Department wishes to acknowledge that the Department's individual Board members may wish, during the course of debate, to express their own views in relation to the FOBTs locally.

[7] Heather Wardle et al, Patterns of play: analysis of data from machines in bookmakers, NatCen Social Research, November 2014

E Gambling

4.13 Paragraph 9 of the 2007 Report recommended that the Department "*introduce an appropriate mechanism to enable the Guernsey authorities to comment upon and, if necessary influence, policies for the application of the eGambling regulatory régime that may impact on Guernsey's interests*".

4.14 By way of update, a tripartite Memorandum of Understanding was signed in 2013 between the Home Department, Alderney's Policy and Finance Committee and the Alderney Gambling Control Commission to formalise the relationship between the two Islands in respect of e-gambling. The Memorandum of Understanding incorporates an appropriate mechanism to allow the Guernsey authorities to comment upon, and if necessary, influence Alderney policies for e-gambling where it may impact upon Guernsey's international reputation or interests.

Consultation

5.1 The Department has consulted with the Royal Court in respect of their role in the licensing process who are supportive of the proposals set out in this Report. The Department has additionally consulted with the Commerce and Employment Department in respect of the Sunday opening element of the Report, and they advised that the Sunday Trading Ordinance, 2002 did not contain powers to regulate the activities of betting shops, or their agents on a Sunday. The Department has also maintained an ongoing dialogue with bookmakers in relation to the proposals within this report.

5.2 The Law Officers of the Crown have been consulted and have confirmed that the amendment of the existing legislative framework is a practical and suitable way to implement the necessary legislative amendments required under the 2007 Report.

Resources

6.1 The proposed new Gambling legislation and regime will place increased emphasis on the regulation of the local industry, and therefore there will be additional demands on the Department's staff resources. The Department envisages being able to undertake this work within existing resources through the reprioritisation of existing workloads.

6.2 The Department will divert a proportion of gambling fees received into assisting with problem gamblers. This amount will be reviewed by the Department annually and will not exceed any additional income from fees generated by the introduction of FOBTs and licensing of gaming machines.

Legislative Framework

7.1 In order to implement a large majority of the proposals there is a need for legislation. There is a reasonably significant amount of drafting time needed to implement these proposals.

Recommendations

8.1 The Department therefore recommends the States:

Legislative Framework

1. to implement the recommendations set out in the States Report dated 29th August, 2007, entitled "Review of Gambling Legislation" included within Billet d'Etat XXII of 2007 ("the 2007 Report") and this Report by amending the existing legislation, rather than repealing and replacing the existing legislative framework;

2. to note that the Department will continue to review whether an entire new gambling legislative framework is necessary as originally proposed in recommendation 23 of the 2007 Report and will report back to the States with its findings;

3. to rescind the part of resolution X.1 of Billet d'Etat XXII of 2007 which adopted recommendation 23 of the 2007 Report which suggested that responsibility for the granting of bookmaker and Crown and Anchor licences should be transferred to the Royal Court;

4. to agree that the powers referred to in recommendation 23 of the 2007 Report should be granted to the Department rather than the Royal Court and that the suspension or revocation powers may also be used in the event of the breach of a licence condition or requirement;

Gaming Machines

5. to approve the introduction of certain types of gaming machines in licensed premises which allow patrons to participate in tournament based competitions (and any licence conditions, controls or limitations in relation to any such machines, or games available on any such machines) as determined by the Department by way of Order under the Liquor Licensing Ordinance, 2006 and the Gambling (Betting) Ordinance, 1973, and to rescind the part of resolution X.1 of Billet d'Etat XXII of 2007 which adopted recommendation 4 of the 2007 Report;

Football Pools

6. to agree that a registration scheme for promoters of football pools is not established at this time but is kept under review for the future, and to therefore rescind the part of resolution X.1 of Billet d'Etat XXII of 2007 which adopted recommendation 6 of the 2007 Report;

Crown and Anchor

7. to remove the restriction that requires Crown and Anchor to be held principally out of doors;

Commercial Off-Course Betting

8. to agree to the amendments to the Gambling (Betting) Ordinance, 1973, in relation to bookmakers' agents as described in paragraphs 3.24 and 3.25;

9. to remove the restriction on Sunday opening for bookmakers and their authorised agents (albeit that the current restrictions should remain when Christmas Day falls on a Sunday), and therefore to rescind the part of resolution X.I of Billet d'Etat XXII of 2007 which adopted recommendation 14 of the 2007 Report;

10. to remove the restriction on licensed betting offices being located on the ground floor of shops;

11. to remove the restriction on the size of screens and the current requirement that coverage must relate to sporting events and instead allow coverage to relate to any betting event as detailed in paragraphs 3.39 to 3.41 inclusive of this Report;

Support for problem gamblers

12. to agree that the Department divert a proportion of gambling fees received by the Department to fund relevant initiatives to support problem gamblers as detailed in paragraphs 3.42 to 3.45 inclusive of this Report;

Charitable/Not-For-Profit Gaming, Lotteries and Draws

13. to rescind the part of resolution X.1 of Billet d'État XXII of 2007 which adopted recommendations 1, 2 and 3 of the 2007 Report;

14. to clarify that a lottery or cinema racing event to raise money for charitable purposes may raise money for more than one charitable / not for profit organisation, and that the money raised may be for a charitable organisation that is different to the organisation promoting the lottery or cinema racing event;

15. to agree to the amendments to the Gambling (Gaming and Lotteries) Ordinance, 1991, as amended, as described in paragraph 3.54(b) of this Report;

16. to agree to the amendments to the Gambling (Cinema Racing) Ordinance, 1988 as described in paragraph 3.54(c) of this Report;

17. to agree that the sale and issue of lottery tickets online to persons present in the Bailiwick of Guernsey for both small scale and high value charitable lotteries be made lawful, as described in paragraph 3.55 and 3.56 of this Report;

Fixed Odds Betting Terminals

18. to note the Department's update in respect to Fixed Odds Betting Terminals and to reaffirm paragraphs 21 and 22 of the 2007 States Report which agreed the introduction of Fixed Odds Betting Terminals locally in licensed bookmakers' offices and the introduction of separate codes of practice and other regulatory practices as may be necessary to ensure that the terminals are not misused;

Legislation

19. to direct the preparation of such legislation as may be necessary to give effect to the above decisions.

Yours faithfully

P L Gillson
Minister

F W Quin
Deputy Minister

M J Fallaize
M M Lowe
A M Wilkie

A L Ozanne
Non-States Member

(N.B. The Treasury and Resources Department notes that the Home Department is not requesting any additional budget to implement the proposals within this Policy Letter including support for problem gamblers as they will be funded within existing resources, through reprioritisation of existing workloads or from operating income received from gambling fees and licences including from the introduction of gaming machines locally.)

(N.B. The Policy Council considers that the Home Department has made a sound case for the need to further modernise and update local gambling legislation in a pragmatic manner, to enable the local gambling industry to remain competitive and relevant given the significant cultural changes and opportunities brought about in recent years largely (but not exclusively) as a result of inter-net gambling. The Policy Council therefore supports this States report and recommends the States to approve its recommendations.)

The States are asked to decide:-

XVII.- Whether, after consideration of the Policy Letter dated 27th April, 2015, of the Home Department, they are of the opinion:-

1. To implement the recommendations set out in the States Report dated 29th August, 2007, entitled "Review of Gambling Legislation" included within Billet d'Etat XXII of 2007 ("the 2007 Report"), and that Policy Letter by amending the existing legislation, rather than repealing and replacing the existing legislative framework.

2. To note that the Home Department will continue to review whether an entire new gambling legislative framework is necessary as originally proposed in recommendation 23 of the 2007 Report, and will report back to the States with its findings.

3. To rescind the part of resolution X.1 of Billet d'Etat XXII of 2007 which adopted recommendation 23 of the 2007 Report, which suggested that responsibility for the granting of bookmaker and Crown and Anchor licences should be transferred to the Royal Court.

4. To agree that the powers referred to in recommendation 23 of the 2007 Report, should be granted to the Department rather than the Royal Court and that the suspension or revocation powers may also be used in the event of the breach of a licence condition or requirement.

5. To approve the introduction of certain types of gaming machines in licensed premises which allow patrons to participate in tournament based competitions (and any licence conditions, controls or limitations in relation to any such machines, or games available on any such machines) as determined by the Department by way of Order under the Liquor Licensing Ordinance, 2006 and the Gambling (Betting) Ordinance, 1973, and to rescind the part of resolution X.1 of Billet d'Etat XXII of 2007 which adopted recommendation 4 of the 2007 Report.

6. To agree that a registration scheme for promoters of football pools is not established at this time but is kept under review for the future, and to therefore rescind the part of resolution X.1 of Billet d'Etat XXII of 2007 which adopted recommendation 6 of 2007 Report.

7. To remove the restriction that requires Crown and Anchor to be held principally out of doors.

8. To agree to the amendments to the Gambling (Betting) Ordinance, 1973, in relation to bookmakers' agents as described in paragraphs 3.24 and 3.25 of that Policy Letter.

9. To remove the restriction on Sunday opening for bookmakers and their authorised agents (albeit that the current restrictions should remain when Christmas Day falls on a Sunday), and therefore to rescind the part of resolution X.I of Billet d'Etat XXII of 2007 which adopted recommendation 14 of the 2007 Report.

10. To remove the restriction on licensed betting offices being located on the ground floor of shops.

11. To remove the restriction on the size of screens and the current requirement that coverage must relate to sporting events and instead allow coverage to relate to any betting event as detailed in paragraphs 3.39 to 3.41 inclusive of that Policy Letter.

12. To agree that the Home Department divert a proportion of gambling fees received by the Home Department to fund relevant initiatives to support problem gamblers as detailed in paragraphs 3.42 to 3.45 inclusive of that Policy Letter.

13. To rescind the part of resolution X.1 of Billet d'État XXII of 2007 which adopted recommendations 1, 2 and 3 of the 2007 Report.

14. To clarify that a lottery or cinema racing event to raise money for charitable purposes may raise money for more than one charitable / not for profit organisation, and that the money raised may be for a charitable organisation that is different to the organisation promoting the lottery or cinema racing event.

15. To agree to the amendments to the Gambling (Gaming and Lotteries) Ordinance, 1991, as amended, as described in paragraph 3.54(b) of that Policy Letter.

16. To agree to the amendments to the Gambling (Cinema Racing) Ordinance, 1988 as described in paragraph 3.54(c) of that Policy Letter.

17. To agree that the sale and issue of lottery tickets online to persons present in the Bailiwick of Guernsey for both small scale and high value charitable lotteries be made lawful, as described in paragraph 3.55 and 3.56 of that Policy Letter.

18. To note the Home Department's update in respect to Fixed Odds Betting Terminals and to reaffirm paragraphs 21 and 22 of the 2007 Report, which agreed the introduction of Fixed Odds Betting Terminals locally in licensed bookmakers' offices and the introduction of separate codes of practice and other regulatory practices as may be necessary to ensure that the terminals are not misused.

19. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

SOCIAL SECURITY DEPARTMENT

EXTENSION OF NON-MEDICAL PRESCRIBING

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

8th May 2015

Dear Sir

1. Executive Summary

1.1 This report proposes that appropriately qualified non-medical health professionals (i.e. nurses and pharmacists) employed by the Health and Social Services Department (HSSD) be authorised to issue medical prescriptions for patients in the community. Authorisation to prescribe will be conditional on the health professional being the holder of relevant qualifications and having received such training as required by the HSSD for this purpose.

2. Extension of Non-Medical Prescribing

Non-medical prescribing

2.1 Non-medical prescribing refers to prescribing by professional groups other than doctors or dentists who have been granted prescribing rights. In the UK, healthcare professionals other than doctors and dentists (i.e. nurses, pharmacists, optometrists, physiotherapists, radiographers, and podiatrists) have been permitted to prescribe medicines for several years.

Current position in Guernsey and Alderney

2.2 The Social Security Department funds the provision of prescription medicines in the community (i.e. excluding hospital inpatients) as pharmaceutical benefit under the Health Service (Benefit) (Guernsey) Law, 1990 ("the Health Service Law"). Until 31st December 2013, only 'approved medical practitioners[1]' and

[1] Defined in Section 39(1) of the Health Service (Benefit) (Guernsey) Law, 1990 as *"a medical practitioner whose name is included in either of the lists of medical practitioners maintained by the States Health and Social Services Department pursuant to paragraph 1(1) of the said Resolution* [a Resolution of the States of 31st January 1990] *but excludes a medical practitioner whose access to the Board's radiology or pathology services is restricted to an exclusively private basis".*

'approved dentists[2]' were permitted to issue prescriptions for the supply of pharmaceutical benefit under the Health Service Law.

2.3 On 29th September 2011, following consideration of a recommendation from the Social Security Department contained in the Department's Uprating Report for 2012 (Billet d'État XV of 2011), the States approved the introduction of very limited non-medical prescribing in the community.

2.4 The legislation necessary to implement this change was approved by the States on 27th November 2013 and came into force on 1st January 2014. This legislation empowered "nurse prescribers" to prescribe from a formulary[3] limited to wound management products (i.e. dressings, bandages, tapes, compression articles, etc). "Nurse prescribers" are community nurses employed, contracted or engaged by the HSSD who are qualified to order drugs, medicines and appliances from the UK's Nurse Prescribers Formulary for Community Practitioners, having successfully completed the V100 Community Prescribing course.

2.5 Following the entry into force of the Prescription Only Medicines (Human) (Bailiwick of Guernsey) Ordinance, 2009, legal powers exist for professionals other than doctors and dentists to prescribe drugs and medicines within hospital and care home settings managed by the HSSD.

Proposed extension of non-medical prescribing in Guernsey and Alderney

2.6 The HSSD is seeking to introduce non-medical prescribing throughout the health service and has requested the Social Security Department to enable non-medical prescribing in the community to be extended. The HSSD has requested that a limited number of suitably qualified professionals (i.e. nurses and pharmacists), employed by that Department, be allowed to issue prescriptions in the community.

2.7 The HSSD has explained that healthcare is now delivered by a range of health professionals, working in multi-disciplinary teams which are often not medically led. As the care pathways of patients have evolved, the need for the responsible health professional to have access to a wider range of interventions, including prescribing, has become more necessary for the cost effective and timely delivery of care.

2.8 The aims of extending prescribing responsibilities to professional groups other than doctors or dentists are to:

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[2] Defined in Section 39(1) of the Health Service (Benefit) (Guernsey) Law, 1990 as *"a dentist whose name is included in either of the lists of dentists maintained by the States Health and Social Services Department pursuant to paragraph 1(1) of the resolution of the States of 31st January 1990, but excludes a dentist who access to the Board's radiology or pathology services is restricted to an exclusively private basis"*.

[3] An official list giving details of prescribable medicines.

- improve patient care without compromising safety;
- develop and utilise skills of other healthcare professionals more effectively;
- provide more flexibility in ways of working;
- make those making the decisions surrounding the delivery of care accountable for those decisions;
- improve the management and access of medications to patients.

2.9 The HSSD has indicated that the number of non-medical prescribers issuing prescriptions for pharmaceutical benefit will initially be only 3 to 5 persons, increasing further over time.

2.10 The HSSD has advised that a practitioner's authorisation to prescribe should be conditional on meeting the eligibility criteria for non-medical prescribing for the individual's particular profession, and where there is a clear and identifiable benefit to patient care and a streamlining of the care pathway.

Governance

2.11 If the extension of non-medical prescribing in the community is approved by the States, non-medical prescribers will work within the Joint Clinical Governance structure of the HSSD.

2.12 The HSSD has recently approved a 'Non-Medical Prescribing Policy' (see appendix 1) which provides a framework for the introduction of non-medical prescribing throughout that Department. This policy sets out, among other things, the eligibility criteria, continuing professional development requirements and the supervision arrangements for non-medical prescribers, the non-medical prescribing and dispensing process and clear guidance regarding legal and clinical liability and dealing with the pharmaceutical industry.

2.13 Non-medical prescribers would be able to prescribe any medication from the Limited List[4] (excluding controlled drugs and chemotherapy drugs) within their level of professional competence and expertise. Section 10 of the HSSD's Non-Medical Prescribing Policy sets out further details in respect of the prescribing and dispensing process:

"All non-medical prescribers must work within their own level of professional competence and expertise and must seek advice and make appropriate referrals to other professionals when the situation exceeds their professional expertise. In accordance with their own professional bodies non-medical prescribers are accountable for their own actions and must be aware of the limits of their skills, competence and knowledge.

---

[4] The 'Limited List' is a list of drugs and medicines available as pharmaceutical benefit which may be ordered to be supplied by medical prescriptions issued by medical practitioners.

Non-medical prescribers are not authorized to prescribe medications to any individual who is not under their care as a patient of HSSD, including themselves, family or friends.[…]

Whilst it is recommended that non-medical prescribers agree a prescribing list of drugs that they are likely to regularly prescribe from with their line manager, medical clinical lead practitioner and unit pharmacist, it is also acknowledged that at times and in the patient's best interest, it may be necessary to prescribe from outside of this prescribing list. If doing so they must also only ever prescribe within the limits of the white list and/or the HSSD formulary. However non-medical prescribers are reminded of their personal professional accountability when prescribing any medicinal product and therefore must ensure their competence in doing so."

2.14 Section 15 of the Non-Medical Prescribing Policy concerning individual practitioner liability states:

"Registered non-medical prescribers are accountable to their professional body for their practice and are responsible for ensuring that they maintain the necessary knowledge, skills and clinical competence to practice.[…]

The non-medical prescriber is accountable for their actions and may be the subject of disciplinary action within the organisation if they fail to comply with the terms of this policy, particularly where patient safety may be compromised. Any individual non-medical prescriber may be referred to their own professional regulatory body where concerns about their practice have been reported to the organisation."

2.15 The proposed extension of non-medical prescribing should not result in an increase in the cost of pharmaceutical benefit if patients continue to be prescribed the same medications, the only difference being who is issuing the prescription. However, if the extension of prescribing rights results in a behavioural change, such as a disproportionate increase in the use of newer drugs, there is potential for the cost to increase. The Social Security Department and the HSSD intend to minimise this risk by extending the scope of the effective educational initiatives already operated by the Prescribing Support Unit aimed at controlling the prescribing of more expensive, non-generic drugs and medicines, and by closely monitoring and supervising non-medical prescribing, as set out in the HSSD's Non-Medical Prescribing Policy (see appendix 1).

Proposed modification to the Health Service (Benefit) (Guernsey) Law, 1990

2.16 The Social Security Department is satisfied that the extension of non-medical prescribing will assist with the cost effective and timely delivery of health care and is assured by the HSSD that the necessary clinical governance structure is in place to ensure that non-medical prescribing may be extended to community settings in a safe and effective manner.

2.17 The extension of non-medical prescribing is supported by the HSSD's Drugs and Therapeutic Committee and also by its Professional Guidance Committee.

2.18 The Department therefore recommends that the Health Service Law and related subordinate legislation be amended to allow appropriately qualified non-medical health professionals who are employed, contracted or engaged by the HSSD, or otherwise authorised by the HSSD to work as such, to be empowered to issue prescriptions for the supply of pharmaceutical benefit for the purposes of the Health Service Law within their own level of professional competence.

3. Consultation and good governance

3.1 The Law Officers have been consulted and have not identified any legal difficulties with the recommendations contained in this Report.

3.2 The Department has consulted with the HSSD, which initiated the request for the extension of non-medial prescribing in the community.

3.3 The extension of non-medical prescribing is supported by the HSSD's Drugs and Therapeutic Committee and the Professional Guidance Committee.

3.4 Good corporate governance has been adhered to during the development of this report.

4. Recommendations

4.1 The Department recommends that:

i. the Health Service (Benefit) (Guernsey) Law, 1990 and related subordinate legislation be amended to allow appropriately qualified non-medical health professionals who are employed, contracted or engaged by the Health and Social Services Department, or otherwise authorised by the Department to work as such, to be empowered to issue medical prescriptions for the supply of pharmaceutical benefit for the purposes of the Health Service Law within their own level of professional competence;

ii. such legislation as may be necessary to give effect to the foregoing shall be prepared.

Yours faithfully

A H Langlois
Minister

J A B Gollop
D A Inglis
M K Le Clerc

M J Brown
Non-States Member

S A James
Deputy Minister

APPENDIX 1

HEALTH AND SOCIAL SERVICES
A STATES OF GUERNSEY GOVERNMENT DEPARTMENT

Non-Medical Prescribing Policy

This policy provides a framework for the introduction of non-medical prescribing throughout the Health and Social Services Department.

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Person Responsible	Chief Nurse and Director of Clinical Governance

Chief Officer's Signature	
Minister's Signature	

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NON-MEDICAL PRESCRIBING POLICY

1. INTRODUCTION

This policy has been written to facilitate the development of non-medical independent prescribing across the Health and Social Services Department (HSSD). It outlines the administrative, procedural and education requirements for current and prospective non-medical prescribers. This policy is to be used in conjunction with HSSD Policy G210 Safe and Secure Handling of Medicines.

The aim of extending prescribing responsibilities to non-medical professionals is to:

- Improve patient care without compromising safety.
- Develop and utilize skills of other healthcare professionals more effectively.
- Provide more flexibility in ways of working.
- Improve the management and access of medications to patients.

2. DEFINITION

Non-medical prescribing refers to prescribing by professional groups other than doctors or dentists who have been granted prescribing rights.

Non-medical prescribing includes:

- Nurse independent / supplementary prescribers who have completed the V300 prescribing programme.
- Pharmacist and optometrists independent / supplementary prescribers who have completed the V300 prescribing programme.
- Allied Health Professional supplementary prescribers who have completed the V300 prescribing programme (physiotherapist, radiographers and podiatrists).
- Specialist Practice Qualification Community Practitioner nurse prescribers who have completed the V100 programme.

3. NON-MEDICAL INDEPENDENT PRESCRIBING

Independent non-medical prescribers are nurses, pharmacists and allied health professionals who have completed the V300 non-medical prescribing programme and are annotated on their professional register as independent prescribers.

The Department of Health (2006) working definition of independent prescribing is:

> "*Prescribing by a practitioner (e.g. Doctor, Dentist, Nurse or Pharmacist) responsible and accountable for the assessment of patients with undiagnosed or diagnosed conditions and for decisions about the clinical management required, including prescribing.*"

Nurse Independent prescribers are able to prescribe any licensed or unlicensed medicine for any condition within their area of competence excluding, under current local legislation, controlled drugs.

Pharmacist Independent prescribers are able to prescribe any licensed or unlicensed medicine for any condition within their area of competence excluding, under current local legislation, controlled drugs.

Optometrist Independent prescribers are able to prescribe any licensed medication for conditions affecting the eye and the tissue surrounding the eye within their recognized area of expertise and competence, except for controlled drugs or medicines for parenteral administration.

3.1 NON-MEDICAL PRESCRIBING IN THE COMMUNITY

Dressing products as described in Section 5 may be prescribed in the community using prescriptions funded by the Social Security Department. Non-medical prescribing of approved medicines by non-medical prescribers was agreed in principle in 2014 and changes to this legislation should be made in the near future.

4. SUPPLEMENTARY PRESCRIBING

Supplementary prescribing is designed to enable a supplementary prescriber to take on the medium and long term management of an individual patient who has had an initial diagnosis made by a medical/dental prescriber. Currently, only nurses, pharmacists, physiotherapists, podiatrists and radiographers who have completed the V300 non-medical prescribing programme can be supplementary prescribers.

The Department of Health (2005) working definition of supplementary prescribing is:

> "*A voluntary partnership between an independent prescriber (a doctor or dentist) and a supplementary prescriber to implement an agreed patient-specific clinical management plan with the patient's agreement.*"

A supplementary prescriber is able to prescribe any licensed or unlicensed medicine within their area of competence, as part of a patient-specific management plan agreed with a Doctor.

5. COMMUNITY PRACTITIONER DISTRICT NURSE PRESCRIBING

District nurse prescribers can currently prescribe from a formulary which is limited to dressing products. Changes are to be made to this in the near future, to enable the prescribing of approved appliances, emollients and medicines relevant to community nursing. Only nurses who have completed the V100 programme can be District nurse prescribers.

6. ELIGIBILITY FOR NON-MEDICAL PRESCRIBING

Nursing and Midwifery Staff

- Ability to study at level 6 (degree level).
- 4 years post registration clinical experience, of which at least 1 year immediately preceding their application to the training programme should be in the clinical area which they wish to prescribe.
- They must be able to demonstrate competence in taking a history, undertaking a clinical assessment and making a diagnosis, e.g. they must be able to carry out a comprehensive assessment of the patient's physiological and/or psychological condition and understand the underlying pathology and the appropriate medicines regime. This should be demonstrated in their professional portfolio.
- Have demonstrated competence in the conditions being treated and have an appreciation of the patient's particular manifestation of it and the effectiveness of the medicines used to manage the condition.
- Be employed at Agenda for Change band 6 or above.
- Be in a role which requires non-medical prescribing and have the support of their line manager.

Pharmacy Staff

- Ability to study at level 6 (degree level).
- At least 2 years experience practicing as a pharmacist, in a clinical environment in a hospital following their pre-registration year after their graduation.
- Be competent to prescribe in the area in which they will prescribe following their training.
- Be in a role which requires non-medical prescribing and have the support of their line manager.

Prospective non-medical prescribers are not able to prescribe until:

- Their qualification is annotated on their professional register.
- They have submitted evidence of this to the non-medical prescribing lead.
- They have written agreement from their line manager.
- Their prescribing role is documented within their job description.
- They have received approval from the NMP lead. This is achieved through the pro-forma in appendix 1 which ensures the non-medical prescribing pre-requisites are met and provides detail of the categories of drugs they are likely to prescribe. Copies should be sent to both NMP lead and the chair person of the Drugs and Therapeutics

Committee which must then minute approval of the non-medical prescriber and the agreed prescribing list.

- Their qualification, V100 or V300 is recorded on the Guernsey register of non-medical prescribers.

The above also applies to newly appointed staff who have previously undertaken the non-medical prescribing course and are in a role which requires non-medical prescribing.

7. CONTINUING PROFESSIONAL DEVELOPMENT

All non-medical prescribers have a professional responsibility to remain up-to-date with the knowledge and skills required to enable competent and safe prescribing. They should ensure that continuing professional development is in line with their role of prescribing as identified by their personal development or knowledge and skills framework review.

Managers also have a responsibility to ensure that prescribers have access to the relevant continuing professional development. This is identified by the KSF/PDR process and should be identified on the annual training needs analysis.

Non-medical prescribers will be expected to keep up to date with evidence and best practice in the management of conditions in which they prescribe and use of the relevant medicines. This must be in the form of a professional portfolio. It is the non-medical prescriber's responsibility to ensure they maintain professional competence and this should be reviewed annually with their line manager via the KSF/PDR and revalidation process. Evidence of competence must be documented in the portfolio.

Evidence of competence may include, but not be limited to:

- Clinical supervision
- Reflections on learning
- Case reviews with colleagues
- Peer/clinical review
- Peer support groups
- Non-medical prescribing updates
- Prescribing newsletters
- Clinical meetings
- Shadowing colleagues
- Relevant journals
- Specific websites
- Relevant competency framework
- Attendance at courses / conferences.

8. ROLE OF THE NON-MEDICAL PRESCRIBING LEAD

The non-medical prescribing lead provides professional leadership and a co-ordinated approach to the development and maintenance of all non-medical prescribing roles within HSSD. To support the development of a strategy for non-medical prescribing within the organisation by making explicit links with service development to influence service redesign and professional leads. They are responsible for disseminating information within the organisation.

Administratively they are responsible for:

- Maintaining a register of all non-medical prescribers to be placed on HSSD intranet.
- Authorisation of non-medical prescribers in conjunction with their line manager and the Drugs and Therapeutics Committee.
- Ensuring that non-medical prescribers are maintaining their competence and audit requirements as detailed by this policy.
- Act as an adviser for the development of non-medical prescribing within the organisation.
- Provide advice and support to potential prescribers.
- Ensure potential prescribers meet the eligibility criteria for the courses.
- Support existing non-medical prescribers with the establishment of a forum where issues relating to NMP can be discussed and resolved.
- Supporting NMPs in meeting their CPD needs.
- Responsible for delivery and distribution of British National Formularies (BNF) to all NMPs.

9. ROLE OF THE DESIGNATED MEDICAL PRACTITIONER

The designated medical practitioner (DMP) is responsible for supervising the period of learning in practice and for assessing whether the learning outcomes and competencies, set by the Higher Education Institution running the non-medical prescribing course, have been achieved.

The DMP has a critical and highly responsible role in educating and assessing the non-medical prescriber and assuring competence in prescribing. This is achieved through:

- Establishing a learning contract with the trainee.
- Planning a learning programme which will provide the opportunity for the trainee to meet their learning objectives and gain competency in prescribing.
- Facilitating learning by encouraging critical thinking and reflection.

- Providing dedicated time and opportunities for the trainee to observe how the DMP conducts a consultation / interview with patients and/ or carer and the development of a management plan.
- Allowing the trainee to carry out consultations and suggest clinical management and prescribing options, which are then discussed with the DMP.
- Helping ensure that the trainees integrate theory with practice.
- Taking opportunities to allow in-depth discussions and analysis of clinical management using a random case analysis approach, when patient care and prescribing behaviour can be examined further.

The trainee is required to undertake 12 days of learning in practice in addition to the taught component of the course.

It is unlikely that a trainee will need to spend all of the period of learning with their DMP, as other clinician maybe better placed to provide some of the learning opportunities. However the DMP remains responsible for assessing whether all of the learning outcomes have been met. Some form of “buddying” link may also be valuable, e.g. with a current nurse or pharmacist prescriber or with a senior and experienced pharmacist.

9.1 Eligibility Criteria for Becoming a DMP

The DMP must be a registered medical practitioner who:

- Has normally had at least 5 years recent clinical experience for a group of patients/clients in the relevant field of practice.
- Is within a GP practice and is either vocationally trained or is in possession of a certificate of equivalent experience from the joint committee for post-graduate training in general practice **or** is a specialist registrar, clinical assistant or Consultant.
- Has the support of the employing organisation or GP practice to act as the DMP who will provide supervision, support and opportunities to develop competence in prescribing practice.
- Has some experience or training in teaching and / or supervising in practice.
- Normally works with the trainee prescriber. If this is not possible (such as in nurse-led services or community pharmacy), arrangements can be agreed for another doctor to take on the role of the DMP, provided the above criteria are met and the learning in practice relates to the clinical area in which the trainee prescriber will ultimately be carrying out their prescribing role.

10. NON-MEDICAL PRESCRIBING AND DISPENSING PROCESS

All non-medical prescribers must work within their own level of professional competence and expertise and must seek advice and make appropriate referrals to other professionals when the situation exceeds their professional expertise. In accordance with their own professional bodies non-medical prescribers are accountable for their own actions and must be aware of the limits of their skills, competence and knowledge.

Non-medical prescribers are not authorized to prescribe medications to any individual who is not under their care as a patient of HSSD, including themselves, family or friends.

For hospital inpatients non-medical prescribers will use the hospital drug kardex (MAR sheet) or electronic prescribing system and must follow policy G210 Safe and Secure Handling of Medicines.

Non-medical prescribers may not undertake any form of remote prescribing.

Whilst it is recommended that non-medical prescribers agree a prescribing list of drugs that they are likely to regularly prescribe from with their line manager, medical clinical lead practitioner and unit pharmacist, it is also acknowledged that at times and in the patient's best interest, it may be necessary to prescribe from outside of this prescribing list. If doing so they must also only ever prescribe within the limits of the white list and/or the HSSD formulary. However non-medical prescribers are reminded of their personal professional accountability when prescribing any medicinal product and therefore must ensure their competence in doing so.

10.1 Separating Prescribing, Dispensing and Administration Where Appropriate

Normally prescribing, dispensing and administration activities are separated. However situations may occur where prescribing and dispensing or administration are carried out by the same individual. In such circumstances it is important that another person must carry out a final accuracy check and a check for clinical appropriateness should also be carried out.

10.2 Patient Consent

Non-Medical prescribers must ensure that patients are aware that they are being treated by a non-medical prescriber. In circumstances where the patient is not able to give consent, e.g. in the intensive care unit or in an emergency situation, independent or supplementary prescribing is still permissible in those situations where the prescriber is deemed to be acting in the best interests of the patient concerned. Adherence to best practice and National guidelines will be essential in these situations. In all situations where the management of the patient is outside the scope of the non-medical prescriber or the patient declines to be treated by a non-medical prescriber, the patient must be referred to the appropriate medical healthcare professional.

10.3 Prescription Writing

Prior to writing the prescription the non-medical prescriber must have assessed the patient and have knowledge of:

- Patient's full medication (this should include both prescribed and non-prescribed medications including over the counter and alternative remedies).
- Past medical history.
- Allergy status.
- Patient's current health status.

- The item to be prescribed, that is, the dosage, therapeutic action, side effects, interactions and frequency of use.
- The British National Formulary (BNF) or Nurse Prescribers Formulary (NPF) for reference.

All non-medical prescribers must prescribe generically, except where this would not be clinically appropriate due to differences in bioavailability or to ensure continuity of supply. Some preparation should always be prescribed by their brand name, this includes modified release products.

Prescription writing should follow Chapter 4 of Policy G210 and non-medical prescribers must ensure the prescription has their signature as well as printed name and must also be endorsed 'NMP'.

10.4 Non-Medical Prescribing of Controlled Drugs

Nationally, pharmacist and nurse independent non-medical prescribers may prescribe controlled drugs within schedules 2-5, with the exception of diamorphine, cocaine and dipipanone for the treatment of addiction. As a matter of agreed policy (but subject to annual review) non-Medical prescribing of all schedules of controlled drugs is not permitted. This includes benzodiazepines and products containing codeine.

10.5 Paediatric Non-Medical Prescribing

It is essential that NMPs only prescribe within their sphere of competence. NMPs can only prescribe for children if they are competent to do so and that they fully understand the action of drugs in children and the differing physiology of children and young people. Unless NMPs have competence in children's health care they should not, under any circumstance, prescribe in this area.

Midwives or Health Visitors are not permitted to prescribe for neonates (birth to 28 days old).

- For the purposes of this policy a child is defined as any person under the age of 18.
- When prescribing for children, non-medical prescribers should refer to the British National Formulary for children.

10.6 Prescribing of Chemotherapy Drugs

Drugs for cytotoxic chemotherapy may not be prescribed by non-medical prescribers.

11. DRUG REACTIONS AND ADVERSE INCIDENTS

The non-medical prescriber must report any medication incidents in accordance with HSSD policy G207, Integrated Risk Management. A full record of the incident must be made in the patient's notes and the medical practitioner in charge of the patient's care informed. If a NMP suspects that a patient is experiencing or has experienced an adverse drug reaction (ADR) to a medicine or combination of medicines the NMP should inform the clinician responsible for the patient's continuing care. The NMP/medical practitioner will

evaluate the suspected ADR in accordance with the guidance issued by the Commission on Human Medicine (CHM) and decide if a “Yellow Card” needs completing to notify the CHM of the suspected drug reaction. Policy G210 Safe and Secure Handling of Medicines, should be followed in this situation. The patient’s notes should be updated to list the suspected ADR and allergy status amended accordingly.

A yellow card should be completed for ALL black triangle drugs.

12. PHARMACEUTICAL INDUSTRY

It is important that non medical prescribers make their choice of medicinal product for their patient on the basis of either their own clinical expertise or that of independently verified evidence coming from a publicly funded source. NMPs who want further advice or to discuss issues on medicines use are advised to refer to trusted medical, pharmacist (Prescribing Advisor or Medicines Information Pharmacist) or nursing colleagues. It may be necessary very occasionally to obtain some safety or pharmacokinetic information from the manufacturers, but ideally those enquiries should be made via pharmacy colleagues. Under almost all other circumstances NMPs must not make or change any prescribing decisions based on information from representatives of the pharmaceutical industry. This will inevitably be biased towards the company’s products and should always be treated as sales promotional material. In the rare circumstances where it is necessary to amend/write a prescription following pharmaceutical industry advice, the NMP should not make this decision independently, but seek advice from a HSSD employed pharmacist or medical practitioner.

NMPs should be aware of the contents of the ABPI code of conduct for the industry, their own professional guidelines and any HSSD guidelines on relationships with the industry. Particular care need to be taken with offers of sponsorship of the NMP to attend meetings or conferences off-island, or to sponsor local events

The island’s Prescribing Advisor is responsible for the local enforcement of the ABPI code of conduct so any concerns may be raised either with him/her or directly with the regulatory body.

13. PRESCRIPTION PAD AND DRUG CHART SECURITY

- It is the responsibility of the prescriber to ensure the safety of the prescription pad at all times.
- The pad should never be left in an unattended car.
- When not in use the pad should be held in a locked container within a locked safe
- Prescribers should also make a note of the first and last serial numbers of each new prescription pad when they receive them.

13.1 Procedure for Dealing with Missing Prescription Pad

- NMPs to take all reasonable measures to secure prescription pads together with relevant documentation held in zipped personal folders and / or within wallets. Personal folders to be secured in a locked safe when not in use.

- NMPs to take out into the Community / Workplace a limited amount of prescriptions, sufficient for their span of duty. (Suggested 5 -8 prescriptions by Southampton lecturers)

- If prescription pads go missing, NMPs are to make a full search of immediate environment, i.e. workplace, cars, office area, then to revisit bedside, homes, residential homes previously attended. If found, no further action required.

- If the prescription pad is still missing NMP is to inform the on-call pharmacist who has a cascading system when there are anomalies regarding prescriptions.

- Inform Duty Manager / Community Services Manager, who will contact Assistant Director.

- Complete Electronic Incident Document which will be sent automatically to Health and Safety and Clinical Risk departments.

- Inform Social Security Department, ref the Prescribing Advisor.

- Document in Personal Diary, keep a copy of Electronic Incident for own reference. An inquiry may be instigated.

- Await further instructions from Duty Manager / Community Service Manager / Assistant Director / Social Security.

- Following discussion with the Assistant Director, the Duty Manager should ensure the police are informed.

14. LEGAL AND CLINICAL LIABILITY

HSSD, as an employer, will assume vicarious liability for the actions of non-medical prescribers provided that:

- They have undergone the preparation and training identified as necessary for the development of practice.

- The required professional registration process is complete and current.

- Notification of prescribing procedures has been followed.

- The non-medical prescriber has followed this policy and the Safe and Secure Handling of Medicines policy and has not practiced outside the scope of these documents.

- The non-medical prescriber can demonstrate they have met the CPD requirements.

- The member of staff has been authorised to prescribe within a specific clinical area and this is reflected in their current job description.

The NMC requires the employer to have the Clinical Governance infrastructure in place including a Protection of Children and Vulnerable Adults check (Police check), which must be completed prior to the commencement of the course, to enable the registrant to prescribe once qualified.

15. INDIVIDUAL PRACTITIONER LIABILITY

Registered non-medical prescribers are accountable to their professional body for their practice and are responsible for ensuring they maintain the necessary knowledge, skills and clinical competence to practice.

Nurse independent prescribers are individually accountable to the NMC for this aspect of their practice, as for any other, and must act at all times in accordance with the NMC Code.

Pharmacist independent prescribers are accountable to the General Pharmaceutical Council.

All non-medical prescribers must ensure that they have appropriate indemnity insurance from a professional organisation or trade union body. This will be provided by HSSD's vicarious liability as outlined in section 14.

Both the employer and the employee should ensure that the non-medical prescribers job description includes a clear statement that prescribing is required as part of the duties of that post or service.

The non-medical prescriber is accountable for their actions and may be the subject of disciplinary action within the organisation if they fail to comply with the terms of this policy, particularly where patient safety may be compromised. Any individual non-medical prescriber may be referred to their own professional regulatory body where concerns about their practice have been reported to the organisation.

16. AUDIT

Non-medical prescribers are responsible for ensuring audit of their prescribing practice. This will provide evidence towards demonstrating clinical competence as well as assisting with providing evidence for professional development, appraisal and regulatory body revalidation.

Audit should consist of maintaining a log of all medication/products prescribed using the documentation in appendix 2. Information regarding the range of medicinal products

prescribed will be required by the non-medical prescribing lead/ drugs and therapeutics committee.

Non-medical prescribers must also ensure a six monthly independent audit, undertaken by a pharmacist, of at least two randomly selected items prescribed using the documentation in appendix 3. This audit should be placed in the practitioner's professional portfolio for discussion at appraisal and may also be requested for review by the non-medical prescribing lead.

For monitoring purposes, NMP's must provide an annual report to the non-medical prescribing lead and Clinical Audit Nurse detailing the number and range of medicinal products prescribed together with confirmation that the six monthly random audit of their practice has been undertaken. This report should also include any details of the positive impact prescribing has on individual practice and patient care as well as any barriers or difficulties encountered.

It should also be noted that all prescriptions within the hospital environment are reviewed and monitored daily by a hospital pharmacist.

17. ACCOUNTABILITY

The Chief Officer is accountable to the Board of the HSSD for ensuring this policy is followed throughout the Department's services.

The non-medical prescribing lead through the Drugs and Therapeutics Committee is responsible for implementing this policy and ensuring the required audits are undertaken.

Directors are responsible for ensuring that their staff understand and carry out the procedures required by this policy.

All non-medical prescribers and Managers of non-medical prescribers are required to familiarize themselves with the requirements of this policy and take all reasonable steps to act in accordance with these requirements.

18. COMPLIANCE MONITORING

It is the responsibility of the Chief Pharmacist and the Chief Nurse and Director of Clinical Governance to ensure that compliance monitoring of a policy is undertaken.

All Directors are required to ensure compliance monitoring within their directorates.

The Drugs and Therapeutics Committee will monitor compliance through:

- Reporting annually on the number of non-medical prescribers registered locally.
- The range of drugs prescribed as audited by individual non-medical prescribers.
- Educational and developmental initiatives as indicated by the non-medical prescribing lead.

19. DISTRIBUTION

This policy will be placed on PoliPLUS by the Director of Corporate Services. Hard copies will be made available to all staff who do not have access to the intranet.

20. REVIEW

This policy will be reviewed by the author, the working party and the non-medical prescribing lead as required, but initially at a period of not less than 1 year following implementation.

21. POLICY REMOVAL

This policy should be retained in the indexed policy folder until such time as its replacement has been approved by the Board of the Health and Social Services Department. A single copy of the superseded policy will be held on the archived files of the Health and Social Services Department.

22. EFFECTIVE DATE

These arrangements were approved by the Board of the Health and Social Services Department on 11 March, 2015 and will come into effect immediately.

CAROL TOZER
Chief Officer

6 March 2015

References

Department of Health (2006) *Improving Patients' Access to Medicines: A Guide to Implementing Nurse and Pharmacist Independent Prescribing within the NHS in England.* London: DoH.

Department of Health (2005) *Supplementary Prescribing by Nurses, Pharmacists, Chiropodists/Podiatrists, Physiotherapists and Radiographers within the NHS in England.* London: DoH.

National Prescribing Centre (2005) *Training Non-Medical Prescribers in Practice. A Guide to help doctors prepare for and carry out the role of designated medical practitioner.* Liverpool: National Prescribing Centre.

National Prescribing Centre (2010) *Non-Medical Prescribing A Quick Guide for Commissioners.* Liverpool: National Prescribing Centre.

National Prescribing Centre Website (2010) *Non-Medical Prescribing.* Available at: http://www.npc.co.uk/prescribers/nmp.htm (Accessed 15th November 2010).

Nursing and Midwifery Council (2006) *Standards of Proficiency for Nurse and Midwife Independent Prescribers.* London: NMC.

Appendix 1

Nomination for Non-Medical Prescribing Preparation

Name of Nominee ……..

Professional Registration Number ……...

Expiry Date ……..

Area of Practice ……. Telephone No ……...

Is the nominee a 1st level registered nurse, registered pharmacist or registered allied healthcare professional?	Yes/No
Does the nominee have a valid current professional registration?	Yes/No
Has the candidate had 4 years post registration clinical experience. (2yrs for pharmacists)?	Yes/No
Has the candidate had a minimum of at least 1 years' experience in the area in which they will be prescribing?	Yes/No
Does the nominee have the clinical competence to take a history, undertake a clinical assessment and make a diagnosis?	Yes/No
Does the nominee have the ability to study at level 6 (degree level)?	Yes/No
Has a medical practitioner been identified to be the DMP for the candidates period of training?	Yes/No
Please state the name of the DMP	
Does the nominee have the agreement of his/her line manager to allow attendance and completion of the prescribing course, the necessary period of supervised prescribing following qualification as a prescriber and continued professional development?	Yes/No
Is the nominee working in a role where because of the nature of the patients seen, he/she will be prescribing on a regular basis?	Yes/No
Date need for non-medical prescribing identified through KSF.PDR process:	Yes/No

Please provide a supporting statement that:
Outlines why the nominee should be selected for non-medical prescribing training and the categories of drugs (as stated in the BNF) they are likely to be prescribing.

For example, benefits to patients, nurse-led services, completes episodes of care, additional qualifications relevant to prescriber's rights.

Signature of Nominee……Date……

Signature of Line Manager……Date……

Signature of DMP……Date……

Signature of Prescribing Lead……Date……

(Form to be sent to and retained by non-medical prescribing lead)

Appendix 2

Non-Medical Prescribing Audit Log

Patient Unit Number	Name of Drug/Product Prescribed	Dose Prescribed	Frequency of use	Duration of Treatment	Route of administration / application	Date of Prescription	Time of prescription	Reason for prescription	Signature of Prescriber

(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 report complies with the Principles of Good Governance as defines in Billet d'État IV of 2011.)

The States are asked to decide:-

XVIII.- Whether, after consideration of the Policy Letter dated 8th May, 2015, of the Social Security Department, they are of the opinion:-

1. To amend the Health Service (Benefit) (Guernsey) Law, 1990 and related subordinate legislation to allow appropriately qualified non-medical health professionals who are employed, contracted or engaged by the Health and Social Services Department, or otherwise authorised by the Department to work as such, to be empowered to issue medical prescriptions for the supply of pharmaceutical benefit for the purposes of the said Law within their own level of professional competence.

2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

ENVIRONMENT DEPARTMENT

RESIDENTIAL ON-STREET PARKING SCHEME

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

11th May 2015

Dear Sir

1. Executive Summary

1.1 In paragraph 56 of the Environment Department's Integrated Transport Strategy and Action Plan *for* Guernsey it was stated that the Department would report back to the States with proposals for a reformed residential parking scheme. This report sets out those proposals.

1.2 The Environment Department proposes to simplify the existing on-street residential parking scheme in St Peter Port and St Sampson by the introduction of a universal 23 hour residential parking scheme. A new day / time parking clock will be introduced in order to administer the new scheme. The display of this new clock will be required for all residential permit holders as well as motorists parking in 23 hour approved parking places across the Island.

2. Background

2.1 Just over a decade ago, concessions for residential parking in disc parking places were initiated and two residential parking schemes were introduced and are in operation today as summarised below:

1. An ordinary residential parking scheme. This allows residents in the locality of disc controlled parking (including St Peter Port, St Martin and St Sampson) to apply for a simple overstay permit ("**ordinary permit**") authorising them to park their vehicles overnight in disc parking places in designated streets within a reasonable walking distance from their residence until 9.30 am the following morning (other than ½ hour and unloading bays). This permit was designed so that residents do not have to move their vehicles by 8.00 am when the disc zone time restrictions come into operation. Ordinary permit holders can also re-park without adherence to the thirty minute prohibition on re-parking.

2. An extended residential parking scheme. This allows St Peter Port residents in specified areas to apply for a ten hour extension permit ("**extended permit**") which authorises them to overstay in designated short term disc parking places for an additional ten hours. This permit was designed in order to try and cut out unnecessary vehicle movements[1]. Holders of the permit can also re-park without adherence to the thirty minute prohibition on re-parking.

2.2 In addition, some St Peter Port residents live on or nearby estates and roads that have 23 hour approved parking places. Motorists are not currently required to display a parking disc in approved parking places.

2.3 In March 2006 (see Billet d'État No. VII 2006, pages 612-613), the States approved the Environment Department's proposals for the introduction of further on-street residential parking schemes under paragraph 4.9 (Residents Parking Schemes) of the 2006 Road Transport Strategy[2]. This permitted the Environment Department to –

1. Extend the existing residential permit schemes to additional St Peter Port roads (as specified in the Appendix to the 2006 Road Transport Strategy[3]) and throughout the urban area in St Peter Port as well as St Sampson and St Martin,

2. Introduce a fee of £75 for the administration and operation of a scheme to issue residential parking permits (to be valid for three years), subject to the adoption of the necessary enabling legislation,

3. Apply any surplus income generated by the scheme to improvements in the provision of alternative forms of transport, in particular, to improve facilities to encourage walking and cycling, and

4. Consider, in conjunction with the Treasury and Resources Department and subject to the associated planning considerations, any opportunity to acquire and develop suitable sites to provide off-street parking areas for lease to Town residents.

2.4 In April 2014, after consideration of the Report, the States resolved to rescind resolution 9 of Billet D'Ētat VII 2006 *"To approve the Environment Department's intention to acquire and develop suitable sites that might become available for the construction of off-street residents' parking facilities, as set out in section 4.9.7 of that Report"*.

Consequently, this Report does not deal with the suggestion for acquiring off-street parking areas identified in paragraph 2.3.4.

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[1] Please see http://gov.gg/Residentsparking for further details of the current residents parking schemes.
[2] See Resolution VIII (8) of Billetd'Ētat No. VII of 2006
[3] Appendix 2 of Item 8 of Billet d'Ētat No. VII of 2006 (page 676).

2.5 It has also become apparent, since the publication of the 2006 Road Transport Strategy, that there is not a pressing requirement for the extension of residential parking into areas other than St Peter Port and the southern side of the Bridge in St Sampson. Paragraph 5 of this Report explains this in more detail.

3. Disadvantages of the Present Residential Parking Schemes

3.1 Currently, if an ordinary or extended permit holder has parked a vehicle overnight in *a disc controlled parking area*, that vehicle must be moved by 9.30 am the following morning. As highlighted in the 2006 Road Transport Strategy, many Town residents only move their cars from the disc parking area outside or near their homes in the morning to another long-stay parking area in Town whilst they are at work because the disc parking legislation together with the parameters of the current residential parking schemes prevents them from leaving their cars near their homes during the day. In effect, some residents are being forced to drive to work elsewhere in Town and are therefore being discouraged from walking, cycling or using public transport.

3.2 Further, in relation to *approved parking places* referred to in paragraph 2.2, due to the absence of any requirement to display the time or day in which a car is parked, there is concern that parking enforcement in the 23 hour approved parking zones is difficult to monitor and enforce. For example, if the law enforcement authorities receive notification that a vehicle has overstayed in a 23 hour approved parking place, the officer is not in a position to determine the time or day on which the car was originally parked, and therefore, cannot ascertain whether or not the vehicle is legally parked. It is therefore necessary to visit the area on two occasions – one to note the presence of the vehicle and a second to ascertain that it has not been moved within the required period. This is frustrating for inconvenienced residents and time consuming and costly for the law enforcement authorities.

4. Proposal to Implement a 23 hour Residential Parking Scheme

4.1 Rather than extend the existing schemes for residential parking, the Environment Department believes it appropriate that the present system for residential parking described in paragraph 2.1 is replaced with a single more extensive scheme.

4.2 The Environment Department proposes to introduce a 23 hour residential on-street parking scheme in relation to certain disc zones whereby persons parking in such zones will be obliged to set a parking clock showing the day as well as the time of arrival.

4.3 In order for the new scheme to be successfully administered, the Environment Department proposes to replace the display clock presently used for controlled parking with an alternative style that includes the day of the week. All clocks sold in future shall have the day display (such that, eventually, they will replace

all existing clocks), however, for the time being the obligation to display the day will only apply to a resident utilising a residential parking permit in a disc parking place (and therefore under the new residential on-street parking scheme) or to a person parking in a 23 hour approved parking place. Investigations indicate that a re-styled parking clock, to include a "day" display, would be only marginally more expensive than the existing model (parking clocks currently retail at £2.50 each from the Environment Department). In order to introduce the new parking clock, this will require some amendments to the existing parking legislation, namely the Road Traffic (Parking Places) Ordinance, 1963, as amended, and the Vehicular Traffic (Control of Parking on Certain States Land) Ordinance, 1988, as amended.

5. Scope of the New Residential Parking Scheme

5.1 The Environment Department proposes that the new 23 hour residential scheme should apply to St Peter Port and St Sampson only for the reasons below –

1. Currently, there is only one ordinary permit in active use in St Martin. Following discussions with the St Martin Douzaine it is apparent that there is not a great demand for residential permits in St Martin and there seems little merit in introducing the proposed residential parking scheme there.

2. Residential parking in St Sampson is in fairly high demand from residents living in areas south of the Bridge, and it would seem appropriate that the proposed scheme includes the areas of St Sampson where there is reasonable demand for residential parking (i.e. New Road).

5.2 The Environment Department proposes to broaden the residential parking scheme in St Peter Port to incorporate a wider segment of residential parking areas in an effort to reduce unnecessary vehicle movements. An important aspect of the residential parking scheme is to discourage short journeys made by residents solely for the purpose of securing long term or overnight parking.

5.3 Clearly, it would not be appropriate for residents to enjoy special parking concessions throughout St Peter Port or St Sampson – this would defeat the objective of reducing unnecessary vehicle journeys. It is appropriate, therefore, to restrict residents to concessionary parking to areas within reasonable walking distance of the road in which they live.

5.4 The Environment Department has therefore assessed each of the roads suggested in the 2006 Road Transport Strategy Report for inclusion in the new scheme (plus some others) and divided the whole area into separate parking zones.[4] (See Appendix Two – Residential Parking Zones – St Peter Port).

[4] It is important to note that residents in the roads identified in the zones are eligible to apply for a permit, but that not all the parking spaces in all of the roads in a given zone are reserved for residential parking.

5.5 Under these new proposals, residents will be able to enjoy concessionary parking only in the roads specified within the disc parking zone stated in their permit. To assist parking enforcement and simplify matters for residents, the Environment Department would add supplementary information to the existing disc parking signs which will identify the different residential parking zones.

5.6 Appendix One of this Report identifies all of the roads which will form part of the proposed residential parking scheme. The scheme will extend to both the additional roads identified in this Report and those approved by the States in 2006.

5.7 In this regard, it is recognised that there is not an even balance of available parking (whether long term or short term) for all residents in all streets of St Peter Port. Research by the Environment Department has indicated that, should the 23 hour residential parking scheme be introduced, the most fortunate of residents will enjoy a parking ratio of one space for every eight vehicles registered in the vicinity; in some areas, the ratio stretches to one space for every ten or eleven registered vehicles (excepting the St Sampson zone where the ratio is closer to one for every twenty three registered vehicles). It is recognised that residents in roads that border the geographical limits of the schemes may be aggrieved that they are not able to obtain the benefits of residential parking concessions. Only time and the operation of the new scheme will provide clear outcomes on these matters. The Department will therefore monitor the scheme and, if necessary, vary the mix by way of adding in roads or adjusting the residential parking zones. This is permissible by use of existing powers, including those under the Road Traffic (Parking Places) Ordinance 1963, as amended, and the Vehicular Traffic (Control of Parking on Certain States Land) Ordinance, 1988.

6. Introducing and Running the Residential Parking Scheme

6.1 Parking permits will be issued to eligible residents on the payment of £100.00, in line with the decision of the States in the 2006 Road Transport Strategy (see paragraph 7 for further details). Permits will be valid for three years and will be clearly marked for identification in relation to the zone in which they are valid. Residents using the scheme will be obliged to display the permit clearly on the dashboard of the parked vehicle, together with a day / time clock.

6.2 The implementation of this scheme will require approximately 430 (about 20%) of long term parking spaces (on-street five, ten hour and 23 hour spaces) in the new residential parking scheme zones to be altered to two hours. This is primarily to ensure that commuters are discouraged from parking in the new residential parking zone areas. However, it should be pointed out that other long term spaces will be “freed up” as a result of residents not moving their vehicles to the compound areas. It will also be necessary to discontinue the ordinary permit and extended permit schemes that are currently operational.

6.3 Arrangements will need to be put in place to ensure sufficient parking for motorcycles is retained in roads where long term parking (i.e. 23 hour approved parking zones) is replaced by 2-hour disc parking. This is because motorcyclists, whilst able to park in 23 hour approved parking zones, are not permitted to park in disc parking zones. The Department will review the areas that are affected in this way and will determine the most suitable places for the location of the additional motor cycle parking.

6.4 Permits will bear the registration number of the vehicle for which they have been issued and will be restricted to one per applicant (there is not a restriction on the number of permits registered to a particular household). Residents seeking to obtain a permit must be the registered keeper of the vehicle for which the permit is issued – checks will be made to ensure that anyone making an application is a genuine resident, eligible to hold a permit. Residents who live within any of the residential parking zones may apply for a permit. A business or other corporate body that has an active presence in the Island and has premises in one of the zones may also apply and will also be restricted to a single permit for a nominated vehicle – the vehicle need not be registered in the organisation's name.

7. Fees, Refunds and Transfers

7.1 The Executive Summary of the States Report for the 2006 Road Transport Strategy states, *inter alia*:

"…the Department is recommending that the Strategy should be financed by … the introduction of an administration charge of £25 per annum for residents' parking permits".

7.2 Section 4.9 of the Report, which deals specifically with residential parking, states the following:

"…the Department proposes to introduce an administration fee of £75 for these permits, which are valid for 3 years".

7.3 The Environment Department proposes that the new residential parking permits follow the same fee structure approved under the 2006 Road Transport Strategy. However, it is proposed that the original £75.00 fee is adjusted for the effects of inflation. The States Inflationary Calculator for the RPIX measure shows the current value of the fee (March 2015) to be £96.12. The Environment Department's own calculations, based on compounded rates for the index, give a figure of £101.59. Taking these adjustments into account, parking permits will therefore be issued to eligible residents on the payment of £100.00 and will be valid for three years. The right of the States to introduce fees in connection with parking is authorised in law under the Road Traffic (Parking Fees and Charges) (Enabling Provisions) (Guernsey) Law, 2009. This Law is not yet in force and will require a Commencement Ordinance together with a fairly simple

Resident's Parking Fees Ordinance to be drafted in order to introduce the £100 fee and any supplementary or associated provisions.

7.4 It is evident from the extracts above that the original intention behind the introduction of a charge for residential parking was that the costs covered administration and that they would be apportioned over three years. The Department intends to abide by these stipulations and will seek to draft the required legislation as appropriate; it further proposes that any refunds claimed will only extend to complete years outstanding on a permit. The Department will have the discretion to issue refunds for complete years that are outstanding where there is merit in doing so; for example, in cases where the permit holder moves out of the area, ceases to use a vehicle, or the permit is no longer required due to personal reasons.

7.5 The Department recommends that a permit may be transferred, at no additional charge, to a replacement vehicle and a new address (within the identified zones), but cannot be transferred to a new holder. A permit that is lost or defaced may be replaced without further charge.

8. Consultation

8.1 The St Peter Port Constables, the Housing Department and the Guernsey Police Service have been consulted on these proposals.

8.2 The Law Officers have been consulted about the legal issues in respect of these proposals.

9. Legislation

9.1 In order to implement the Environment Department's proposals, the enactment of legislation will be required. It is estimated that this will involve a day or two of drafting time.

10. Corporate Governance

10.1 The Department considers that it has complied with the six principles of good governance in the preparation of this Report.

11. Policy Statements

11.1 There are no significant detrimental environmental impacts arising as a result of these proposals. It is anticipated that there will be environmental benefits arising with fewer short journeys by residents and commuters seeking to park.

11.2 The Department considers that these proposals conform to the overarching strategies of the States Strategic Plan in respect of the fiscal, economic, social and environmental infrastructure.

12. Revenue Implications

12.1 There are minor revenue implications from these proposals relating primarily to the administration of the scheme and the collection of fees. It is anticipated that these will be met from existing resources within the Environment Department.

12.2 The proposed fee for taking out a residential parking permit accords with the Policy Council Guidelines on Fees and Charges (November 2013).

13. Recommendations

13.1 The Environment Department recommends that the States:

1. Approve the introduction of a new residential on-street parking scheme as described in paragraphs 4, 5, 6 and 7 of this Report which will replace the existing residential on-street parking schemes described in paragraph 2.1 of this Report;

2. Approve the introduction of a new parking clock (which states the day and the time) which residents utilising a residential parking permit or persons parking in a 23 hour approved parking place will be under an obligation to display, as described in paragraphs 4.2 and 4.3 of this Report;

3. Direct the preparation of such legislation as may be necessary to give effect to the foregoing.

Yours faithfully

Y Burford
Minister

B L Brehaut
Deputy Minister

P A Harwood
J A B Gollop
E G Bebb

Appendices:

1. Proposed Parking Areas.
2. Residential Parking Zones – St Peter Port and St. Sampson's Harbour

Appendix One

Proposed Parking Areas in the 2014 Residential Parking Scheme

RED ZONE	
Permit Holders From	**Are Eligible To Park With Concessions In:**
Back Street; Burnt Lane; La Charroterie; Cour du Parc; Mount Durand; Mount Hermon; Mount Row East; Park Lane; Park Street; Les Petites Fontaines; Rue du Pre; Valnord Hill; Valnord Road; Victoria Road and Upper Mansell Street Cordier Hill; La Couperderie and New Place Le Bouillonne Steps; Contree Mansell; Cordier Hill Steps; Lower Vauvert; Mansell Court; Park Lane Steps; Prince Albert Road; St Thomas Village; Trinity Square; Valnord Private Estate; Mount Row; Vauvert (filter to Victoria Road)	Cordier Hill; La Couperderie; Mount Durand; New Place; Park Street; Park Street Triangle; Les Petites Fontaines; Valnord Hill; Valnord Road and Victoria Road

BLUE ZONE	
Permit Holders From	**Are Eligible To Park With Concessions In:**
Bosq Lane; Bruce Lane; Les Canichers; Corbin Steps; Paris Street and Well Road Les Amballes; New Paris Road; St Clement's Road; St John's Road and Piette Road Bouillon Lane; Don Street; Doyle Street; Glategny Esplanade; Lower Canichers; Rope Walk Lane; Rouge Rue; Rougeval; Royal Avenue; St George's Esplanade; St Julian's Avenue (lower section)	Les Amballes; Bruce Lane; Les Canichers; New Paris Road; Paris Street; Piette Road; St Clement's Road; St John's Road and Well Road

PURPLE ZONE	
Permit Holders From	**Are Eligible To Park With Concessions In:**
Beauregard Lane; La Butte; Cambridge Park Road; Candie Road; Les Cotils; L'Hyvreuse; L'Hyvreuse Avenue; Monument Gardens; Monument Road and Les Vauxlaurens Arsenal Road and Upland Road Ann's Place; Berthelot Street; Brock Road; Church Square; College Street; Commercial Arcade; Coronation Road; Dalgairns Road; Doyle Road; Forest Lane; Rue Freres; Grange Road; High Street; Hirzel Street; Hospital Lane; St Julian's Avenue (upper section); Lefebvre Street; Lower Pollet; Rue du Manoir; Le Marchant Street; La Rue Marguerite; New Street; North Esplanade; North Plantation; La Plaiderie; Le Pollet; The Quay; Quay Street; Rosaire Avenue; St James Street; Smith Street; Le Truchot; Sir William Place and The Weighbridge; St Jacques; La Gibauderie; La Gibauderie Clos; Fosse Andre (section between Coronation Road and La Butte)	Arsenal Road (part); Brock Road; Candie Road (part); Coronation Road; Dalgairns Road; L'Hyvreuse (part); Monument Road; Rosaire Avenue; Upland Road and Les Vauxlaurens

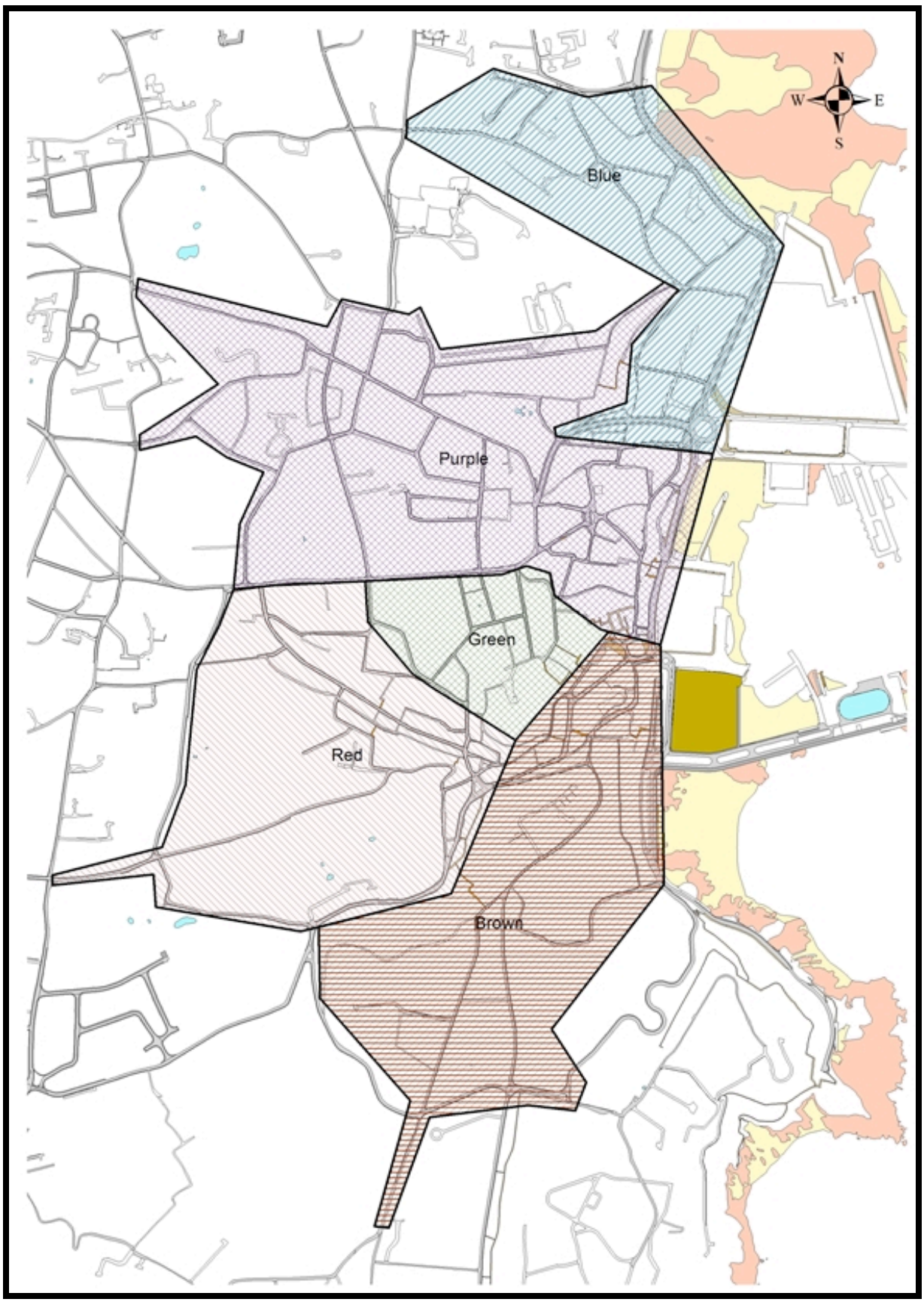
GREEN ZONE	
Permit Holders From	**Are Eligible To Park With Concessions In:**
Clifton; Clifton Steps; Constitution Steps; Little St John Street; St John Street; Sausmarez Street and Union Street Allez Street; Arcade Steps; Battle Lane; Clifton Stairs; George Street; Havilland Street; North Clifton; Le Platon; Port Vase and Vauvert (east to filter)	Clifton; North Clifton; Sausmarez Street; St John Street; Union Street and Vauvert

BROWN ZONE	
Permit Holders From	**Are Eligible To Park With Concessions In:**
Hauteville; Pedvin Street and George Road Havelet and Les Vardes Le Bordage; Burnt Lane; Castle Vaudin; Church Hill; Cliff Street; Contree Croix Mansell; Cornet Street; Coupee Lane; Domaine de Beauport; Les Echelons; Fountain Street; Godaines Avenue; Lower Hauteville; Mansell Street; Ruette Marie Gibaut; Market Hill Market Square; Market Street; Mill Street; Montville Road; Park Lane Steps; Petit Carrefour; Pied des Vardes; Rosemary Lane; South Esplanade; The Strand; Tower Hill; Tower Hill Steps and Val Fleury; Havilland Road	George Road; Hauteville; Havelet; Pedvin Street: Les Vardes; Rue de Belvedere

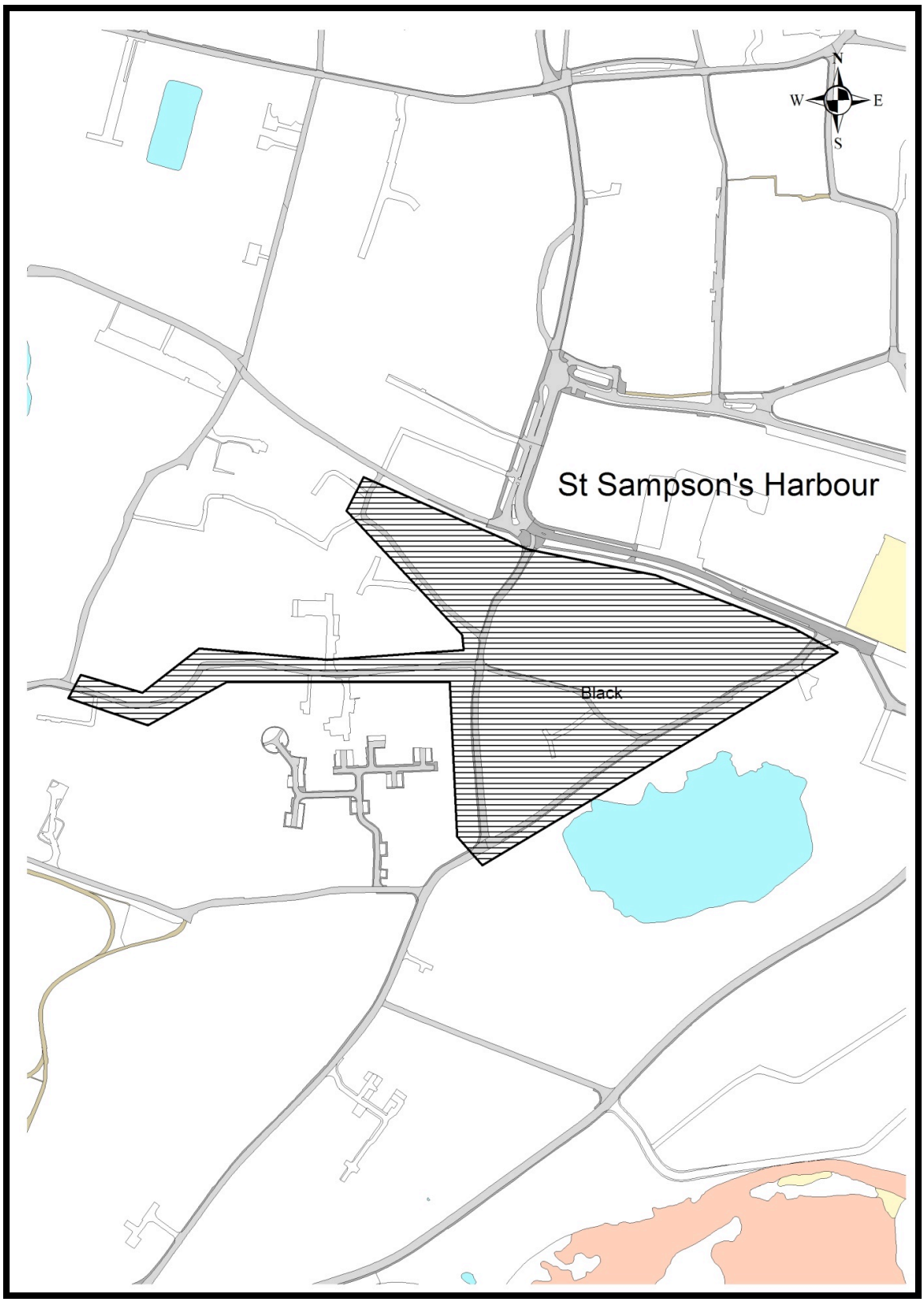
BLACK ZONE	
Permit Holders From	**Are Eligible To Park With Concessions In:**
Brock Road; Church Lane; Church Road; New Road; Roland Road	New Road

Appendix Two

Residential Parking Zones - St Peter Port



Residential Parking Zone - St Sampson’s Harbour



(N.B. The Treasury and Resources Department notes that the Environment Department is not requesting any additional budget to implement the proposals within this Policy Letter as the minor initial costs will be funded within existing resources and the ongoing costs of administering the scheme will be covered by the fees charged.)

(N.B. The Policy Council considers that the Environment Department has made a sound case for the need to amend the residential parking scheme in an effort to remove the requirement for residents to move their vehicles by 9:30am, reduce unnecessary vehicle movements and to free up some long term parking for commuter use within the Town and Bridge centres. It is noted that the Environment Department has committed to keep the proposals under review, to ensure they are operating successfully and producing the desired results. Therefore, the Policy Council supports this Policy Letter and recommends the States to approve its recommendations.)

The States are asked to decide:-

XIX.- Whether, after consideration of the Policy Letter dated 11th May, 2015, of the Environment Department, they are of the opinion:-

1. To approve the introduction of a new residential on-street parking scheme as described in paragraphs 4, 5, 6 and 7 of that Policy Letter which will replace the existing residential on-street parking schemes described in paragraph 2.1 of that Policy Letter.

2. To approve the introduction of a new parking clock (which states the day and the time) which residents utilising a residential parking permit or persons parking in a 23 hour approved parking place will be under an obligation to display, as described in paragraphs 4.2 and 4.3 of that Policy Letter.

3. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

SOCIAL SECURITY DEPARTMENT

ELIGIBILITY FOR INDUSTRIAL INJURIES BENEFITS

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

6th May 2015

Dear Sir

1. Executive Summary

1.1 This report proposes that people who are engaged in work activity under the various programmes and courses operated by or on behalf of the Social Security Department, or similar programmes approved by that Department, shall be eligible for industrial injuries benefits under the Social Insurance (Guernsey) Law, 1978. Entitlement to those benefits at present is limited to people who are employed or self-employed as defined by the Law, or otherwise gainfully occupied under a contract of service. This does not, at present, include people who are engaged in work programmes or courses without earnings but with their benefits continuing in payment. The Department proposes that people in this and similar positions, should receive the protection of industrial injuries benefits.

2. Eligibility for Industrial Injuries Benefits

Industrial Injuries Benefits

2.1 Industrial injuries benefits comprise the oldest branch of social security. In Guernsey, the States Insurance Authority was established in 1924 to provide workers' compensation for industrial accidents financed through the purchase of 'insurance stamps'. Although the risk of industrial accidents has reduced considerably since that time due to changing industries and improved health and safety procedures and awareness, the Social Insurance (Guernsey) Law, 1978 ("the Social Insurance Law") continues to make provision for the payment of the following three benefits, at the cost of the Guernsey Insurance Fund, to employed and self-employed people who have an accident at work or who contract certain diseases or conditions while at work:

- **Industrial medical benefit**

Industrial medical benefit is a benefit that is used to pay for treatment connected with an accident at work or with certain prescribed diseases known to be a risk from certain jobs.

- **Industrial injury benefit**

Industrial injury benefit is a weekly cash benefit, similar to sickness benefit (which cannot be paid at the same time), payable to qualifying individuals under the age of 65 who are unable to work for at least four days due to an accident at work. It can also be paid to individuals who are unable to work as a result of having contracted certain diseases or conditions while at work.

- **Industrial disablement benefit**

Industrial disablement benefit is a weekly cash benefit payable to a person who has become disabled or disfigured as a direct result of an accident at work or due to certain prescribed diseases caused by their job. The amount of benefit payable is based on the degree of disablement assessed by a Medical Board and expressed as a percentage. Beneficiaries can receive this benefit and still be at work. The benefit can also be paid beyond the age of 65.

2.2 The current rates of industrial injury benefit and industrial disablement benefit are set out in table 1 below:

Table 1 – 2015 rates of industrial injury benefit and industrial disablement benefit

Benefit	**Degree of disablement**	**Weekly rate of benefit**
Industrial injury benefit	N/A	£147.91 – flat rate
Industrial disablement benefit	100% 90% 80% 70% 60% 50% 40% 30% 20% <20%	£162.00 £145.80 £129.60 £113.40 £97.20 £81.00 £64.80 £48.60 £32.40 No benefit payable

Persons eligible for Industrial Injuries Benefits

2.3 Only "insured persons", as that phrase is defined for the purposes of Part III of the Social Insurance Law, are entitled to industrial injuries benefits. In brief, an insured person for that Part of the Law is someone who is liable for social insurance contributions as an employed or self-employed person or someone who is not so liable, but is gainfully occupied in employment under a contract of

service. The latter category would include people who are working part-time and not earning enough to make them liable for contributions.

2.4 There are no contributions conditions for industrial injuries benefits, so an employed or self-employed person who has paid no, or very few, contributions would be eligible to claim industrial injuries benefits if they had an accident at work or contracted a prescribed disease or condition while at work.

Persons ineligible for industrial injuries benefits

2.5 Persons classified for Social Insurance purposes as non-employed are not eligible for industrial injuries benefits. Industrial injury benefit is not available to anyone who has reached pensionable age. Industrial medical benefit and industrial disablement benefit are available to employed people who have reached pensionable age, but not to self-employed people who have attained pensionable age (unless the injury was sustained or the prescribed disease was contracted before reaching pensionable age) or self-employed people earning less than the lower earnings limit.

2.6 The Department operates a number of employment training programmes and courses (e.g. the "Work2Benefit" Scheme, the "get into" courses, work trials and work experience placements) for jobseekers in receipt of supplementary benefit or unemployment benefit. The purpose of these programmes and courses is to assist participants to gain relevant skills and work experience, improve their work ethic, establish a work routine, etc, in order to help them to secure employment. Participants are not paid a wage but their benefit remains in payment during the course of their placement. Currently, people taking part in these activities are not covered for industrial injuries benefits.

2.7 The Department's staff and, in the case of the Work2Benefit Scheme, the Department's contracted supplier, carry out risk assessments of potential workplaces and work tasks in order to minimise the risk of an accident occurring, but clearly a risk of injury remains. The Department is of the view that participants on its employment training programmes and courses should be eligible for industrial injuries benefits if they suffer a personal injury or contract a prescribed disease in the course of, or as a result of, their participation.

Support available for people who are not eligible for industrial injuries benefits

2.8 The States Insurers have confirmed that all participants on employment training programmes and courses operated by the Department are covered under the States' insurance policy for the purposes of personal injury incurred in the course of duties arranged by the States and liabilities incurred to third parties. However, they are not eligible for the personal accident benefits available to permanent public sector employees.

2.9 If a person in receipt of supplementary benefit were injured while on an employment training programme or employment training course, that person would be eligible to have the cost of his or her medical treatment covered under Section 6A of the Supplementary Benefit (Guernsey) Law, 1971 ("the Supplementary Benefit Law"), provided that the person had capital below the relevant threshold or, if having capital in excess of the relevant threshold, that the threshold was waived having regard to the circumstances of the case. This cover would be essentially equivalent to industrial medical benefit.

2.10 As things currently stand, persons in receipt of unemployment benefit only (with no income top-up from supplementary benefit) would not be eligible to have their medical treatment funded through supplementary benefit.

2.11 It would be possible, by Regulation made under the Supplementary Benefit Law, to create a special category of persons (i.e. participants on employment training programmes and employment training courses operated by or behalf of the Social Security Department) to whom payments in respect of medical treatment may be made. This would ensure that all participants on unpaid employment training programmes and employment training courses operated by the Social Security Department, who suffer a personal injury or contract a prescribed disease while participating in the course or programme, would be eligible to have the cost of their medical treatment connected with the accident or prescribed disease covered through supplementary benefit. However, this would not provide such persons with a weekly cash benefit.

2.12 If the claimant was incapable of work for at least four days and they satisfied certain contribution conditions, they would be able to claim sickness benefit instead of industrial injury benefit. The maximum rate of sickness benefit is the same as the rate of industrial injury benefit (i.e. £147.91 per week), but in order to qualify for this rate claimants must have paid or been credited with at least 50 contributions during the relevant contribution year. Reduced amounts are payable to people who have paid or been credited with 26 to 49 contributions during the relevant contribution year. Many of the people taking part on these programmes and courses will not qualify for the maximum rate of sickness benefit and some may not qualify at all. People in this position would have to rely on supplementary benefit (provided that they met the financial criteria) while they were unable to work, which would meet their immediate financial needs.

2.13 However, if a person became disabled as a direct result of an accident that he or she suffered while participating in an employment training course or programme which did not preclude them from returning to work at some point in the future, they would potentially no longer be eligible for supplementary benefit and they would not be eligible to receive compensation in the form of industrial disablement benefit as the legislation currently stands.

2.14 Therefore, the Department's preferred approach is to amend the Social Insurance Law in order to make participants on employment training programmes and employment training courses operated by or on behalf of the Social Security Department, or approved by the Social Security Department, eligible for all three forms of industrial injuries benefits; namely industrial medical benefit, industrial injury benefit and industrial disablement benefit.

The UK position

2.15 The UK's Industrial Injuries Scheme provides non-contributory no-fault[1] benefits for disablement because of an accident at work, or because of one of over 70 prescribed diseases known to be a risk from certain jobs. From 31 October 2013, the scheme also covered people working on approved employment training schemes or employment training courses. The benefits payable under the scheme are known as Industrial Injuries Scheme Benefits (IISB)[2].

2.16 IISBs are paid to employees who were "employed earners"[3] (or treated as employed earners) at the time of the accident or when they contracted a prescribed disease, or to people who were working on an approved employment training scheme or employment training course when the accident or event happened. Accidents or diseases which arise out of self-employment or service in H.M. forces are not included in the scheme.

Proposed amendment to the Social Insurance (Guernsey) Law, 1978

2.17 The Department recommends that the Social Insurance Law be amended to the effect that a person directed by the Administrator to participate in an employment training programme or an employment training course operated by or on behalf of the Social Security Department, or approved by the Social Security Department, shall be deemed to be gainfully occupied under a contract of service for the purposes of the Part of the Law concerning industrial injuries benefits. This would give such persons the same cover for industrial injuries benefits as if they were gainfully employed.

2.18 The Department recognises that there may be a future need to further extend the categories of persons eligible for industrial injuries benefits. In order to provide this flexibility, it is recommended that the Department be empowered to prescribe by Regulation additional categories of persons to be treated for the purposes of industrial injuries benefits as employed persons.

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1 No fault' means, in this context, that no fault needs to be proven.

2 The Industrial Injuries Scheme Benefits are: Industrial Injuries Disablement Benefit, Constant Attendance Allowance, Exceptionally Severe Disablement Allowance, Reduced Earnings Allowance and Retirement Allowance.

3 An employed earner is a person who is gainfully employed in Great Britain, either under a contract of service or as an office holder (e.g. a company director).

2.19 The cost of carrying these proposals into effect is expected to be negligible. In December 2014, 31,632 people were employed or self-employed in Guernsey[4] and, as such, were potentially eligible for industrial injuries benefits if they suffered an injury or contracted a prescribed disease in the course of their work under existing rules. Expenditure on industrial injuries benefits in 2014 was £987,000. There are currently approximately 50 placements available on unpaid employment training programmes and courses operated by or on behalf of the Social Security Department. Even if the number of placements doubled to 100, this represents just 0.3% of the total workforce. 0.3% of total annual expenditure on industrial injuries benefits is approximately £3,000 – although this is likely to vary on an annual basis with no claims being made by persons participating in unpaid employment training programmes or courses operated by or on behalf of the Social Security Department in some years, and a more expensive claim or claims being made in other years.

3. Consultation and good governance

3.1 The Social Security Department has taken account of the Disability and Inclusion Strategy during the development of the proposals set out in this report.

3.2 The Law Officers have been consulted and have not identified any legal difficulties with the recommendations contained in this Report.

3.3 Good corporate governance has been adhered to during the development of this report.

4. Recommendations

4.1 The Department recommends that:

i. Section 40(1) of the Social Insurance (Guernsey) Law, 1978 be amended to the effect that a person directed by the Administrator to participate in an employment training programme or an employment training course operated by or on behalf of the Social Security Department, or approved by the Social Security Department, shall be deemed to be gainfully occupied under a contract of service for the purposes of the Part of the Law relating to entitlement to industrial injuries benefits;

ii Section 40 of the Social Insurance (Guernsey) Law, 1978 be amended to give the Social Security Department the power to prescribe by regulation additional categories of persons to be treated for the purposes of industrial injuries benefits as employed persons;

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4 Guernsey Quarterly Labour Market Bulletin – Quarter 4 2014, Policy Council

iii. Such legislation as may be necessary to give effect to the foregoing shall be prepared.

Yours faithfully

A H Langlois
Minister

S A James
Deputy Minister

J A B Gollop
D A Inglis
M K Le Clerc

M J Brown
Non-States Member

(N.B. The Treasury and Resources Department notes that the Social Security Department expects that the cost of carrying these proposals into effect will be negligible.)

(N.B. The Policy Council believes that extending the eligibility for Industrial Injuries Benefits to people participating on an employment training programme or course provided by or on behalf of the Social Security Department is a fair and equitable way forward and would provide economic security to those participants who might become a disabled person due to suffering a personal injury or contracting a prescribed disease in the course of, or as a result of, their participation.

This proposal is therefore in accordance with the Disability and Inclusion Strategy.

The Policy Council also supports the proposal providing greater flexibility to prescribe additional categories of persons eligible for industrial injuries benefits. The cost of introducing any such regulation should be considered, in conjunction with any relevant Departments, before such a regulation is made.)

The States are asked to decide:-

XX.- Whether, after consideration of the Policy Letter dated 6th May, 2015, of the Social Security Department, they are of the opinion:-

1. To amend Section 40(1) of the Social Insurance (Guernsey) Law, 1978, to the effect that a person directed by the Administrator to participate in an employment training programme or an employment training course operated by or on behalf of the Social Security Department, or approved by the Social Security Department, shall be deemed to be gainfully occupied under a contract of service for the purposes of the Part of the Law relating to entitlement to industrial injuries benefits.

2. To amend Section 40 of the Social Insurance (Guernsey) Law, 1978, to give the Social Security Department the power to prescribe by regulation additional categories of persons to be treated for the purposes of industrial injuries benefits as employed persons.

3. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

ENVIRONMENT DEPARTMENT

HIGH HEDGES PROPOSAL

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

28th April 2015

Dear Sir

1. Executive Summary

1.1 The issue of high hedges has been well documented and for those affected is a continuing blight on their enjoyment of their property. The issue has featured in the media with high hedges being addressed in England and Wales through Remedial Orders made under the High Hedges part of the Anti-Social Behaviour Act, 2003, in Jersey through the High Hedges (Jersey) Law, 2008 and in Northern Ireland through the High Hedges Act (Northern Ireland) 2011. Scotland has also passed the High Hedges (Scotland) Act, 2013. All contain provisions which are similar to those in England where a high hedge forms a barrier to light.

1.2 This report seeks the approval of the States for the drafting of new, specific high hedges legislation as outlined in this report which will be similar to that enacted elsewhere.

1.3 The emphasis is for neighbours to take all reasonable steps to reach agreement without recourse to legislation, but to be able to make an application to the Environment Department to require action to be taken in relation to the hedge should that avenue prove fruitless. The Department considers that the mere fact of having specific legislation in place should be sufficient in the vast majority of cases to encourage agreement between neighbours without the need for formal intervention as the experience in Jersey and elsewhere has shown.

1.4 A formal consultation on the proposals ran for six weeks from the 7th January 2015 to the 16th February 2015. The majority of the consultation comments gave positive support for the principle of the proposals and provided some useful feedback which has resulted in some refinements to the original proposals. These refinements include a new proposed fee of £350 (rather than £500) and provision for neighbours to make multiple complaints in relation to the same

high hedge at a reduced fee. The document “Results of Public Consultation” is attached as appendix 1 to this report.

2. Present position

2.1 Most hedges provide a suitable garden boundary but they can have an adverse effect on the enjoyment of neighbouring property when they are not properly maintained or are allowed to grow too tall. Difficulties can also arise when trees and hedging which are not suitable for a particular location are planted. Some hedge species grow at a rapid rate and so can have adverse effects for those living in their shadow. In other cases the person planting the hedge is unaware of the size it may reach when mature.

2.2 Currently, there is no legislation in Guernsey which specifically addresses the potential adverse effects that a high hedge may create for neighbours, including the loss of light into a neighbouring property. At present, a neighbour may merely prune limbs of a tree that overhang their property and return the prunings to their neighbour. The Cutting of Hedges Ordinance, 1953 also places legal obligations on occupiers of land bordering a public road to cut away biannually parts of hedges which overhang such roads up to specified heights.

2.3 The absence of specific legislation means that neighbours have little option but to negotiate with each other to address the adverse effects. In the majority of cases a satisfactory outcome is achieved but in some cases this is not possible. For example, the owner of the hedge or occupier of the property on which it stands may not respond or may refuse to cut back the hedge to mitigate its effects. In such cases the affected neighbour has no readily available means under existing Guernsey legislation to address the adverse effects.

2.4 It is arguable that they may potentially be able to take a private nuisance action against their neighbour or argue that their neighbour's land is, as a result of the hedge, in such a state as to be a nuisance under statutory nuisance provisions in the Public Health legislation. However, it may be difficult to prove that premises are in such a state by virtue of effects on light and amenity alone, as opposed to structural damage from tree roots which has been held in a number of cases to amount to a nuisance, and so this is unlikely to provide as effective or clear a remedy for home owners as specific legislation.

2.5 There would also be the potential option of amending the statutory nuisance provisions so as to specifically add high hedges, to the list of matters to which nuisance applies, so that it is clearly covered.

2.6 However, dedicated high hedges legislation would have the benefit of providing for a tested regime tailored to the relevant light and amenity effects of high hedges. Also, the statutory nuisance legislation does not provide for a dedicated complaint procedure or for complainants to have exhausted all reasonable steps to resolve their hedge problems before making a complaint.

2.7 The option of amending statutory nuisance legislation was also rejected in England and Scotland for these and other reasons in favour of specific high hedges legislation.

2.8 When ownership of property changes, the new neighbours may not always be aware of the need for maintenance or of the impact of allowing their hedge to affect neighbouring property. The main concern is the reduction of light into a neighbour's home or garden.

2.9 The Department has recognised for some time that there is a need to have specific legislation to provide an effective legal remedy for people whose property is adversely affected by a high hedge and are unable to reach a neighbourly solution to the problem with the person who owns or occupies the land where the hedge is growing. Although the number of such cases may be very few the impact on the lives of people affected can be significant and can, in extreme cases, become a total blight on their reasonable enjoyment of their homes.

3. Need for Legislation

3.1 Many jurisdictions, including England and Wales, Scotland and Jersey, have introduced specific legislation to provide a means of addressing the adverse effects that a high hedge may cause. The legislation typically includes provision for affected parties to make a complaint to the local authority or, in Jersey, the Minister for Planning and Environment. The authority's role is to determine whether the hedge is adversely affecting the reasonable enjoyment of neighbouring properties and if it is, to decide what action is required now and in the future to mitigate the problem. It is not proposed, however, that the legislation should cover structural damage arising from tree roots.

3.2 The main aim of the legislation is to provide for an impartial settlement where neighbours have been unable to agree. The experience of other jurisdictions has been that once the Law is introduced most neighbours, who were previously reluctant to cut back the offending hedge, become more cooperative and satisfactory solutions are found. In Jersey, prior to the introduction of the legislation it was estimated that about 100 potential high hedge complaints would be made when the Law came into force. However, when the Law was introduced in 2008, just 7 complaints were received by the Minister for Planning and Environment that year. The numbers have continued to fall.

Jersey Statistics of High Hedge Complaints to the Minister for Planning and Environment:

* 2008 = 7
* 2009 = 6
* 2010 = 2
* 2011 = 3
* 2012 = 4
* 2013 = 2
* 2014 = 0
* 2015 = 1 to date

3.3 It is understood that over the last six years, there has been only one appeal relating to such a matter in Jersey.

3.4 The Jersey experience adds weight to the impact of such legislation in "encouraging" neighbours to reach a neighbourly agreement without recourse to the sanctions available under the Law.

3.5 The response to the consultation gave an indication of the level of issues on Island (see section 5) with some 60 responses in favour of the legislation mainly by those affected by high hedges. This figure is consistent with the Jersey figure referred to above where prior to their legislation they had estimated a potential for 100 high hedge issues.

3.6 In Guernsey it is assessed that the situation is similar to that in Jersey and although the number of individual cases may be small, such disputes can seriously harm people's quality of life. There is presently no means of readily addressing this under Guernsey legislation.

4. Existing Provisions in Law

4.1 The Land Planning and Development (Guernsey) Law, 2005 (the 2005 Law) includes provision for the States, by Ordinance, to address the adverse effects on enjoyment of neighbouring property which high hedges and trees may cause (the Brouard/Brehaut amendment). Section 45(3) of the 2005 Law states:

> *"(3) The States may by Ordinance under this section make provision (including general restrictions and requirements and/or provision for the imposition of specific requirements by notice or otherwise) in relation to any, or any description of, trees, shrubs, hedging or plant growth which impair, or which threaten to impair, the amenity or enjoyment of any neighbouring property or locality; and an Ordinance under this section may make any such provision as might be made by an Ordinance under section 46, and such incidental, consequential and transitional provision as the States consider appropriate."*

4.2 Following consultation with the Law Officers on the preparation of this Report, the Law Officers have advised that a separate Law is preferable rather than an Ordinance under the 2005 Law. This is because the Land Planning legislation is primarily concerned with requiring planning permission for development as defined under the Law. The tested model for nuisance hedges in England, Scotland and Jersey would not fit well into this framework as it is based rather on a system of providing for the making of complaints and the requiring of action concerning such hedges where other private means of resolving the problem have been exhausted.

4.3 The suggested approach will not require additional drafting resources to that for preparing an Ordinance under the 2005 Law. Indeed the drafting time may be less as this approach is less likely to require consequential amendments or

adaptations to other common provisions under the 2005 Law, such as appeals provisions, and its associated Ordinances and Regulations.

5. Public Consultation

5.1 This issue has been raised on several occasions in the media and in States Debates, including at the time of States approval of the 2005 Land Planning and Development Law. The Environment Department indicated in 2013 that it hoped to bring to the States a proposal to deal with high hedges in 2014.

5.2 Public consultation was commenced by the Environment Department in conjunction with Deputy Al Brouard and was published on 7 January 2015 on the States of Guernsey Website and closed on the 16 February 2015. There was good coverage in all the local media drawing attention to the issue and the consultation. The consultation paper set out the background to the proposals and an overview of the proposed new Law. In addition, a guidance leaflet "High Hedges Your Questions Answered", was also published alongside the consultation document. This provides an example of the type of guidance which the Department intends to issue and takes the form of easily readable 'Frequently Asked Questions'.

5.3 The consultation particularly sought views as to whether the proposals for high hedges legislation are effective and proportionate and if there are any issues with the legislation as proposed. To assist with this, a questionnaire was attached at the end of the consultation paper.

5.4 In summary, there were 66 responses of which 60 were in favour of the proposed legislation. Four issues came to the fore out of the consultation.

1. The complaint fee of £500 proposed by the Department was, to many, an issue and some responses favoured a sharing of that expense with the hedge owner on a successful complaint in relation to a High Hedge.

   The Department has considered both the expense to which the landowner could be put in satisfying any order in relation to a hedge and the administrative cost burden in having a more complex system where provision was made to recover all/part of the original complaint fee from the landowner. Taking this into account, the Department proposes instead a lower complaint fee of £350.

2. The importance of hedging in adding to privacy of a garden/property was an issue especially for hedge owners. The original proposals required the Department to take the extent to which a hedge adds to the privacy and enjoyment of the property and neighbouring land into account.

   The Department has carefully considered these comments and can reassure those who made them that the Department would be expressly required to take into account these factors under the legislation and to balance this

against other relevant considerations. However, the Department has concluded that it would not be appropriate to require particular weight to be given to privacy over other major considerations as this may not result in the most appropriate decision in all the circumstances of a particular case.

3. Clubbing together was a suggestion of several respondents where several neighbours had an issue with the same hedge. This scenario was clearly relevant to a number of the 18 Respondents who referred to specific issues with high hedges or trees affecting them. This is to be addressed by charging a lower fee for multiple complaints made at the same time in relation to the same high hedge. A separate application would still be required as the details as to how each property may be affected could differ owing to their different locations.

4. Party hedges were raised by one representor and it was suggested that there is no reason that the proposed legislation should not cover these. Without such a provision, in the case of a high party hedge causing nuisance to one of the parties, there may be no remedy for that person, whereas someone affected by a high hedge owned solely by their neighbour could use the proposed legislation to seek a remedy.

   This issue has been carefully considered. It is proposed that the Law does not apply to party hedges but that there is a power of the Department to amend it by Regulations to cover them should such hedges give rise to significant effects on joint owners which cannot be adequately addressed by other means.

   The reasons for not covering them at present are that where a hedge is jointly owned a person would have some rights to cut the hedge and it may be more likely that there is a private agreement or a covenant already in place in relation to the party hedge.

   Including party hedges would make the legislation more complex. Any notices requiring work in relation to a party hedge would have to be served by the Department on the complainant as a joint owner and would affect his land as well as that of his neighbour. Finally, the proposals relating to access to neighbouring land may have some relevance to the cutting of party hedges for their maintenance (see Billet d' État X of 2014).

   The results of the public consultation are appended in appendix 1. Also appended in appendix 2 is the original consultation paper issued by the Department including the original Frequently Asked Questions.

6. Overview of the proposed Law

6.1 The new law will establish a procedure for complaints about high hedges to be made to and dealt with by the Environment Department.

(a) Complaining to the Department would be a last resort

6.2 Before accepting a complaint under the Law, the Department will require the person/s making the complaint to provide evidence that they have taken all reasonable steps to resolve their hedge problems by discussion or negotiation with their neighbours. Neighbours will be able to make multiple complaints for a reduced fee where they are affected by the same hedge. Provision would be made for guidance to be issued by the Department to assist householders as to what they must do to meet that requirement.

(b) What complaints can be considered?

6.3 Where someone is unable to reach an amicable settlement in a dispute with a neighbour over the height and impact of a hedge on their property despite having taken all reasonable steps to do so, they will be able to take their complaint to the Environment Department provided that:

- the hedge or tree in question is formed wholly or predominantly by one or more evergreen or semi-evergreen trees or shrubs;
- it is over two metres high;
- the hedge or tree forms a barrier to light; and
- because of its height, it is adversely affecting the complainant's reasonable enjoyment of their home or garden.

6.4 The legislation would not cover the effect of the roots of a high hedge on neighbouring property.

(c) How would complaints be dealt with?

6.5 In each case, the Environment Department, or an authorised person on its behalf, will inspect the hedge or tree to decide whether the height of the hedge or tree is adversely affecting the complainant's reasonable enjoyment of their property by virtue of its effect on light. If the Department concludes that the hedge or tree is having a detrimental effect, it will consider what, if any, action should be taken in order to remedy the adverse effect and to prevent it happening again.

6.6 In reaching a decision, the Environment Department would take into account all relevant factors, including comments of relevant owners and occupiers and:

- the extent to which the hedge adds to the privacy and enjoyment of the property or the neighbouring land; and
- the contribution of the hedge to the wider amenity of the area.

6.7 There would also be provision for the complaints and any Notices and other documents to be copied to occupiers of the land (where different from the owner) on which the hedge/tree is situated.

6.8 In England, the Department for Communities and Local Government has published guidance to assist parties involved in such disputes to understand their obligations and the remedies under the law. A copy of the "Hedge height and light loss" guidance (Crown copyright, HMSO, 2004) is appended in appendix 3.

6.9 In Jersey, this guidance is made available on the relevant part of the States of Jersey website. It is the Department's intention to issue similar guidance locally reflecting the proposals set out in this report.

(d) Fees

6.10 The new law will also include provision for the Environment Department to charge a fee, to be paid by the person bringing the complaint. It is proposed that initially the fee will be set at £350 but with a lower fee of £150 per application for multiple complaints made at the same time in relation to the same hedge, subject to a minimum fee of £350 for each hedge.

6.11 In Jersey, a fee of £296 is payable.

6.12 In the UK fees vary from council to council, for example:

South Norfolk Council	£350
Swale Borough Council	£450
London Borough of Redbridge	£500

6.13 As the main purpose is having specific legislation which will act as an incentive to reach a private agreement without the need for making a complaint there should, as the Jersey experience has shown, be few complaints made to the Department. A complaint application fee (non-refundable) of £350 is proposed. This accords with the Policy Council's guidance on fees and charges. The Environment Department would not be obliged to consider the complaint until the fee was paid in full and there would be a power to change the level of the fees by Regulations of the Department. There would be scope to reduce or waive the fee in exceptional circumstances where genuine financial hardship is proven and this would apply to both application and appeal fees.

(e) Remedies

6.14 If the Department decides that action should be taken to resolve the complaint, it will issue a formal Notice setting out the actions to be taken to mitigate the effects and by when these actions must be completed. The types of actions which may be required under such a Notice will include long-term maintenance of the hedge or tree at a lower height, but could not involve reducing the height of the hedge below two metres, or the removal of the hedge or tree.

6.15 This Notice would be binding not only on whoever was the owner and/or occupier of the land where the hedge is situated at the time the Notice was issued but also on anyone who subsequently bought or occupied the property.

6.16 The Law will provide for the Department to maintain a public register of Notices so that prospective purchasers of land can be alerted to them.

6.17 The Environment Department will be authorised to have the works carried out if the owner or occupier of the land where the hedge is situated fails to comply with a Notice and will be able to recover costs incurred as a civil debt from that owner or occupier. These powers will broadly reflect those under section 50 of the 2005 Law in respect of the execution and costs of works required under a Compliance Notice. It is envisaged that this power will rarely be used.

(f) Scope

6.18 The Law will allow owners or occupiers of domestic properties to make a complaint. It will also give such rights to owners or occupiers of non-domestic residential properties such as nursing homes and tourist accommodation.

6.19 In reaching its decision regarding whether or not to issue a Notice and the extent of the actions required under the Notice, the Department will have regard for the privacy of the hedge owner and the contribution of any hedge to the amenity of the area.

6.20 The Department, or those appointed by it, will need reasonable access to the property on which the hedge is situated to undertake the assessment of the hedge. In normal circumstances this can be arranged with the owner but it is proposed that the legislation provides for standard powers of entry and a related obstruction offence to allow it to undertake the assessment and carry out its duty, should the neighbour be uncooperative.

(g) Appeals

6.21 Under the new Law, both the owners and occupiers of the land on which the hedge is situated and also the complainants will have a right of appeal against a decision of the Environment Department. Rather than establish a new appellate body to determine such appeals, it is proposed that appeals would be determined by the Planning Tribunal established under the 2005 Law to determine appeals against planning decisions. The reason for this approach is that the Planning Panel from which Tribunals are appointed has the necessary experience and expertise to deal with these matters and it is also a more cost effective approach as there will be no requirement to set up a separate appeals administration.

6.22 Provision would be made to allow determinations by a single Panel member and/or on written representations so that this is available as an option for cases which are straightforward and where there is no dispute as to the facts.

6.23 The Law will allow a dissatisfied party 28 days from the date of the notification of the Department's decision to make their appeal to the Planning Tribunal.

6.24 It is proposed that, as is the case for most planning appeals, an appeal fee equivalent to the application fee under the Law will be payable by the party making the appeal and that there should be provision for the level of the fee to be changed by Regulations.

6.25 The Law will also include a provision for standard powers of entry to land for the Tribunal in relation to the determination of an appeal and powers to refer a point of Law to the Royal Court and for appeals against decisions of the Tribunal to be made to the Royal Court.

(h) Enforcement

6.26 Failure to comply with a notice, on the part of the owner or occupier of the land on which the hedge is situated, will be an offence for which the penalty will be a fine. There will also be provision for a further offence if the failure to comply continues after the first conviction and a power for the Court to order a person convicted to take the steps set out in the notice.

6.27 It is proposed that the maximum level of fine for any convictions under the new law is Level 4 (current maximum £5,000).

6.28 The Environment Department will be authorised to have the works carried out if the owner or occupier of the land where the hedge is situated fails to comply with a Notice and will be able to recover costs incurred as a civil debt from that owner or occupier. These powers will broadly reflect those under section 50 of the 2005 Law in respect of the execution and costs of works required under a Compliance Notice. The Department would be able to use these powers whether or not a prosecution was taken. It is envisaged that this power will rarely be used.

7. Amendment to scope of Law

7.1 The Law will include provision to amend the Law by Regulations to change the types of plants and trees covered by the Law, to extend it to a party hedge jointly owned by the complainant and another person, and to amend the scope and tenure of properties covered under the Law and the level of fees payable.

8. Guidance

8.1 The Department will issue guidance as part of the roll-out of the new legislation explaining what a prospective complainant should do to satisfy the requirement that all reasonable steps have been taken before resorting to a complaint, how to make a complaint and as to the matters the Department must take into account in deciding a complaint. In appendix 2, “High Hedges Your Questions Answered”, which was part of the consultation, provides an example of the type of guidance which the Department intends to issue. This takes the form of easily readable ‘FAQ’s’ but will be updated reflecting the consultation and this States Report.

9. Tree Protection Orders and Conservation Areas

9.1 The existence of any Tree Protection Order in relation to the hedge or tree in question or its inclusion within a designated Conservation Area will be taken into account by the Department in assessing a complaint under the new Law. The Department will have the power to issue a Notice under the Law in respect of a tree or group of trees subject to a Tree Protection Order if the circumstances require. Insofar as any permission is required under any other Laws, that permission will be taken to have been granted to undertake the work required to comply with a High Hedge Notice. In this regard, there is an existing planning exemption relating to the cutting down of protected trees in compliance with statutory requirements, to abate or prevent a nuisance or to implement a planning permission (Class 7(3) of the Schedule to the Land Planning and Development (Exemptions) Ordinance, 2007).

10. Resource Implications

10.1 It is expected that there may be an initial backlog of existing problem cases to deal with. Thereafter, the case load should drop. However, the Jersey experience suggests that the new Law had the effect of "encouraging" most neighbours to come to mutually agreed arrangements without recourse to the new legislation.

10.2 The costs of dealing with the complaints system would be met predominantly through fees paid by complainants. The level of fee would be set by the Department; it is suggested initially at £350. At this level, with what is likely to be a limited number of applications, it is envisaged that the fee would be sufficient to cover the Department's costs in administering the scheme but be at a level to ensure that the complainant is encouraged to exercise all reasonable steps to seek agreement with the neighbour before considering a complaint.

10.3 The income from the fee will cover the Department's initial assessment of the complaint and the administrative costs of the Department in determining the complaint. Having regard to the process and likely time involved in dealing with an application under the proposed legislation it is envisaged that the administration of a Guernsey High Hedge Law would be self-funding, having regard to the limited number of applications anticipated. The proposal accords with the Policy Council's policy guidance on fees and charges.

10.4 In respect of any appeals, based on a similar number of applications as in Jersey, it is likely that only one or two cases will go to appeal. It is understood that over the last six years, there has been only one appeal relating to such a matter in Jersey. Such an increase in workload could be managed within the Planning Panel and Planning Tribunal's and Policy Council's existing staff resources. However, an appeal fee of £350 (i.e. the same as the application fee), would not cover the costs for determining the appeal at a public hearing before a Planning Tribunal. Therefore, the Planning Panel's budget may need to be increased

slightly to make provision for the additional casework, but it is envisaged that this will be accommodated within the Policy Council's Cash Limit.

10.5 The Legal Aid Administrator has been consulted on this States Report to ensure that consideration is given to the impact of any new legislation on the Legal Aid fund. The Legal Aid Administrator's preliminary view is that if legal aid is to be made available for either criminal or civil proceedings in connection with the proposed High Hedges legislation, it will have an impact on the legal aid budget, but that any resulting increase to the legal aid budget is unlikely to be significant.

10.6 The proposed legislation will largely reflect that already in existence elsewhere. It is estimated that 2-3 weeks of drafting time would be required to produce the legislation proposed in this report.

11. Principles of Good Governance

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

11.2 The Department believes that the Report conforms with the overarching strategies (fiscal and economic, social, environmental and infrastructure) set out in the States Strategic Plan.

12. Conclusion

12.1 The proposals for the new Law set out in this Report are long awaited in Guernsey. The provisions under the new Law will provide a fair and accessible remedy for the adverse effects on neighbour's enjoyment of their land which a high hedge may cause and where no dedicated legislation presently exists to address this.

12.2 The Environment Department recommends that the States agree:

1. To introduce controls in respect of high hedges and trees having adverse effects on neighbouring property as set out in this Policy Letter.

2. To direct the preparation of legislation to give effect to the above decision.

Yours faithfully

Y Burford
Minister

B L Brehaut
Deputy Minister

J A B Gollop P A Harwood A R Le Lièvre

Appendix 1

ENVIRONMENT DEPARTMENT

PROPOSAL FOR NEW LEGISLATION TO DEAL WITH THE ISSUE OF HIGH HEDGES – RESULTS OF PUBLIC CONSULTATION

Introduction

The Environment Department, in conjunction with Deputy Al Brouard, has prepared proposals on which basis, subject to the outcome of public consultation, it intends to seek States approval to introduce new legislation to deal with the issue of high hedges.

The public consultation on the Environment Department's proposals for high hedges legislation ran for six weeks from 7 January 2015 to 16 February 2015.

The purpose of this consultation was to publicise the Department's proposals regarding high hedges legislation and to gather views from the public and stakeholders as to whether its proposals are effective and proportionate, and if there are any issues with the legislation as proposed.

This report presents a summary of the responses.

Following this public consultation, the Environment Department will finalise its proposals with a view to submitting a States Report for consideration by the States.

If approved by the States, the legislation will be drafted and brought into force later in 2015.

The results of the consultation as summarised within this report will be published on the Government website.

Consultation process

The Environment Department's consultation paper on its proposal for new legislation to deal with the issue of high hedges was published on 7 January 2015 on the States of Guernsey Website. The consultation paper set out the background to the proposals and an overview of the proposed new Law. In addition, a guidance leaflet "High Hedges Your Questions Answered", was published alongside the consultation document. This provides an example of the type of guidance which the Department intends to issue and takes the form of easily readable 'FAQ's' (Frequently Asked Questions).

The consultation particularly sought views as to whether the proposals for high hedges legislation are effective and proportionate, and if there are any issues with the legislation as proposed. To assist with this, a questionnaire was attached at the end of the consultation paper inviting a yes/no response to four specific questions:-

- I believe that it is worthwhile having High Hedges legislation and am in favour of this proposal in principle

- I believe that the Environment Department's proposals for how the legislation would operate are an appropriate and proportionate way of dealing with the issue

- On a specific matter of detail, I believe that a successful complainant's fee, or a proportion of it, should be refunded and an equivalent fee be levied on the owner/occupier of the land which includes the high hedge in question

- I would like to make some additional comments to help the Environment Department when considering its proposals for High Hedges legislation

The questions each provided an additional area for comment.

The publication of the consultation paper and draft guidance leaflet was accompanied by a media release to raise awareness of the consultation.

In addition, the Environment Department's consultation targeted a number of specific stakeholder groups including the Parish Douzaines and the Guernsey Bar.

Nature and content of responses

The Environment Department and Deputy Al Brouard received, in total, 66 separate responses to the consultation. Of all the responses received, 60 were supportive of the proposed new legislation. An initial estimate of over 80 responses included an element of double counting as some responses were sent to both the Department and Deputy Brouard. The breakdown of these responses in summary is as follows:-

<u>Parish Douzaines</u>

4 Responses were received from Parish Douzaines:

- St Peters – supportive of the concept in principle as legislation to be used as a deterrent and a last resort for landowners
- St Andrews – happy with proposals but disagree with £500 cost which they feel needs reviewing
- Vale – the objectives of the proposed legislation were deemed commendable, other than the £500 fee which is considered too high and would deter complaints. A fee of £100 was considered more acceptable. The complainant's fee or a proportion of it should be refunded and levied on the hedge owner.
- St Saviours – considers legislation unnecessary and another layer of government with additional costs that the island cannot afford at the present time. St Saviours is a rural parish with many miles of hedges; however Members of the Douzaine and present Constables have no recollection of parishioners contacting them with concerns about high hedges; this is not to

say that there will not be an isolated problem somewhere in the Island from time to time.

Questionnaire responses

40 Respondents specifically answered some or all of the questions posed within the questionnaire.

Regarding the first question, 39 Respondents confirmed that they believe that it is worthwhile having High Hedges legislation and are in favour of this proposal in principle. Of these, 6 commented that the proposal for legislation is long overdue. 5 mentioned specific issues with high hedges affecting them. One Respondent answered this question negatively, commenting that the proposal lacks checks and balances, takes no account of long established boundary hedges and would be a financial burden on landowners.

Regarding the second question, 38 Respondents agreed that the Environment Department's proposals for how the legislation would operate are an appropriate and proportionate way of dealing with the issue. Of these, one commented that trees should be included as well as hedges. One commented that the fee is a 'bit steep' but they can understand why. One commented that £500 is far too expensive; the application fee should be no more than £150 and if successful should be paid by the hedge owner. Another commented that the fee is too high at £500.

Two Respondents answered this question negatively. One commented that the assessment of the impact of the hedge by the Environment Department may be a little too subjective; criteria should be specified in the legislation. The other commented that the Department is making a 'rod' for itself and that any proposals should apply to vexatious new planting only.

Regarding the third question, 39 Respondents confirmed that on a specific matter of detail, they believe that a successful complainant's fee, or a proportion of it, should be refunded and an equivalent fee be levied on the owner/occupier of the land which includes the high hedge in question. Of these, 5 Respondents suggested that the full fee should be refunded. One commented that the primary focus should be on motivating hedge owners to co-operate with neighbours. Four commented that a fee of £500 would be too high, two suggesting that around £300 similar to Jersey may be more appropriate. One commented that they would be happy to pay £500 with the chance of a refund. One noted that the proposal is in line with the 'polluter pays' principle. One commented that if several properties are affected they should all be able to put in a single complaint for £500. Another queried whether a substantial levy on a landowner would be practical if their trees affected many individual parties.

One Respondent answered this question negatively, commenting that the complainant should fund all of the costs.

Regarding the fourth question, 31 Respondents made some additional comments to help the Environment Department when considering its proposals for High Hedges legislation. Of these, 11 Respondents referred to specific issues with high hedges affecting them. 5 commented that the proposed £500 fee is too high, with one Respondent suggesting that a fee of £300-£350 would be appropriate along with provision for a discretionary refund in full or part if the complaint is settled quickly to everyone's satisfaction at low cost to the Department. One Respondent suggested that an initial payment could be made to cover an initial site visit to determine if the application had merit, whereupon an additional amount would be paid.

Other comments made under the fourth question related to the following:

- Query what would happen if owner/manager of land where hedge is situated is unavailable or uncommunicative with the Department
- Two queried the enforcement process and whether this could be circumvented by wealthy parties; and whether the Department would in fact step in to carry out work itself in such cases or where the height or extent of hedge is particularly large
- Query what would happen if a landowner cannot afford the cost of required works
- Suggestion that there is no reason the legislation should not cover party hedges; otherwise for a high party hedge causing nuisance to one party, there would be no remedy
- Suggestion that a minimum height of 3 metres rather than 2 metres would be more appropriate and would protect privacy
- Decisions should be made public, to incentivise reaching agreement thus keeping the matter private
- Suggestion that the £500 fee could part fund an arbitration process
- Query definition of 'semi evergreen' trees
- Legislation should not be limited to evergreen or semi-evergreen trees or hedges; in summer a tall deciduous hedge or tree can cause equal problems
- Suggestion that legislation be extended to bamboo
- Can complainants 'club' together where a large property is concerned with numerous trees affecting several properties or will individual applications still be required?
- In addition to light, dampness caused by high trees/hedges and loss of views should also be considered
- Loss of solar heat is a significant problem, resulting in cold, damp and mouldy housing and increased heating and maintenance costs
- Damage to roads and blocking of drains caused by inappropriate species choice should be considered
- Damage to property foundations should be considered
- It is important that the legislation refers to daylight rather than sunlight; north facing hedges also obscure light and sky
- Pre-existing views should be considered
- Overall height should be considered if the hedge is on a bank or higher ground

- A timescale should be given for hedge/tree removal [where a notice is issued]
- High hedges may be long established, provide a wildlife haven and help protect privacy
- Costs of required work to reduce a high hedge or tree may be onerous, e.g. for pensioners
- Required work may harm the hedge or tree
- Proposals seem to go beyond those in UK and whilst well intentioned are making a rod for the Department's back.

Other responses

There were also 22 other individual responses, 18 of which were supportive of the legislation in principle; this group of Respondents did not use the questionnaire format but made the following comments:

- Particularly important in built up areas; include loss of light to windows and gardens and follow guidance in UK 'Creating Sustainable Communities' document revised October 2005 which could form part of legislation
- Standard forms should be used by the Department, setting out procedures and cost implications, and stating time period for undertaking pruning, say 8 weeks
- Request for clarification that the cost of reducing the height of a problematic hedge would be met by the owner of that hedge
- Three objections to fee of £500 which is considered too high and would be a barrier to complaints
- Comment that £500 is a lot of money
- Support for concept of refund if complaint is upheld
- Cost of application should be borne by landowner; if a complaint is upheld charge the landowner £500 but only charge £25-50 to raise a complaint
- Suggestion for a charge of no more than £250 with exemption or support in cases of financial hardship, with balance of £500 then to be paid by landowner if complaint upheld; if there is a repeat complaint regarding the same hedge/trees the landowner should pay the full fee
- Evergreen trees should be included
- Suggestion that legislation be extended to any trees that block light and sunshine, including deciduous trees
- Two suggestions that legislation be extended to Sycamore trees
- Allergies caused by inappropriate species selection should be considered
- The proposals are emotively weighted to the complainant's point of view; a high hedge can protect privacy and maintain property saleability/value
- Privacy should in some cases be considered as a priority over light
- Concerns about impacts of legislation on privacy and that legislation is a 'sledgehammer to crack a nut'
- Proposed Law is unnecessary and expensive
- New development should not be proposed or permitted where there would be a subsequent requirement to remove existing trees or hedges due to light issues for that new property

- Powers under the legislation would be of a judicial nature and determine the rights of private individuals between themselves, rather than being of a general and public nature as under planning legislation, and should thus be for the judiciary, through the Magistrate's Court in the first instance, and not be exercised by the Environment Department
- Query whether an existing Law governing the height of hedges/trees exists and should therefore be repealed before a new Law is introduced.

Of these responses, 7 Respondents referred to specific issues with high hedges or trees affecting them.

Media coverage

In addition to the above, there was some media coverage of the consultation with four articles concerning high hedges published in the Guernsey Press between 8 and 20 January. Comments from Parish officials reported in response to the proposals included the view that the proposed fee of £500 is too high and a fee of £50 would be more feasible. Others interviewed were split on the proposals, some thinking the legislation is necessary and others not. A story concerning someone who is affected by a high hedge issue was also featured by the newspaper.

Comments on results

The public consultation has been helpful in both gauging public reaction to the proposed new legislation and eliciting comments and suggestions which have all been carefully considered.

66 separate responses were received to the consultation by the Environment Department and Deputy Brouard collectively. Of all the responses received, 60 were supportive of the proposed new legislation. 18 of these Respondents referred to specific issues with high hedges or trees affecting them.

Whilst Respondents who supported the principle of the legislation also predominantly agreed that the Department's proposals for how it would operate are an appropriate and proportionate way of dealing with the issue, many expressed concerns regarding the proposed £500 fee, which was generally considered to be too high. A substantial proportion of Respondents also believed that a successful complainant's fee, or a proportion of it, should be refunded and an equivalent fee be levied on the owner/occupier of the land which includes the high hedge in question.

Several Respondents, and not only those opposed to the legislation in principle, however also pointed out that high hedges and trees often serve a useful screening function and that a reduction in height to improve a neighbour's light could result in a loss of privacy, potentially by both parties. In an extreme case, it is possible, for example, that someone may not raise an objection to a development proposal adjacent to their property because they own a high hedge which screens them from the proposed development. In such a case, it could be seen as unreasonable for their

neighbour to then seek a reduction in the height of the hedge to give them more light. It should be clarified, therefore, that the issue of privacy, for both parties, would be a consideration to be taken into account as part of the assessment when dealing with an application under high hedges legislation. For example, if a complaint were upheld and it was required that a high hedge be reduced in height, the resulting agreed height should still be sufficient to safeguard the reasonable privacy of both parties.

The concept of refunding the complainant's fee, or a proportion of it, and charging the owner/occupier of the land which includes the high hedge in question an equivalent amount may superficially appear attractive from a natural justice perspective, in that the hedge/tree owner, rather like a polluter, has to an extent 'caused' the issue and should pay to rectify it. However, this needs to be balanced against the costs to the owner of reducing the height of the tree or hedge, which may typically amount to several hundred pounds, and also the potential impact on the privacy of the hedge or tree owner which may result from the changes required. The administration costs of this approach would also be likely to be substantial, in terms of administering the more complex process including providing fee refunds and pursuing debts where owners who have already paid for the hedge or tree to be reduced are reluctant to pay the additional fee costs.

An alternative approach, having regard to the likely limited number of cases anticipated to come forward for consideration, would be to charge a lower fee than currently proposed to cover the costs of the basic assessment process. A fee of £350 which is similar to that in Jersey could be more appropriate and would accord more with the views expressed by a number of Respondents.

Several Respondents also suggested that the legislation should allow complainants to 'club' together where a large property is concerned with numerous trees affecting several neighbouring properties. This scenario was clearly relevant to a number of the 18 Respondents who referred to specific issues with high hedges or trees affecting them. This might potentially be achieved by charging a basic application fee of £350 but with a further lower fee charged for additional parties affected by the same hedge or tree of £150 each, to seek to encourage such complainants to 'club' together.

Although a number of Respondents suggested that the proposed Law be extended to deal with additional issues, such as views, and forms of vegetation, including deciduous trees, the Department's proposals are intended to deal specifically with the issue of evergreen and semi-evergreen hedges and trees which are so tall they unreasonably block light reaching a neighbouring property. Such legislation already exists in most comparable jurisdictions and the Department's proposals are to largely mirror these existing provisions elsewhere whilst tailoring the details of implementation to the local Guernsey context. A power is however already proposed to enable extension of the legislation to cover certain additional matters should the States agree.

One Respondent raised the issue of party hedges and suggested that there is no reason that the proposed legislation should not cover these. Without such a provision, in the case of a high party hedge causing nuisance to one of the parties, there would be no remedy for that person, whereas someone affected by a high hedge owned solely by their neighbour could use the proposed legislation to seek a remedy. It is therefore recognised that there is considerable merit in seeking to include a provision dealing with this issue.

Summary

The public response to this consultation has been very encouraging, with 66 separate responses received in total. Of all the responses received, 60 were supportive of the proposed new legislation. Respondents provided very useful feedback on the Department's proposals, including in relation to the issue of fees, enabling complainants to 'club' together, dealing with the issue of privacy and inclusion of party hedges within the proposals.

Other comments or suggestions made by Respondents who support the legislation in principle are generally covered within the proposals as currently drafted or can be considered further in relation to the details of implementation of the legislation in due course if approved. All comments that have been made by Respondents as part of this public consultation are appreciated and will help the Department in finalising its proposals regarding high hedges legislation for consideration by the States.

Environment Department

25th February 2015

Appendix 2

ENVIRONMENT DEPARTMENT

CONSULTATION PAPER

PROPOSAL FOR NEW LEGISLATION TO DEAL WITH THE ISSUE OF HIGH HEDGES

1. Purpose and type of consultation

The Environment Department, in conjunction with Deputy Al Brouard, has prepared proposals on which basis, subject to the outcome of this consultation, it intends to seek States approval to introduce new legislation to deal with the issue of high hedges.

Most hedges provide a suitable garden boundary but they can have an adverse effect on the enjoyment of neighbouring property when they are not properly maintained or are allowed to grow too tall. Difficulties can also arise when trees and hedging which are not suitable for a particular location are planted. Some hedge species grow at a rapid rate and so can have adverse effects for those living in their shadow. In other cases the person planting the hedge is unaware of the size it may reach when mature.

Currently, there is no legislation in Guernsey which specifically addresses the potential adverse effects that a high hedge may create for neighbours, including the loss of light into a neighbouring property.

The purpose of this consultation is to publicise the Department's proposals regarding high hedges legislation and to gather views from the public and stakeholders as to whether its proposals are effective and proportionate, and if there are any issues with the legislation as proposed.

This consultation paper sets out the background to the proposals and an overview of the new Law. In addition, "High Hedges Your Questions Answered", provides an example of the type of guidance which the Department intends to issue. This takes the form of easily readable 'FAQ's'

2. Closing date for consultation

16th February 2015

3. Summary of questions

The Environment Department would particularly like your views as to whether its proposals for high hedges legislation are effective and proportionate, and if there are any issues with the legislation as proposed. To assist with this, a questionnaire is attached at the end of this consultation paper.

4. Contact details

Please send your comments by letter or email addressed to:-

The Director of Planning
Environment Department
Sir Charles Frossard House
La Charroterie
St. Peter Port, Guernsey
GY1 1FH

Contact us:

Tel +44 (0) 1481 717200
Fax +44 (0) 1481 717099

Email planning@gov.gg
www.gov.gg

5. High Hedges proposal overview

5.1. Background

The issue of high hedges has been well documented and for those affected is a continuing blight on their enjoyment of their property. The issue has featured in the media with high hedges being addressed in England and Wales through Remedial Orders made under the High Hedges part of the Anti-Social Behaviour Act, 2003, in Jersey through the High Hedges (Jersey) Law, 2008 and in Northern Ireland through the High Hedges Act (Northern Ireland) 2011. Scotland has also passed the High Hedges (Scotland) Act, 2013. All contain provisions which are similar to those in England.

Subject to the outcome of this consultation, the Department intends to seek the approval of the States for the drafting of new, specific high hedges legislation as outlined below which is similar to that enacted elsewhere.

In addition, “High Hedges Your Questions Answered”, provides an example of the type of guidance which the Department intends to issue. This takes the form of easily readable ‘FAQ’s’

5.2. Overview of the Proposed Law

The proposed new law would establish a procedure for complaints about high hedges to be made to and dealt with by the Environment Department.

(a) Complaining to the Department would be a last resort

Before accepting a complaint under the Law, the Department would require the person/s making the complaint to provide evidence that they have taken all reasonable steps to resolve their hedge problems by discussion or negotiation with their neighbours. Provision would be made for guidance to be issued by the Department to assist householders as to what they must do to meet that requirement.

(b) What complaints can be considered?

Where someone is unable to reach an amicable settlement in a dispute with a neighbour over the height and impact of a hedge on their property despite having taken all reasonable steps to do so, they would be able to take their complaint to the Environment Department provided that:

- the hedge or tree in question is formed wholly or predominantly by one or more evergreen or semi-evergreen trees or shrubs;
- it is over two metres high;
- the hedge or tree forms a barrier to light; and
- because of its height, it is adversely affecting the complainant's reasonable enjoyment of their home or garden.

(c) How would complaints be dealt with?

In each case, the Environment Department, or an authorised person on its behalf, would inspect the hedge or tree to decide whether the height of the hedge or tree is adversely affecting the complainant's reasonable enjoyment of their property by virtue of its effect on light. If the Department concludes that the hedge or tree is having a detrimental effect, it would consider what, if any, action should be taken in order to remedy the adverse effect and to prevent it happening again.

In reaching a decision, the Environment Department would take into account all relevant factors, including comments of relevant owners and occupiers and:

- the extent to which the hedge adds to the privacy and enjoyment of the property or the neighbouring land; and
- the contribution of the hedge to the wider amenity of the area.

There would also be provision for the complaints and any Notices and other documents to be copied to occupiers of the land (where different from the owner) on which the hedge/tree is situated.

In England, the Department for Communities and Local Government has published guidance to assist parties involved in such disputes to understand their obligations and the remedies under the law. The "Hedge height and light loss" guidance can be found at https://www.gov.uk/government/publications/hedge-height-and-light-loss.

In Jersey, this guidance is made available on the relevant part of the States of Jersey website. It would be the Department's intention to issue similar guidance locally reflecting the proposals set out in this report.

(d) Fees

The proposed new Law would also include provision for the Environment Department to charge a fee, to be paid by the person bringing the complaint.

In Jersey, a fee of £282 is payable. The income from this fee is used to cover the costs of an initial survey of the problem hedge and its relationship to the complainant's property which is undertaken by a firm of local surveyors appointed to carry out this work on behalf of the Minister for Planning and Environment. In Jersey, the income from the fees does not cover any of the Departmental officers' time involved in dealing with the application.

In the UK fees vary from council to council, for example:

South Norfolk Council	£350
Swale Borough Council	£450
London Borough of Redbridge	£500

As the main purpose is having specific legislation which would act as an incentive to reach a private agreement without the need for making a complaint there should, as the Jersey experience has shown, be few complaints made to the Department. A complaint application fee of £500 is proposed which unlike in Jersey would cover both the costs of the assessment and also the costs of determination of the complaint by the Environment Department. The Environment Department would not be obliged to consider the complaint until the fee was paid in full and there would be a power to change the level of the fees by Regulations of the Department. There would be scope to reduce or waive the fee in exceptional circumstances where genuine financial hardship is proven and this would apply to both application and appeal fees.

The Environment Department is also considering whether or not, in the interests of natural justice, a mechanism should be included within the proposed new Law to provide powers that once a high hedge Notice takes effect on a particular hedge, and subject to any appeal, the complainant's fee, or a proportion of it, may be refunded and an equivalent fee be levied on the owner/occupier of the neighbouring land which includes the hedge in question. A similar fee-transfer process was introduced in Northern Ireland in 2012. Your comments on this particular aspect of detail would be most appreciated.

(e) Remedies

If the Department decided that action should be taken to resolve the complaint, it would issue a formal Notice setting out the actions to be taken to mitigate the effects and by when these actions must be completed. The types of actions which may be required under such a Notice would include long-term maintenance of the hedge or tree at a lower height, but could not involve reducing the height of the hedge below two metres, or the removal of the hedge or tree.

This Notice would be binding not only on whoever was the owner and/or occupier of the land where the hedge is situated at the time the Notice was issued but also on anyone who subsequently bought or occupied the property.

The Law would provide for the Department to maintain a public register of Notices so that prospective purchasers of land could be alerted to them.

The Environment Department would be authorised to have the works carried out if the owner or occupier of the land where the hedge is situated fails to comply with a Notice and would be able to recover costs incurred as a civil debt from that owner or occupier. These powers would broadly reflect those conferred under section 50 of the Land Planning and Development (Guernsey) Law, 2005 in respect of the execution and costs of works required under a Compliance Notice. It is however envisaged that this power would rarely be used.

(f) Scope

The proposed new Law would allow owners or occupiers of domestic properties to make a complaint. It would also give such rights to owners or occupiers of non-domestic residential properties such as nursing homes and tourist accommodation.

In reaching its decision regarding whether or not to issue a Notice and the extent of the actions required under the Notice, the Department would have regard for the privacy of the hedge owner and the contribution of any hedge to the amenity of the area.

The Department, or those appointed by it, would need reasonable access to the property on which the hedge is situated to undertake the assessment of the hedge. In normal circumstances this could be arranged with the owner but it is proposed that the legislation provides for standard powers of entry and a related obstruction offence to allow it to undertake the assessment and carry out its duty, should the neighbour be uncooperative.

The proposed new Law would include provision to amend the Law by Regulations to change the types of plants and trees covered by the Law, to amend the scope and tenure of properties covered under the Law, and also regarding fees as noted above.

(g) Appeals

Under the proposed new Law, both the owners and occupiers of the land on which the hedge is situated and also the complainants would have a right of appeal against a decision of the Environment Department. Rather than establish a new appellate body to determine such appeals, it is proposed that appeals would be determined by the Planning Tribunal established under the 2005 Law to determine appeals against planning decisions. The reason for this approach is that the Planning Panel from which Tribunals are appointed has the necessary experience and expertise to deal with these matters and it is also a more cost effective approach as there will be no requirement to set up a separate appeals administration.

Provision would be made to allow determinations by a single Panel member and/or on written representations so that this is available as an option for cases which are straightforward and where there is no dispute as to the facts.

The proposed new Law would allow a dissatisfied party 28 days from the date of the notification of the Department's decision to make their appeal to the Planning Tribunal.

It is proposed that, as is the case for most planning appeals, an appeal fee equivalent to the application fee under the Law would be payable by the party making the appeal and that there should be provision for the level of the fee to be changed by Regulations.

The proposed Law would also include a provision for standard powers of entry to land for the Tribunal in relation to the determination of an appeal and powers to refer a point of Law to the Royal Court and for appeals against decisions of the Tribunal to be made to the Royal Court.

(h) Enforcement

Failure to comply with a notice, on the part of the owner or occupier of the land on which the hedge is situated, would be an offence for which the penalty would be a fine. There would also be provision for a further offence if the failure to comply continues after the first conviction and a power for the Court to order a person convicted to take the steps set out in the notice.

It is proposed that the maximum level of fine for any convictions under the new law would be Level 4 (current maximum £5,000).

As noted above, the Department would also have powers to authorise a person to undertake the steps required in a Notice and to recover costs from the owner or occupier of the land on which the hedge is situated as a civil debt. The Department would be able to use these powers whether or not a prosecution was taken.

(i) Tree Protection Orders and Conservation Areas

The existence of any Tree Protection Order in relation to the hedge or tree in question or its inclusion within a designated Conservation Area would be taken into account by the Department in assessing a complaint under the proposed new Law. The Department would have the power to issue a Notice under the proposed High Hedge Law in respect of a tree or group of trees which are already subject to a Tree Protection Order if the circumstances require. Insofar as any permission is required under any other Laws, that permission would be taken to have been granted to undertake the work required to comply with a High Hedge Notice.

6. Next steps

Following this public consultation, the Environment Department will finalise its proposals with a view to submitting a States Report for consideration by the States. If approved by the States, the legislation would be drafted and brought into force later in 2015.

Questionnaire:

I believe that it is worthwhile having High Hedges legislation and am in favour of this proposal in principle	**Yes/No** **Comment:**
I believe that the Environment Department's proposals for how the legislation would operate are an appropriate and proportionate way of dealing with the issue	**Yes/No** **Comment:**
On a specific matter of detail, I believe that a successful complainant's fee, or a proportion of it, should be refunded and an equivalent fee be levied on the owner/occupier of the land which includes the high hedge in question	**Yes/No** **Comment:**
I would like to make some additional comments to help the Environment Department when considering its proposals for High Hedges legislation	**Yes/No** **Comment:**

Appendix 2a

High Hedges:

Your Questions Answered

When can I complain?

1. Can I make a complaint straight away if I have a hedge or tree problem?

No. Making a complaint to the Environment Department should only be a last resort if you really cannot agree a solution with your neighbour. The Environment Department can refuse to intervene if they think that you have not done everything you reasonably could do to settle your dispute.

If you are troubled by someone else's hedge or tree, the best way to deal with the issue is to talk to them about it. It is in both your interests to try to sort things out. Asking the authorities to intervene might make matters worse, without first having raised your concerns with your neighbour.

2. What will I have been expected to do to sort this out with my neighbour?

This will depend on how well you get on with your neighbours. But before you consider making a formal complaint about a problem high hedge or tree, you should have tried the following:

• Have a quiet word with your neighbour about your concerns;

• Follow this up by sitting down with them so that you can get a better understanding of each other's concerns and try to work a solution out;

• If your neighbour won't talk to you or you are apprehensive about speaking to them, send a polite letter; it won't be enough to say that your neighbour is not approachable.

Keep a record of what you have done e.g. copies of letters or dates when you approached your neighbour. If nothing works, you should let your neighbour know that you will be making a formal complaint.

3. I have a long-running dispute with my neighbour about a hedge or tree. Do I have to go through all this again?

You will be expected to provide evidence of a recent attempt to settle your hedge or tree dispute with your neighbour. If you rely on an approach you made more than, say, three months ago you might be asked to try again.

Your neighbour may have had a change of heart and might not welcome the involvement of the Environment Department: they may be ready to compromise.

What can I complain about?

4. What sorts of complaint will be considered?

If you've been through all the steps set out above AND can answer 'yes' to ALL the points listed below, then the Environment Department should be able to consider your complaint:

About the hedge or Tree

• Is it growing on land owned by someone else?
• Is the hedge – or that part of it that is causing problems – made up of one or more trees or shrubs?
• Is it mostly evergreen or semi-evergreen?
• Is it more than two metres tall?
• Even though there might be gaps in the foliage or between the trees or shrubs, is the hedge still capable of obstructing light?

Who can complain?

• Are you the owner or occupier of the property affected by the hedge?

• Is the property a dwelling or residential?

Grounds of complaint

• Does the hedge or tree spoil the reasonable enjoyment of the property (which might include the garden) because it is too tall?

High Hedges:
Your Questions Answered

5. Does the hedge or tree have to be on the boundary line or in next door's garden?

No, it doesn't matter where the hedge is growing provided it isn't on land which you own. The further away it is from your house or garden, however, the less problematic it is likely to be.

6. What about a party hedge that is not maintained by one of the parties responsible for it?

You can only complain to the Environment Department about a hedge that is on land owned or occupied by someone else. In this example, the land where the hedge is growing is jointly owned by the person who would be making the complaint so you can not use the high hedges legislation to solve your problems. Depending on the terms of the party agreement, both neighbours might be entitled to cut the whole of the hedge - both sides and top.

You should talk to your neighbour and you may need to seek legal advice about what your legal rights are.

7. Can I complain about individual trees?

Yes. For the purposes of this law a hedge or nuisance tree is defined as being made up of one more trees or shrubs.

8. What's a semi-evergreen tree or shrub?

It is a plant/tree that keeps some live or green leaves all year round. Reference books such as "Hillier's Gardener's Guide to Trees and Shrubs" may help to clarify whether particular trees and shrubs are classed as evergreen, semi-evergreen or deciduous.

The intention is that it doesn't include beech and hornbeam hedges; they might retain some foliage for most of the year but this is brown and dead.

The law applies to hedges that are *mostly* evergreen or semi-evergreen so mixed hedges, which can contain some deciduous trees and shrubs, may fall within the provisions of the legislation. Whether a particular hedge is mostly evergreen or semi-evergreen will be a matter of judgement.

Bamboo is not covered by the legislation as it is a grass, and while ivy may be evergreen, it is a climber and so needs support in order to give it height. Any height-related problems are caused not so much by the ivy as by what it is growing up, although can cause a nuisance. Following the introduction of the new law, the Environment Department will monitor issues that arise and if necessary can make changes by way of regulations to the trees/hedges within the scope of the Law.

9. Where is the two metres measured from?

It's measured from ground level where the hedge or tree is growing – which will be on the hedge or tree owner's side. This is usually at the base of the trunk or main stem of the trees or shrubs in the hedge. If the hedge or tree has been planted on a bank or in a raised bed or other container that is raised from the ground, the measurement should be from the natural ground level rather than that of the base of the hedge or tree.

10. The hedge has got some gaps in it that allow light through. Can I still complain about it?

This depends on the extent of the gaps and may not be easy to judge, as the law also covers a single tree there will be a consideration of reasonableness. But if individual trees or shrubs are so widely spaced that you can see what lies behind them, then it might not meet the criteria for making a complaint as it might not form a barrier to light.

11. What sort of problems can I complain about?

You can complain about problems that you experience in your house and garden because the hedge or tree is too tall. You must also be able to explain why these bother you. You need to think about the disadvantages that you actually face and whether these are to do with the height of the hedge and how serious they are.

Things that are not really about the hedge in question or its impact on your house and garden cannot be regarded as valid grounds of complaint under the Law. For example, that other people keep their hedges trimmed to a lower height; that the problems with the hedge have caused worry which is making you ill; that you are concerned that the hedge might break or fall; or that the hedge is affecting particular activities in your home or garden such as television reception.

The proposed law is not designed to deal with other problems that might be caused by trees or hedges such as the effect of roots.

How do I make a complaint?

12. What do I need to do to complain about a hedge?

You will need to fill in a form and send it to the Environment Department. You should send a copy to your neighbours so they know what you've done. The Department will send your neighbour a copy of your complaint so you should bear this in mind when you fill in the form.

The form will provide you with a chance to set out why you feel that your neighbour's hedge or tree is a problem. In particular, you should think carefully about your grounds of complaint.

You will need to explain as clearly as you can the problems that you actually experience in your house and garden because the hedge is too tall, and why these are serious. Stick to the facts and provide all relevant information to back up the points you are making.

13. Do I have to pay anything for my complaint to be considered?

Yes, the Environment Department will charge a fee for this service. The Department will not get any additional funding from general States revenues to operate this service so it needs to raise funds to administer it otherwise other parts of its service will have to be reduced or cut. It is proposed that initially it will be £500 non refundable.

The fee must be submitted with the complaint so that it can be considered.

14. What if I cannot afford to pay the fee?

In exceptional circumstances, where financial hardship resulting in an inability to pay the full fee is proven to the satisfaction of the Department, the Environment Department may reduce or waive the fee.

15. Will I get my money back if my complaint is upheld or rejected?

No. The fee that you have paid will have been spent on investigating the complaint. The fee is not refundable once initially paid.

16. Can I reclaim the fee from my neighbours?

The Environment Department can't get involved in helping you recover the fee that you have paid and it can't require your neighbours to reimburse you.

17. What happens if the hedge is on land owned by the States of Guernsey or a parish?

You should still send your complaint to the Environment Department.

I own a high hedge: what does this mean for me?

18. My neighbour has told me that if this new law is introduced, it will be illegal for my hedge to be higher than two metres. Is this right?

No. There is no offence for having a tall hedge.

The law enables people, who have tried and exhausted all other avenues for resolving their hedge dispute, to take their complaint about a neighbour's evergreen hedge to the Environment Department for a decision to be made about whether the hedge is adversely affecting a property; a complaint can be made in respect of a hedge which is higher than two metres. For the complaint to be successful, they need to show that the hedge is adversely affecting the reasonable enjoyment of their property because it is too high.

You will only be in breach of the law if a complaint about your high hedge is upheld by the Department and if you fail to carry out the work that you are required to do to reduce the height of your hedge. If you fail to carry out the work when required you may commit an offence for which you may be charged a fine of up to £5,000.

High Hedges:

Your Questions Answered

19. My neighbour has asked me to reduce the size of my hedge. I am willing to do some works to it but is there any guidance to help me establish what would be a reasonable hedge height?

This is difficult because there is no single right answer. It's a question of trying to find what suits both you and your neighbour. It's best to look at all the options rather than discuss just one possible solution.

A booklet to help you assess whether an evergreen hedge is blocking too much daylight and sunlight to neighbouring properties – Hedge height and light loss – has been published by the UK Government. A printed copy will be available from the Environment Department. It can also be viewed online. https://www.gov.uk/government/publications/hedge-height-and-light-loss

20. I am willing to reduce the height of my hedge without my neighbour making a formal complaint to the Environment Department. There is, however, a protected tree which forms part of the hedge; do I still need to make a formal application to carry out works to a tree that is protected by a Tree Protection Order?

Yes, you will need to make a formal application to carry out any works to a protected tree. Similarly, if a hedge or tree is subject to a planning condition, the permission of the Environment Department to carry out works to the tree or hedge may be required.

In determining any application for planning permission for works to protected trees the Environment Department will undertake the normal balancing exercise of weighing the amenity value of the tree(s), the trees health against any harm likely to be caused by the tree.

21. If my neighbour makes a formal complaint about my hedge, what involvement will I have in the process?

The Environment Department will write to you to let you know that they have received a formal complaint about your hedge. They might ask you to provide certain factual information, such as whether you own the property as well as occupy it and whether there are any legal restrictions that apply to the property.

The Department will also ask you for your comments on the points made in the complaint and to provide any further information that you want the Department to take into account. In making your comments, it is best to keep to the facts and explain how the hedge contributes to your enjoyment of your property and what the effect would be if its height had to be reduced. Bear in mind that a copy of your comments will be sent to the complainant.

Someone may also need to come to your property to gather further information about the hedge and its effect on your neighbour's property.

In making their decision, the Department must take account of all relevant factors and must strike a balance between the competing interests of the complainant and hedge owner, as well as the interests of the wider community.

If the complaint is upheld, the Department may issue a notice which will set out what you must do to the hedge to remedy the problem, and by when.

22. I offered to reduce the hedge to what I consider a reasonable height but my neighbour wanted more. They have now made a formal complaint. Will my offer be taken into account by the Environment Department in deciding the complaint?

No. It is not the role of the Environment Department to negotiate or arbitrate between individuals. Acting as an independent and impartial third party, they will adjudicate on whether the hedge is adversely affecting the reasonable enjoyment of the complainant's property. So any offers that you made earlier are not directly relevant to what they have to decide, which is about the impact of the hedge.

Negotiations between you and your neighbour do not have to stop just because a formal complaint has been made. It's worth continuing to talk to one another. If you agree a solution, the complaint can be withdrawn.

23. The hedge was there before the complainant's property was built [or before they moved into it]. Will the Environment Department take this into account?

No, the history of the hedge or of the site where it is located is not relevant to the question that the Department has to decide - which is about the impact of the hedge on the complainant's reasonable enjoyment of their property.

What happens to a complaint?

24. What is done to investigate a complaint?

If the Environment Department is satisfied that a complaint is a valid one (i.e. that is, it satisfies all the 'tests' set out under question 4 above), it will invite the hedge owner to set out their case. When they've got both sides of the story, someone from or on behalf of the Department will visit the site to see the hedge and surroundings for themselves. They will also obtain any other information that might be needed to determine the complaint. This might involve measuring the size of the complainant's garden, the height of the hedge or how far the hedge is from windows in their house.

Once all this information is gathered, the Environment Department will weigh it all up. They will decide whether the hedge adversely affects the reasonable enjoyment of the complainant's home or **garden** or other residential property such as a care home or visitor accommodation and what, if anything, should be done about it.

If they decide that action is necessary, they will issue a formal notice to the hedge owner which will set out what they must do to the hedge or tree and when they must do it by. It can also require the hedge or tree owner, and anyone who subsequently lives in the property, to keep the hedge or tree trimmed to its new height.

25. Why can't people just be made to cut their tall hedges?

There is no offence for having a tall hedge. It is the job of the Environment Department to decide whether the height of the hedge or tree is adversely affecting the reasonable enjoyment of a property and if so, what should be done about it.

The Environment Department will take into account the comments of the hedge or tree owner as well as the grounds of the complaint. They must also take into account whether the hedge is an important or attractive feature in the area. It is only by weighing up all of the relevant information that a fair and balanced decision can be reached.

Collecting written evidence from the hedge or tree owner and the neighbour and visiting the site will make sure that the Environment Department has all the information they need to make the right decision.

26. How do I know that a complaint will be successful?

You can't be certain what the outcome of a complaint will be. That's why it is important for people to think carefully about their reasons for making a complaint before they submit a form.

27. How long will it take for a complaint to be determined?

There is no set deadline for a complaint to be dealt with. It will take time to get a statement from the hedge owner and to visit the site once a complaint has been made. It is expected that complaints will take at least 13 weeks to be determined.

What happens to the hedge?

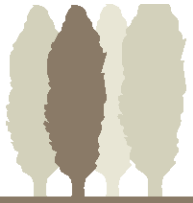
28. If the hedge is a problem why can't it just be removed?

The Department has no powers to require a hedge to be removed in its entirety nor can they require it to be cut down to a height below two metres.

29. Will all problem hedges have to be cut down to two metres?

Not necessarily. Where a high hedge or tree is found to be a problem it should be reduced to a height that will solve the problem. This may well mean that the hedge can be maintained at a height that is greater than two metres.

High Hedges:
Your Questions Answered



30. How long will a hedge owner be given to reduce the height of a hedge?

This will vary but it could well be months rather than weeks. A realistic time will be given to allow the hedge owner to carry out the works.

Extra time may be given so that the hedge does not have to be cut when birds might be nesting in it or to avoid causing serious damage to the health of the hedge.

The hedge owner can appeal if they think that they have not been allowed enough time to carry out the work.

31. What is there to make sure the hedge owner keeps the hedge at its new height?

As well as being ordered to cut the hedge to a new height, the hedge owner can be required to keep the hedge within its new height for as long as it is there. Any remedial notice that is issued by the Environment Department will set out any such maintenance requirement.

32. If the hedge owner doesn't carry out the work to cut the hedge can the neighbour do it?

No. If the neighbour does any work to the hedge the owner could take them to court for damaging their property.

33. What happens if the hedge owner doesn't cut the hedge how and when they're meant to?

Failure to carry out the works ordered by the Environment Department will be an offence. The hedge owner could be prosecuted and, if found guilty, could be fined.

34. Can someone else carry out the work?

The Environment Department is authorised to have the works carried out if the hedge owner doesn't comply with a notice. It's up to the Department to decide whether to do this and they are not obliged to do so.

35. How will the Environment Department deal with high hedge or nuisance tree complaints where there is a planning condition requiring the hedge to be maintained at a certain height?

In determining a high hedge and nuisance tree complaint, the Department should take account of the reasons why such a condition was attached to the original development permission. The age of the planning permission and the extent to which circumstances have altered in the meantime might also be material. Any notice issued in response to a complaint could however, override a planning condition and the planning condition would need to be separately discharged. But the department should be able to deal with this at the same time.

36. What happens if there is a protected tree in a hedge that has to be reduced in height?

The Environment Department can protect a tree because of its amenity value by making a Tree Protection Order in relation to it. The contribution that a hedge or tree makes to the amenity of the area, whether it contains protected trees or not, will be taken into account by the Department in deciding whether to issue a notice and in determining what action the notice will require the hedge owner to take.

If the hedge owner wants to go further than the remedial notice requires, they will need the Department's consent to carry out works to the protected tree in the normal way.

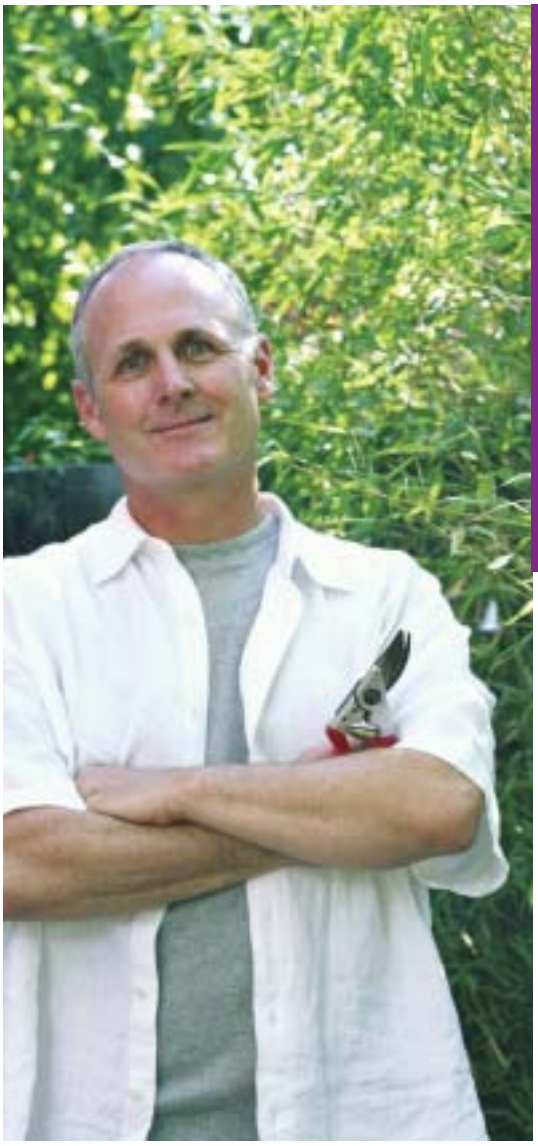
What if I disagree with a decision?

37. Can I challenge the Environment Department's decision?

If a hedge or tree owner or someone who has made a complaint about a high hedge disagrees with the Environment Department's decision they can appeal to the independent Planning Tribunal. Their appeal must be received by the Tribunal within 28 days of the person appealing receiving the Department's decision letter. An appeal fee is payable; initially it is proposed this will be the same as for an application for a complaint (£500).

Office of the
Deputy Prime Minister
Creating sustainable communities

Hedge height and light loss



Office of the
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Creating sustainable communities

Hedge height and light loss

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Summary

This guidance note has been produced by BRE as part of a contract 'Review of hedge height and light loss' for the Office of the Deputy Prime Minister. It supersedes an earlier guidance note produced in October 2001 for the then Department for Transport, Local Government and the Regions.

The aim of this document is to provide an objective method for assessing whether high hedges block too much daylight and sunlight to adjoining properties, and to provide guidance on hedge heights to alleviate these problems.

The document introduces the concept of 'action hedge height' above which a hedge is likely to block too much light. It then gives a procedure to calculate this height both for a garden, and for windows to main rooms in a dwelling. The minimum action hedge height is 2 metres.

The procedure is intended to be simple enough for householders to use. It involves multiplying the distance from a window to the hedge, or the depth of the garden, by a factor; for gardens this factor depends on hedge orientation. Corrections can be made for site slope or where the hedge is set back from a garden boundary.

A simple technique cannot cover every situation, and a section discusses other relevant factors which might need to be considered. Of course the hedge owner is free to trim the hedge below the height proposed in these guidelines, or remove it altogether, if it is easier or safer to do so.

1. Introduction

Hedges have many benefits; they can provide privacy and wind shelter and encourage wildlife. A hedge can also be an attractive feature in its own right.

However, very high hedges can cause problems. Often the worst of these is the loss of sunlight and daylight to neighbouring gardens and houses.

This Guidance Note provides a way of calculating the height of a hedge that is likely to cause significant loss of light to a garden or house nearby. This method could be used by a hedge owner, or by an affected neighbour, to find out if a hedge is likely to block too much light to the neighbour's house or garden.

The Note may be used to help resolve cases arising under the Anti-Social Behaviour Act 2003. However the advice given here is not mandatory, and is only one of the factors a local authority will need to take into account. A discussion of the other factors which may be addressed is given in an ODPM guidance document 'High hedges complaints: prevention and cure'.

In the Anti-Social Behaviour Act, "high hedge" means 'so much of a barrier to light or access as:

(a) is formed wholly or predominantly by a line of two or more evergreens; and

(b) rises to a height of more than two metres above ground level.'

Consequently, these guidelines apply to evergreen hedges. They have not been designed to be applied to individual trees, groups of trees or woodlands.

2. Hedge heights

This Note gives a method to calculate the 'action hedge height' H. A hedge higher than this is likely to be already causing a significant loss of light. Reduction of the height of the hedge is then recommended.

Where reduction in height is deemed necessary, it is advisable for the hedge to be cut below the action hedge height. This will allow the hedge to grow in between annual (or more frequent) trimmings, and still remain below the action hedge height. For most hedge types, between 600mm and one metre below the action hedge height would give a suitable margin for growth.

However there may be other reasons why a local authority may require a hedge to be cut lower, in some case substantially lower, than this height. This could happen if the hedge is causing adverse effects other than loss of light.

If the hedge is somewhere within the buffer zone or growing margin, it may cause significant loss of light as it grows. In this case future trimming will be needed.

If the hedge is already below the buffer zone or growing margin, it could cause a noticeable loss of light. However it is unlikely to cause significant over shading and no action need be taken. Of course this situation may change in the future as the hedge grows.

Figure 1 summarises this. Advice on measuring heights of hedges can be found in Annex 1.

Figure 1. The action hedge height

3. Procedure for calculating action hedge height

To calculate the action hedge height, follow this procedure.

a) Calculate the hedge height for loss of light to the nearby garden (Section 4).

b) Calculate the hedge height for loss of daylight to main house windows (Section 5).

c) Take the **lower** of these 2 heights.

d) If this height is less than 2 metres, round it up to 2 metres.

e) The resulting number is the action hedge height.

4. Loss of light to gardens

4.1 Introduction

A hedge will create an area of shade next to it. The extent of this area of shade will depend on the height and orientation of the hedge (whether it is north or south of the obstructed garden). The impact on the amenity value of the garden will depend on its size, relative to the size of the shaded patch.

These guidelines apply to any type of garden, even small back yards with no lawn. They are intended to protect light to the garden as a whole rather than particular features within it.

The procedure for calculating action hedge height is as follows:

i. find the effective depth of the garden (for a rectangular garden the effective depth is the distance between the hedge and the opposite end of the garden)

ii. multiply the effective depth by a factor (which will vary with the orientation of the hedge) to get the basic action hedge height

iii. make a further correction if the hedge is set back from the boundary

iv. correct for site slope if any.

4.2 Hedge Height and Garden Size

The basic action hedge height is calculated from the effective depth of the garden.

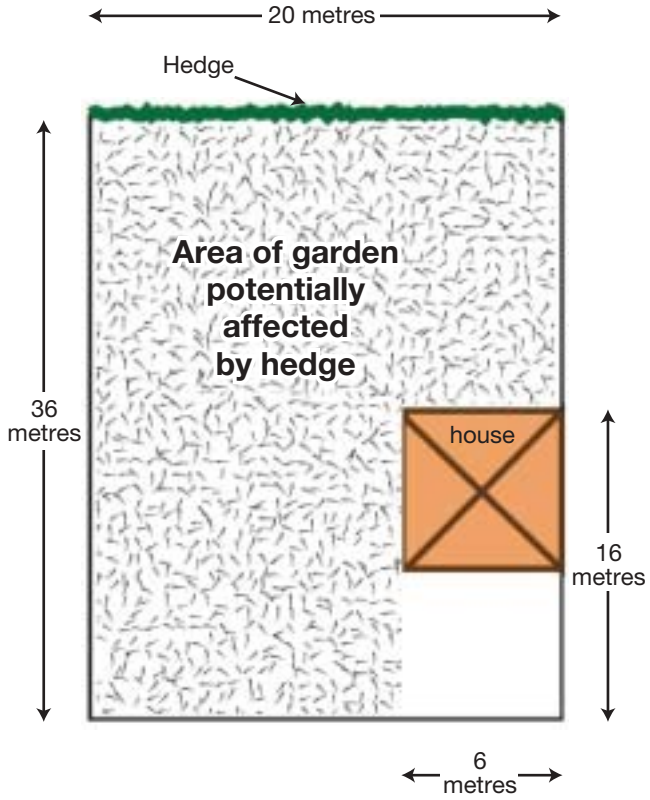
The equation for non-rectangular gardens is:

$$\text{Effective depth} = \frac{\text{Area of garden}}{\text{Effective length of hedge}}$$

For a rectangular garden, where the hedge grows along the whole length of a boundary, the effective depth is the distance between the boundary by the hedge and the opposite end of the garden. Where the length of the hedge is less than the length of the boundary it grows on, then the formula for non-rectangular gardens (see above) should be used.

In all cases, the area of the garden includes outhouses, greenhouses, sheds, patio and yard areas, and paths within the garden itself. However it does not include garages, or narrow access ways (less than 3m wide) for example pathways and driveways to the side of a house. For gardens which go round the side of a house, the area of garden should be that which has a direct view of most of the hedge (see figure 2). The impact of trees and screens within the obstructed garden is not taken into account here. Areas behind such a screen still count in the garden area.

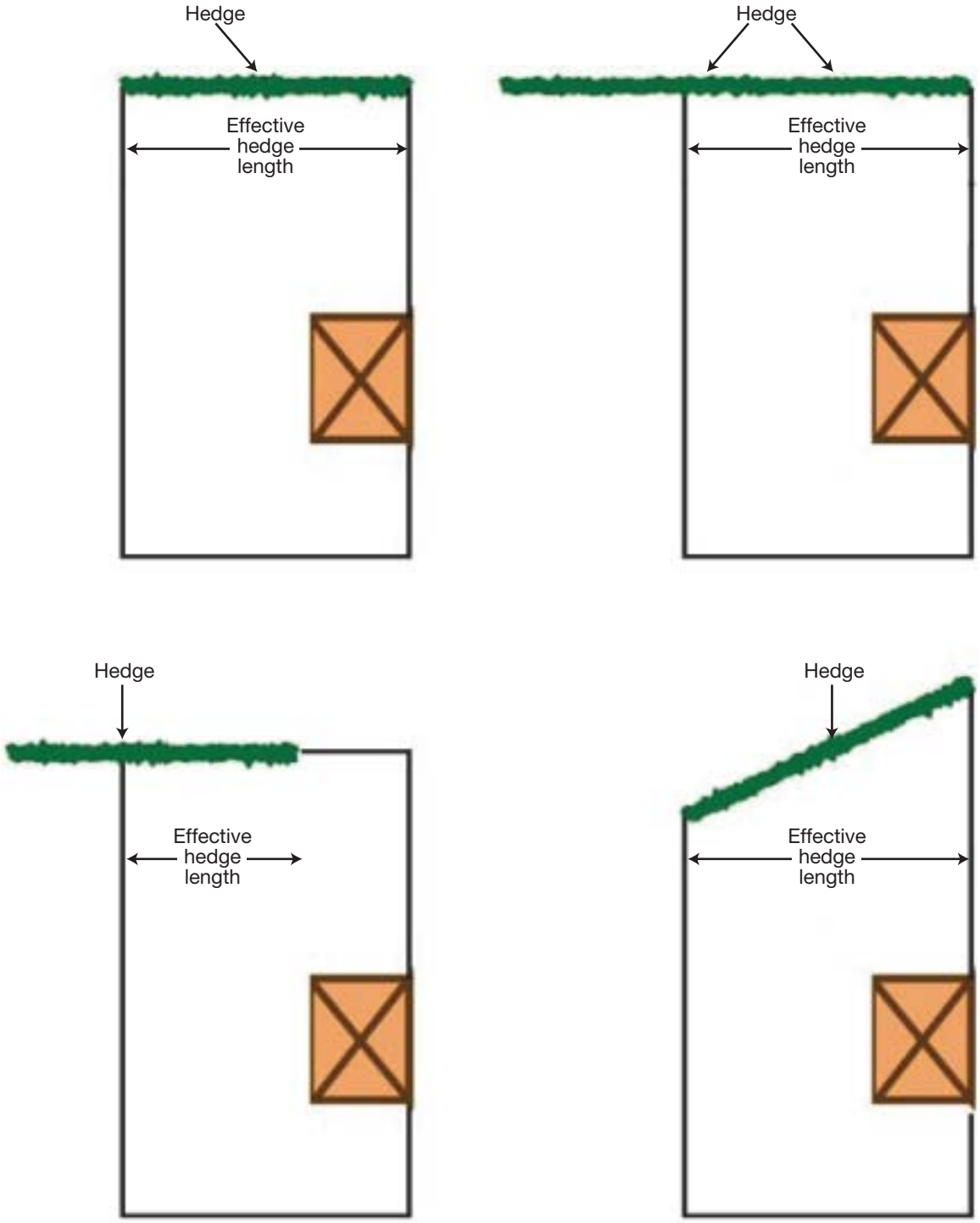
Figure 2. Only the hatched area is included in the calculation of effective garden depth



In the example shown in Figure 2, the area of the garden (the hatched area) is (20 x 36) – (6 x 16) = 720 – 96 = 624 m^2. The effective depth of the garden is this area divided by the effective length of the hedge, in this case 20 metres. So the effective depth of the garden is 31.2 metres.

The effective length of the hedge is the length of the hedge that runs parallel to the garden boundary (see figure 3). The effective length of the hedge cannot be more than the width of the garden boundary.

Figure 3. Examples of the measurement of effective hedge length



Once the effective depth of the garden is obtained, multiply it by the relevant factor in Table 1 to get the basic action hedge height.

Table 1

Orientation	Factor
North	0.65
North East	0.55
East	0.4
South East	0.3
South	0.25
South West	0.25
West	0.35
North West	0.5

Factors for other orientations may be obtained by interpolation. The orientation in Table 1 is the direction faced when looking from the obstructed garden to the hedge. So if the hedge is by the western boundary of the obstructed garden, multiply the effective garden depth by 0.35. If the hedge is to the south east of the garden, multiply the effective garden depth by 0.3.

4.3 Special Cases for Gardens

4.3.1 Hedge Set Back from Boundary

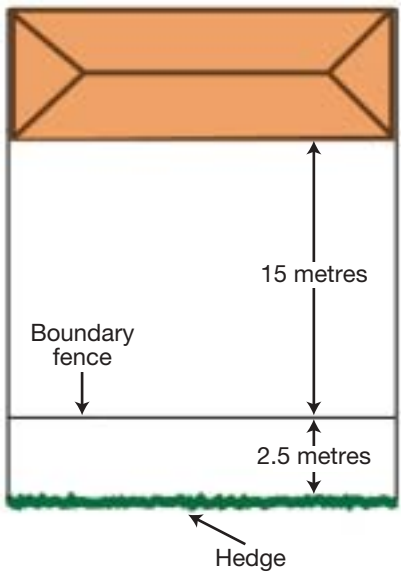
Sometimes the hedge may not be immediately adjacent to the boundary of the affected garden, but some distance away from it. For example, there may be a driveway between the hedge and the boundary. Or the hedge might be at the far side of the hedge owner's garden.

Where the hedge is more than 1 metre from the boundary, the shortest distance between the boundary and the nearest part of the hedge should be added to the action hedge height.

Figure 4 shows an example. The effective depth of the garden is 15 metres, and the hedge is to the south of the garden. This gives a basic action hedge height of 15 x 0.25 = 3.75 metres.

The hedge is set back 2.5 metres from the boundary. So the corrected action hedge height is 3.75 + 2.5 = 6.25 metres.

Figure 4. Hedge set back from boundary



4.3.2 Garden Sloping or Stepped

Where the base of the hedge is above or below the level of the obstructed garden, or the obstructed garden is sloping or terraced, the action hedge height needs to be corrected.

This applies only if the level of the obstructed garden changes as you walk away from the hedge, at right angles to it (see for example figure 5). Where the slope is along the line of the hedge, so that the hedge runs up or down the slope, no correction need be made.

The procedure is as follows:

a. Measure the effective depth of the garden in metres (see (i) above).

b. Divide by 3.

c. Take a point this distance away from the boundary nearest the hedge.

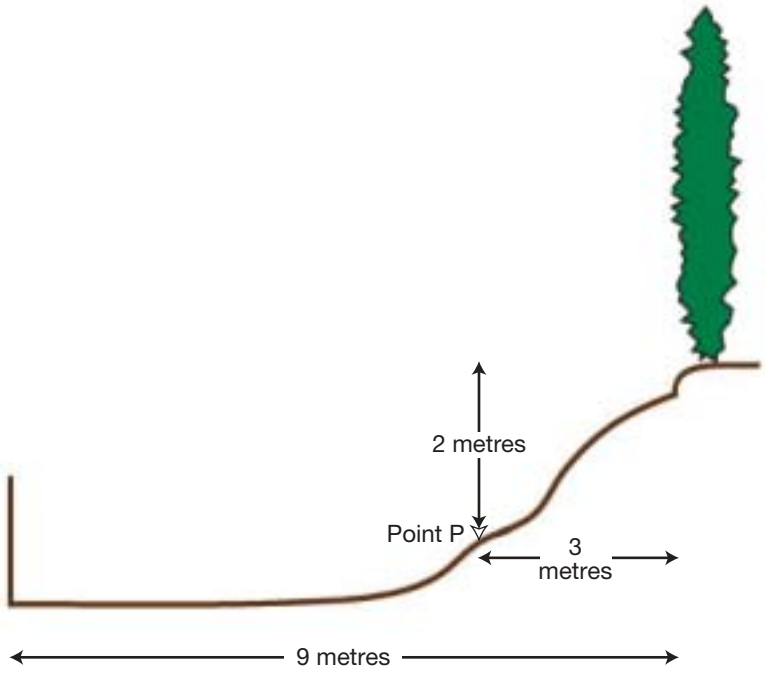
d. Estimate the vertical height difference between this point and the base of the hedge opposite it.

e. If the base of the hedge is higher, subtract this height difference from the action hedge height. If the base of the hedge is lower than the point in the garden, add this height difference to the action hedge height.

Figure 5 shows an example. The effective garden depth is 9 metres, and the hedge is west of the garden. So the action hedge height is 9 x 0.35 = 3.15 metres.

Now we correct for site slope. The garden depth divided by 3 is 3 metres, so we choose a point P 3 metres from the boundary next to the hedge. P is 2 metres below the base of the hedge, so the action hedge height is 3.15 – 2 = 1.15 metres. This is less than 2 metres, the minimum action hedge height, so it would be rounded up to 2 metres (see section 3).

Figure 5. A hedge and a sloping garden



5. Loss of light to windows

5.1 Introduction

High hedges can obstruct daylight to windows. Even if a window faces north, significant loss of diffuse sky light can occur. The extent of the loss of light will depend on the distance from the hedge to the window as well as the height of the hedge.

The guidelines given here are intended for use for the main rooms of a house. These include living rooms, dining rooms, kitchens and bedrooms. Glazed doors can be counted as windows if they form a major source of light to the room.

Loss of light to toilets, bathrooms, storerooms and circulation areas (hall, stairs and landing) is deemed less important and such windows need not be analysed. These guidelines apply to dwellings, and not to outbuildings such as sheds, greenhouses, summer houses, garages or workshops. Windows to these structures need not be taken into account.

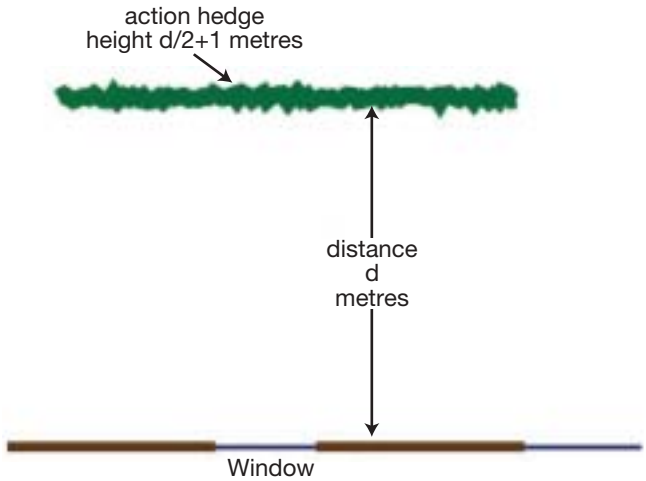
Where a dwelling has a conservatory, the opening between it and the house, not the front or side faces of the conservatory, is taken as the window position.

5.2 Hedge is directly opposite window

Where the line of the hedge is parallel to the window wall (figure 6), measure the horizontal distance between the outside window wall and the boundary on which the hedge stands. (If the hedge is set back from the boundary, follow the guidance in ‘Special cases’ at the end of this section). Halve it and add 1 metre. This gives the action hedge height.

Example: the hedge is eight metres away. The action hedge height is (8 ÷ 2 = 4) + 1 = 5 metres.

Figure 6. Hedge opposite a window



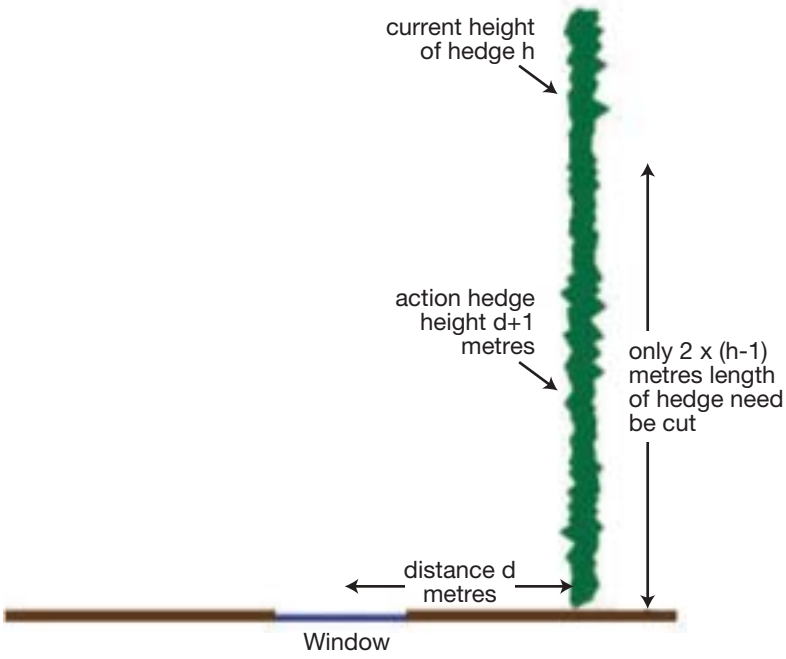
5.3 Hedge is to one side of window and at right angles to window wall

This is normally the case if the hedge separates the gardens of two adjoining houses. Measure the horizontal distance between the centre of the window and the boundary on which the hedge stands. Add one metre to get the action hedge height.

Example: the hedge is two metres to the right of the centre of the window (figure 7). The action hedge height is 2 + 1 = 3 metres.

Most of the light loss to the window will be caused by the portion of the hedge nearest to it. Only this part need be reduced in height. To find the length of hedge that needs trimming, take the current height of the hedge, subtract 1 metre and then double this number. So in Figure 7, if the hedge is currently 7 metres high, the length that needs cutting is (7 – 1 = 6) x 2 = 12 metres.

Figure 7. Hedge to one side of window



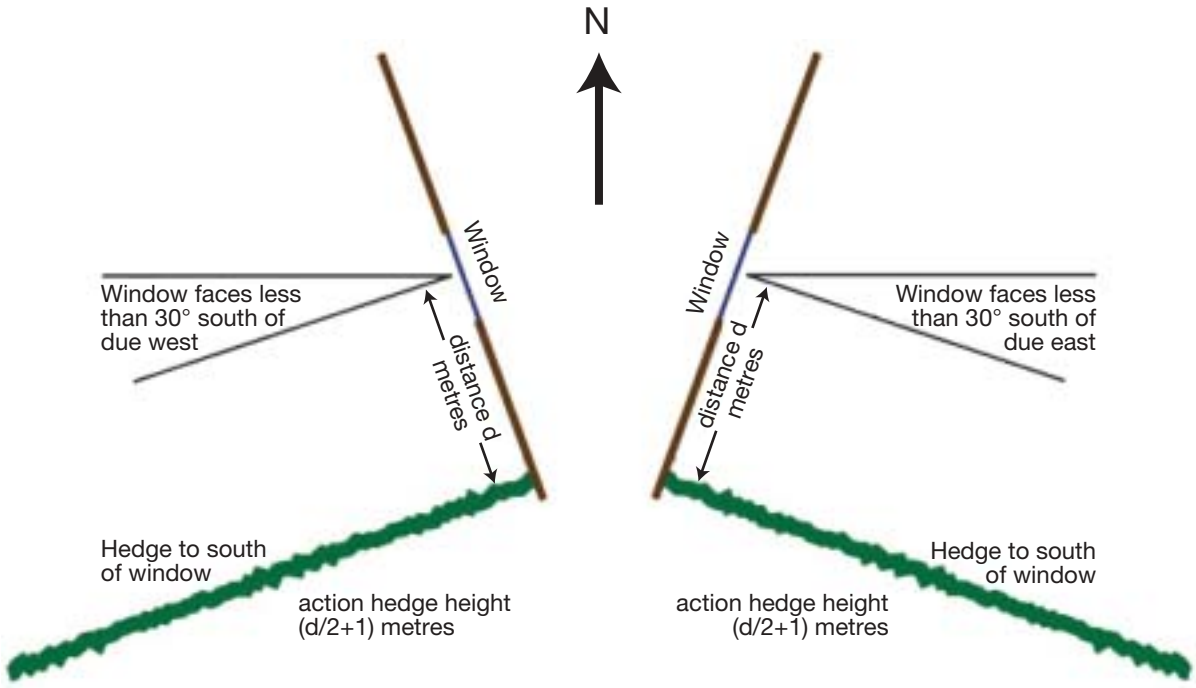
In certain cases the hedge can block significant amounts of sunlight as well as daylight, particularly in the winter. Particular problems can occur if the window faces less than 30° south of due east or west, for example between east and east south east, or between west south west and west (figure 8), and the hedge is to the south of the window.

In these cases the action hedge height is found by taking the horizontal distance between the centre of the window and the boundary on which the hedge stands, dividing this by two and then adding one metre to get the action hedge height.

Example: the hedge is six metres south of the centre of the window (figure 8). The action hedge height is (6 ÷ 2 = 3) + 1 = 4 metres.

The length of hedge that needs trimming is found as described above (take the current height of the hedge, subtract 1 metre and then double this number).

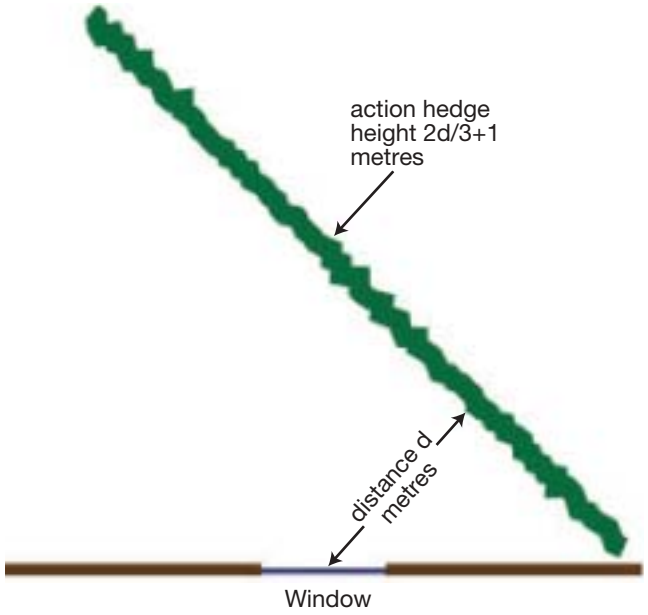
Figure 8. Examples of hedges that could block substantial amounts of winter sunlight. The window faces within 30° south of due east or west and the hedge is to the south of the window



5.4 Hedge is at 45° to window

This can sometimes happen if the hedge is on a corner plot (figure 9). Take the closest distance d from the boundary on which the hedge stands to the centre of the window (this will be measured along a line at right angles to the hedge and 45° to the window). Multiply this distance by two, divide it by three and add one metre. So if the distance d were 6 metres, the action hedge height would be (6 x 2 ÷ 3 = 4) + 1 = 5 metres.

Figure 9. Hedge at 45° to window



Where the window faces less than 30° south of due east or west, eg between east and east south east, or between west south west and west, extra sunlight may be blocked in winter if the hedge begins to the south of the window (compare figure 8).

In these cases the action hedge height is found by taking distance d in figure 9, dividing this by two and then adding one metre to get the action hedge height.

Example: the distance d (figure 9) is ten metres. The action hedge height is (10 ÷ 2 = 5) + 1 = 6 metres.

5.5 Special cases for windows

If the lowest affected window is at first floor height or above, add the height above ground of the floor level of the affected room to the action hedge height. For example, a flat above a shop might have a floor level three metres above ground. The action hedge height, as calculated above, should be increased by 3 metres.

Sometimes the same hedge may obstruct main windows in more than one wall. This can happen if there is a rear extension to a house, for example. In this case the action hedge height is calculated separately for each window wall, and the lowest value taken.

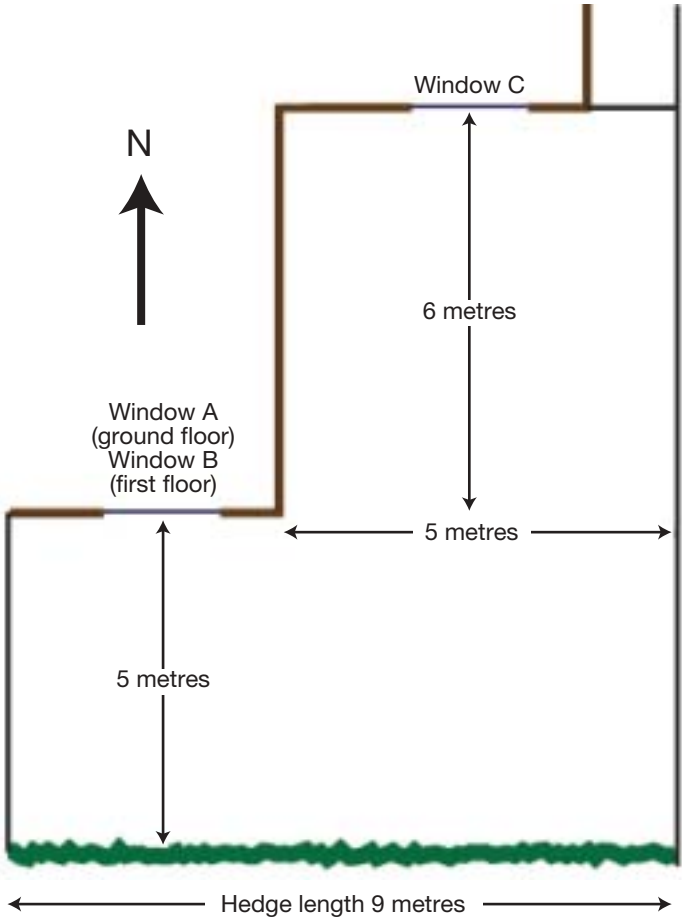
If the land slopes or is stepped from window wall to hedge, the action hedge height needs to be modified to take account of this. If the base of the hedge (where the trunks meet the ground) is higher than the base of the window wall, subtract this height difference from the calculated action hedge height. If the base of the hedge is lower, add the height difference to the calculated action hedge height.

Where the hedge is set back from the boundary by at least one metre, the distance from the window should be measured to the hedge itself, not the boundary. From the affected window, look towards the hedge and estimate which part of it appears highest. For a hedge that has not been trimmed in the past, this may be the centre of the hedge above the trunks. Where a hedge has previously been trimmed and grown thick and bushy, the part that appears highest from the window may be closer than the centre of the hedge. In each case, measure the distance from the window to the part of the hedge that appears highest when viewed from it. The distance is always measured at right angles to the line of the length of the hedge (see figures 6-9).

6. Example of full calculation procedure

Figure 10 is a plan of Axel Otoff's small garden. The garden is flat, not sloping or stepped. On the south boundary is a 6m high evergreen hedge owned by Laurel Riot.

Figure 10. Plan of example situation



First we calculate loss of light to the garden. The area of the garden is (5 X 9) + (6 X 5) = 75 m^2. We exclude the small side passage. The effective length of the hedge is 9 metres, the full width of the garden in this case. So the effective depth of the garden is 75 ÷ 9 = 8.33 metres. According to section 4.2, we then multiply by the factor in Table 1 to get the action hedge height. As the hedge is to the south, this is 0.25. So the action hedge height is 8.33 X 0.25 = 2.08 metres.

Axel's house is a Victorian villa built with an original rear extension. He is also concerned about three windows that face the hedge. On the ground floor, window C lights his dining room. At ground floor level window A lights a bathroom, loss of light to which need not be taken into account (see section 5.1). However, the window directly above at first floor level (window B) lights a bedroom/study. This window, as well as the dining room window, should be analysed.

Next we calculate the action hedge height as far as the windows in the house are concerned. For window B, the distance from the centre of the hedge is 5 metres. As the hedge is opposite the window (section 5.2), we halve this distance and add one metre, to get an action hedge height of 3.5 metres. But because the window is at first floor level, we add on the height of the first floor above the ground. In this particular case this is 2.7 metres, giving an action hedge height for window B of 6.2 metres.

Window C is 11 metres from the centre of the hedge, and hence the action hedge height is (11 ÷ 2 = 5.5) + 1 = 6.5 metres.

We take the lower of the two action hedge heights, namely 6.2 metres for window B.

The next stage is to compare the two action hedge heights (for windows and garden) and take the lowest one. In this case the value for the garden is the lower of the two, 2.08 metres. The local authority could require Laurel to cut the hedge down to 2 metres high, and keep the hedge pruned so that it does not cause future problems related to its height.

Annex 3 of this report gives the calculation of action hedge height in spreadsheet form, and includes as an example figures from the above case.

7. Other relevant factors

As Section 1 explained, this Note is intended as a guide only. A simple technique cannot cover every situation and there are circumstances which may mean a different action hedge height is chosen. These include:

i. Where hedges cover more than one side of the garden, normally different action hedge heights will be calculated for each side individually. However, to allow for the cumulative impact of the hedges a lower action hedge height could be chosen in some circumstances. One way of doing this would be to trim all the hedges to the lower of the two (or three) calculated action hedge heights.

ii. If there is a building behind, and close to, the hedge, the hedge might not be blocking any extra light. For windows, the extra light the hedge blocks could be assessed using the techniques in the BRE Report 'Site layout planning for daylight and sunlight: a guide to good practice'.

ii.a When calculating the action hedge height for a garden where a hedge only covers part of the boundary use the calculation stated in 4.2. If a building is up against part of the boundary of the garden, and the hedge the rest of the boundary, then this may give an unfairly high action hedge height if this method is applied rigidly. It may be more appropriate to choose a lower action hedge height, although this should not be lower than the action hedge height that would have resulted if the hedge occupied the whole of the boundary.

iii. If a hedge opposite a window only covers a part of the field of view (figure 11), or if there are gaps in the hedge (figure 12) the action hedge height may be raised. For a hedge opposite a window, a very rough rule of thumb is that x% gaps will lower the effective height of the hedge above the window by x%. Suppose the centre of the window is 1.5m above ground and opposite a hedge 5.5m high. The height of the hedge above the window is 4m. If the hedge had 25% gaps, it would have a similar effect to that of a hedge 4x 25% = 1m lower, in other words a 4.5m high hedge. If the hedge had 50% gaps, it would have a similar effect to a hedge 4 x 50% = 2m lower, a 3.5m high hedge. This rule of thumb only works well where the hedge is opposite the window and not too close to it. Figure 1 shows how gaps in a hedge viewed from an oblique angle tend to disappear and have little effect on light. So for a window with a hedge to one side, the effect of gaps in the hedge is much less. Where a hedge is a very irregular shape or has large gaps which may or may not be opposite the window, the light loss to the window may be calculated using the methods in the BRE Report 'Site layout planning for daylight and sunlight: a guide to good practice'.

Figure 11

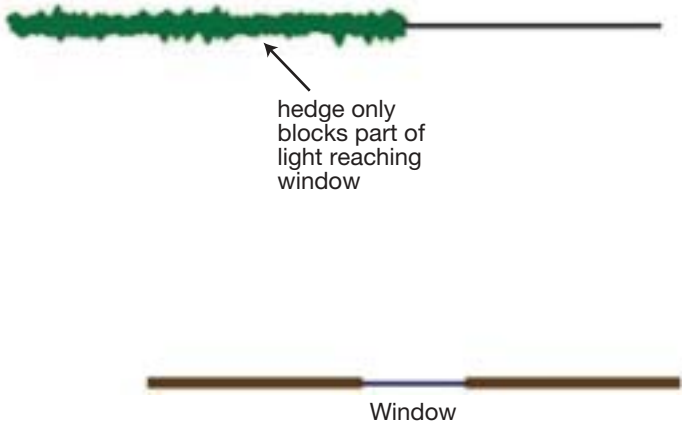
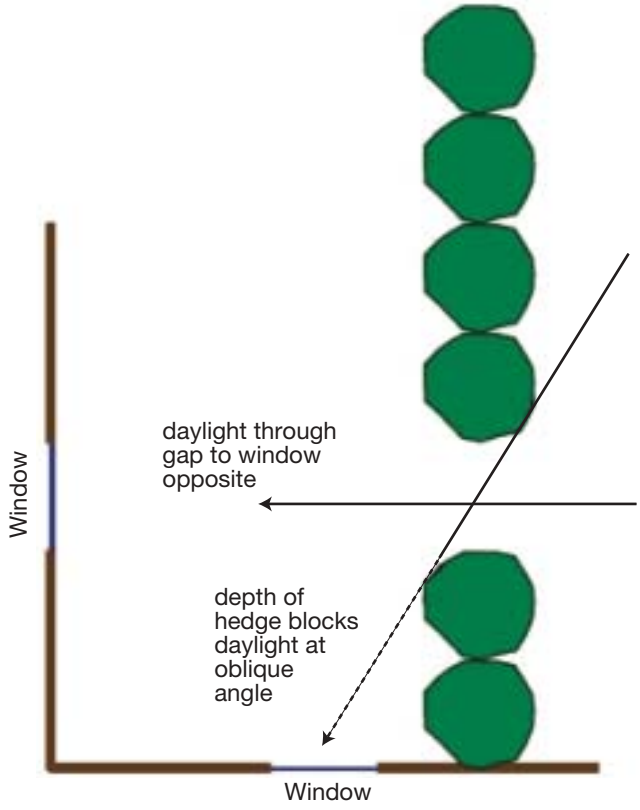


Figure 12. The effect of gaps in the hedge. Where the window is opposite the gap, it can receive daylight through it. A window at an oblique angle may receive little or no light through the gap because of the depth of the hedge



iv. Where the hedge is deliberately being trimmed to, and managed at, a non-uniform height (for example topiary) a higher action hedge height could be set to avoid the top of the design being removed.

v. Single trees growing above a lower hedge should be considered separately. More selective and sensitive pruning should be possible.

Of course the hedge owner is free to trim the hedge below the height proposed in these guidelines, or remove the hedge altogether, if it is easier or safer to do so and the hedge is not protected by a tree preservation order or by growing in a conservation area. High and overgrown hedges often need specialist equipment or professional help to remove them altogether, reduce their height or trim their sides. Where the work required is beyond the skills and resources available to the individual then engaging the services of a reputable tree work contractor is recommended. A hedge that has substantial value as a refuge for wildlife may receive special consideration. If birds are nesting in the hedge, trimming should be delayed until after the nesting season.

A local authority may also require a hedge to be cut lower than the height proposed in these guidelines. This could happen if the hedge is causing adverse effects other than loss of light.

8. Further reading

‘The right hedge for you’ DETR, London, 1999.

‘Hedges: suitable trees, shrubs and conifers’ Horticultural Advisory Leaflet no. 182, Royal Horticultural Society, Wisley, 2000.

‘Leyland’s cypress hedges’ Horticultural Advisory Leaflet no. 222, Royal Horticultural Society, Wisley, 1999.

‘Evergreen hedges’ Leaflet no. 5, Arboricultural Association, Romsey, 1991.

P J Littlefair ‘Site layout planning for daylight and sunlight: a guide to good practice’ BRE Report, CRC, Garston, 1991.

J F Barlow and G Harrison ‘Shaded by trees?’ Arboricultural Practice Note 5, Arboricultural Advisory and Information Service, Farnham, 1999.

The Arboricultural Advisory and Information Service runs a Tree Helpline offering advice on trees and hedges. Telephone 09065 161147. Premium rate charges apply.

9. Acknowledgments

This project was carried out for the Office of the Deputy Prime Minister. I would like to thank Julie Richardson, Peter Annett and Steve Clark of ODPM and Derek Patch of the Tree Advice Trust for their help and guidance. Emma Dewey of BRE carried out a series of site visits to test out these guidelines; I would like to thank all those people who allowed access to their gardens and co-operated with the surveys, Alan Bridgman of Hedgeline, for co-ordinating sites for visiting, and Barbara Milne of the London Borough of Bromley, for her help with the four site visits there.

I would also like to thank the following people for the time they gave in discussing the proposals and giving advice and information: Guy Barter, Colin Crosby and Paul Goacher of the Royal Horticultural Society; Richard Nicholson of East Dorset District Council; Clare Hinchliffe, Derek Glew and Alan Bridgman of Hedgeline; Alistair Redler of Delva Patman Associates and the Royal Institution of Chartered Surveyors; Becky Hesch of the London Tree Officers' Association; Chris Colwell of the Royal Borough of Kensington and Chelsea; Barbara Milne of London Borough of Bromley; Jim Smith of Islington London Borough Council; and David Hall of Envirobods Limited. A large number of individuals and organisations also provided comments on an earlier version of this note. Their help is gratefully acknowledged, but the guidelines in this report are not necessarily in accordance with their views or those of their organisations.

The characters in the Example are entirely fictitious.

Annex 1: Measuring hedge height

It is sometimes difficult to estimate the height of an existing hedge. The following techniques can be used. The hedge height is normally taken as the height of the highest shoot.

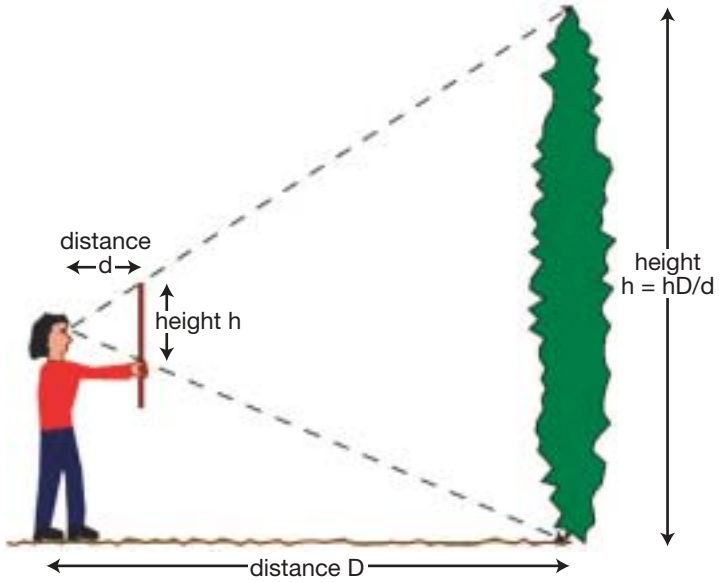
If the hedge is less than 4-5m high, a measuring stick or tape (the stiff metal kind) can be used to find its height. From a fixed point, measure downwards towards the base and upwards to the top, and add the two heights together. It can be hard to tell if the tape or stick is at the top of the hedge; get someone else to stand back from the hedge to help judge when it is.

If the hedge is next to a house, you can assess its height by counting the bricks of the house up to the top of the hedge and multiplying by the height of a brick (with mortar bed).

Alternatively, take a straight stick and stand some distance away from the hedge. Hold the stick vertically at arms length (get someone else to check it is vertical). Keeping the stick vertical, hold it so the top of the stick is aligned with the top of the hedge and the top of your fist is aligned with the base of the hedge (figure 13). Then the height of the hedge is given by the horizontal distance between you and the hedge trunk, multiplied by the length of the stick above your fist, divided by the horizontal distance between your eye and the stick (get your assistant to measure this).

Tree experts use an instrument called a hypsometer or clinometer to measure heights. Further details are given in 'Measuring trees and forests' by M S Philip (CAB International, Wallingford, 1994).

Figure 13. Estimating hedge height using a vertical rod



Annex 2: Explanatory notes

These notes are intended to provide more detail on the basis for the guidelines.

In gardens the guidelines are based on the loss of sunlight and diffuse daylight. The corrections for orientation are based on light blocked by the hedge between 0900 (clock time) and sunset, which is why the values for east and west are not the same. The factors in Table 1 form a central part of the guidelines; roughly speaking they correspond to up to a quarter of the garden losing at least half its light.

For daylight to windows of dwellings, the guidelines are based on those in the BRE Report 'Site layout planning for daylight and sunlight: a guide to good practice', except that the angular criteria have been replaced by spacing to height ratios for ease of application. The aim here has been to concentrate on daylight provision on cloudy days. Where the hedge is opposite a window that faces within 90° of due south, it can be shown that there is little obstruction to sunlight if the guidelines are followed.

Glossary

Action hedge height. The height above which a hedge is likely to block too much light.

Buffer zone. A distance up to 1 metre below the action hedge height (defined above). Hedges within this range of heights could cause a significant loss of light as they grow.

Centre of the hedge. This is the centre of the thickness of the hedge. For most plant types it will lie in a plane through the main trunks of the individual trees or shrubs.

Daylight. The combination of skylight and sunlight.

Diffuse daylight. Light from the sky (skylight).

Effective depth. For a rectangular garden the effective depth is the distance between the boundary by the hedge and the opposite end of the garden. For non-rectangular gardens:

$$\text{Effective depth} = \frac{\text{Area of garden}}{\text{Effective length of hedge}}$$

Effective length. The length of the hedge that runs parallel to the garden boundary. The effective length of the hedge cannot be more than the width of the garden.

Garden. A garden or yard which is used wholly or mainly in connection with a dwelling.

Height of a hedge. The vertical distance from the base of the trunk to the topmost shoot.

Orientation. The compass direction of a line on plan from the obstructed garden to the hedge and at right angles to the line of the hedge.

Annex 3: A Spreadsheet to calculate action hedge height

Measure distances in metres	Quantities you measure/ look up	Quantities you calculate
GARDEN *If the garden is not rectangular, or the hedge is shorter than the boundary on which it grows, enter -* Area of garden (see section 4.2 and 7.ii.a)	A	
Effective hedge length (see Figure 3)	B	
and calculate the effective garden depth. *Otherwise enter -* Effective garden depth		(A ÷ B) C
Orientation Factor from Table 1 (section 4.2) (depends on compass direction of hedge from garden)	D	
Uncorrected action hedge height		(C x D) E
Hedge set back from boundary (section 4.3.1) If hedge over 1 metre back from boundary, enter distance between boundary and nearest part of hedge else enter zero.	F	
Slopes (section 4.3.2) Distance between hedge and reference point for slope calculation		(C ÷ 3) G
If garden slopes, enter height that a point in the garden G metres away from hedge is above the base of hedge (negative number if hedge is higher). If flat enter zero	H	
Corrected action hedge height for garden		(E + F + H) J
WINDOWS *Measurements* Closest distance from hedge to centre of window (section 5)	K	
If hedge opposite window (or to south side of a window that faces within 30 degrees S of E or W) write 2 here If hedge at right angles to window, write 1 here If hedge at 45 degrees to window, write 1.5 here	L	
Uncorrected action hedge height for windows		(K ÷ L) + 1 M
Amendments Enter height of floor above ground, else enter zero	N	
If site sloping or stepped, enter height of base of window wall above base of hedge (negative number if hedge is higher) else enter zero	P	
Corrected action hedge height for windows		(M + N + P) Q
OVERALL ACTION HEDGE HEIGHT (Lowest of J and Q, or 2 if greater)		

EXAMPLE CALCULATION (Section 6, Figure 10)

Measure distances in metres	Quantities you measure/ look up	Quantities you calculate
GARDEN		
If the garden is not rectangular, or the hedge is shorter than the boundary on which it grows, enter -		
Area of garden (see section 4.2 and 7.ii.a)	75 A	
Effective hedge length (see Figure 3)	9 B	
and calculate the effective garden depth.		(A ÷ B)
Otherwise enter - Effective garden depth		8.33 C
Orientation		
Factor from Table 1 (section 4.2) (depends on compass direction of hedge from garden)	0.25 D	
		(C x D)
Uncorrected action hedge height		2.08 E
Hedge set back from boundary (section 4.3.1)		
If hedge over 1 metre back from boundary, enter distance between boundary and nearest part of hedge else enter zero.	0 F	
Slopes (section 4.3.2)		(C ÷ 3)
Distance between hedge and reference point for slope calculation		2.78 G
If garden slopes, enter height that a point in the garden G metres away from hedge is above the base of hedge (negative number if hedge is higher). If flat, enter zero	0 H	
		(E + F+ H)
Corrected action hedge height for garden		2.08 J

WINDOWS		
Measurements		
Closest distance from hedge to centre of window (section 5)	5 K	
If hedge opposite window (or to south side of a window that faces within 30 degrees S of E or W), write 2 here If hedge at right angles to window, write 1 here If hedge at 45 degrees to window, write 1.5 here	2 L	
		(K ÷ L) + 1
Uncorrected action hedge height for windows		3.5 M
Amendments		
Enter height of floor above ground, else enter zero	2.7 N	
If site sloping or stepped, enter height of base of window wall above base of hedge (negative number if hedge is higher) else enter zero	0 P	
		(M + N + P)
Corrected action hedge height for windows		6.2 Q

OVERALL ACTION HEDGE HEIGHT (Lowest of J and Q, or 2 if greater) **2.08**

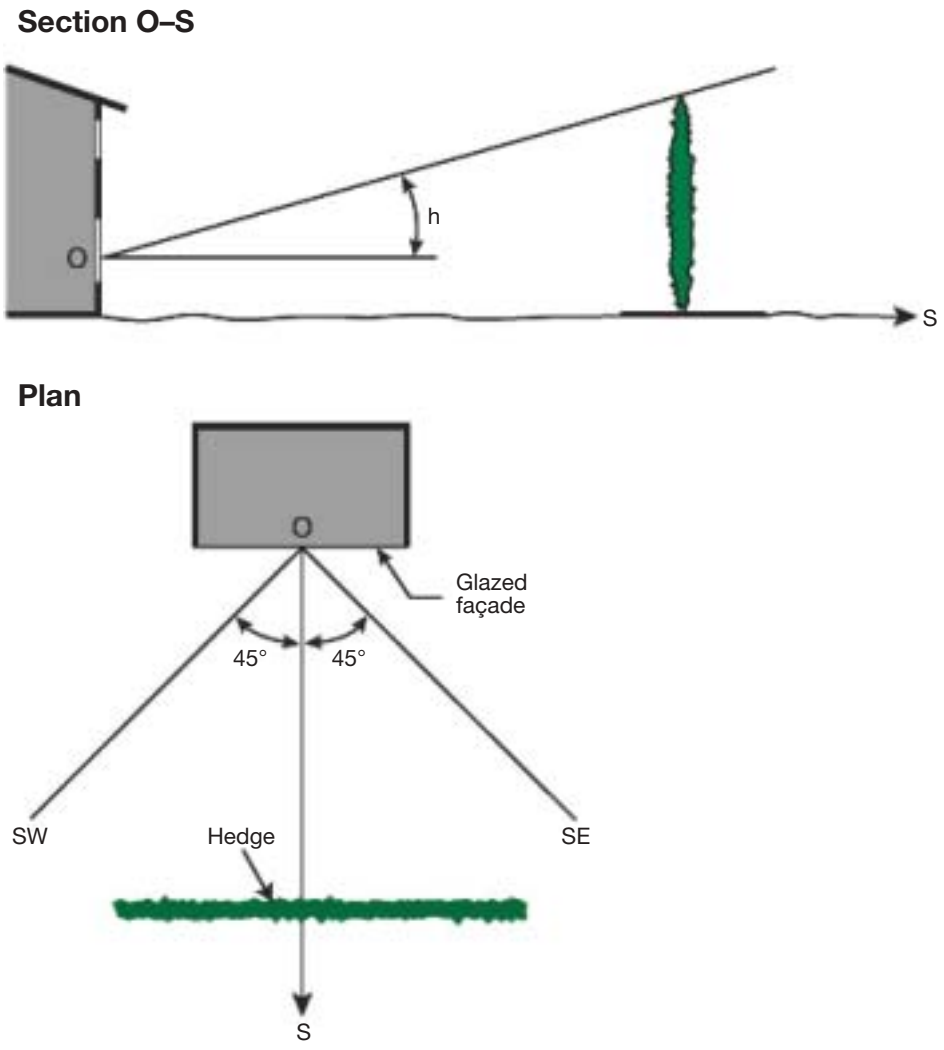
Annex 4: Solar energy

If a hedge might block sunlight to solar features in a specially designed or modified dwelling, a lower action hedge height may be necessary.

Passive solar houses can exploit the sun's heat to give energy savings. These would normally be characterised by a main window wall facing within 30 degrees of due south, significantly larger windows on the south facing wall compared to the north facing one (or a collecting device like a Trombe wall or thermosyphon (ref 1)), provision of thermal mass to store heat, and heating controls to make sure the solar energy is utilised. To be classed as a passive solar dwelling rather than one which happens accidentally to have large windows, some evidence of design intent would be helpful (for example guidance to homeowners on the operation and maintenance of the solar features).

The BRE Reports 'Site layout planning for daylight and sunlight: a guide to good practice' (ref 2) and 'Environmental site layout planning' (ref 3) give guidance on obstruction of passive solar dwellings. This is summarised in figure 14.

Figure 14. For passive solar access, the area of sky between south east and south west is important. Obstructions in this zone should not exceed the critical angle h. For UK latitudes, h = (70° – latitude)



Reference 3 explains that the key area for solar access in winter lies within 45° of due south. This means that hedges to one side of the window are unlikely to have a substantial effect. Hedges opposite the window, however, will block solar access if they subtend more than the critical angle h to the horizontal measured from the centre of the window. A value of h = (70°-site latitude) (ref 3) is recommended. This would give an obstruction angle of 18.5° in the London area and 14° in Edinburgh or Glasgow.

Example. A passive solar dwelling is situated in Manchester (53.5°N). It has a 'solar wall' facing due south. The centre of the solar collecting glazing is 1.5 metres above the ground. The boundary on which the hedge stands is 15 metres away. The action hedge height would be 1.5 + 15 tan (75°-53.5°) = 1.5 + 15 tan (16.5°) = 5.94 metres.

If the base of the hedge (where the trunks meet the ground) is higher than the base of the window wall, subtract this height difference from the calculated action hedge height. If the base of the hedge is lower, add the height difference to the calculated action hedge height.

Where the hedge is set back from the boundary by at least one metre, the distance from the window should be measured to the hedge, not the boundary. Section 5.5 'Special cases' explains how to measure this distance.

Active solar thermal installations use solar collectors with pumps or fans to provide water or space heating. A typical example is the roof mounted solar panel filled with water, usually used to provide water heating. Photovoltaic panels generate electricity directly from the sun's radiation.

Where a roof mounted solar panel is provided, or a solar heating system serves a swimming pool and the solar collector cannot be easily relocated, the action hedge height should be set so that the hedge does not cast a shadow over the solar panel during the hours between one hour after sunrise and one hour before sunset. For an outdoor swimming pool this would apply only to the period between 21 March and 21 September. A sunpath diagram such as the BRE sunlight availability protractor (ref 4) can be used to check this.

References.

1. J R Goulding, J O Lewis and T C Steemers, 'Energy in architecture' Batsford/CEC, London, 1992.

2. P J Littlefair 'Site layout planning for daylight and sunlight: a guide to good practice' BRE Report BR 209, CRC, Garston, 1991.

3. P J Littlefair et al 'Environmental site layout planning' BRE Report BR 380, CRC, Garston, 2000.

4. 'Sunlight availability protractor' CRC, Garston, 2000.

The aim of this document is to provide an objective method for assessing whether high hedges block too much daylight and sunlight to adjoining properties, and to provide guidance on hedge heights to alleviate these problems.

This guidance introduces the concept of ‘action hedge height’ above which a hedge is likely to block too much light. The procedure is intended to be simple enough for all householders to use.

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9 781851 127078

(N.B. The Treasury and Resources Department notes that the proposed claimant application fee will cover the Environment Department's costs in assessing and determining complaints. It is envisaged that any costs incurred by the Policy Council in determining an appeal which are in excess of those that can be met from the appeal fee will be funded within the overall Policy Council's Cash Limit. If legal aid expenditure rises, this formula led budget will be increased accordingly, funded by a reduction in the Budget Reserve.)

(N.B. The Policy Council supports the proposals contained in this Policy Letter and is of the view that the controls in respect of high hedges and trees should be introduced and that the Law Officers should be instructed to prepare the necessary legislation.)

The States are asked to decide:-

XXI.- Whether, after consideration of the Policy Letter dated 28th April 2015, of the Environment Department, they are of the opinion:

1. To introduce controls in respect of high hedges and trees having adverse effects on neighbouring property as set out in that Policy Letter.

2. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

HOUSING DEPARTMENT

HOUSING (CONTROL OF OCCUPATION) (GUERNSEY) LAW, 1994
VARIATION TO THE HOUSING REGISTER

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

7th May 2015

Dear Sir

1. Executive Summary

The purpose of this report is to seek approval for the preparation of an Ordinance (under section 52 of the Housing (Control of Occupation) (Guernsey) Law, 1994) ("the 1994 Law") to amend the Housing Register to facilitate the inscription of three dwellings being created on the site of the former La Salerie Inn, La Salerie, St Peter Port, in Part A of the Housing Register (i.e. onto the 'Open Market').

2. Background

Since the commencement of the Housing (Control of Occupation) (Guernsey) Law, 1982, the Housing Register has been closed for new inscriptions by the Housing Department[1]. However, section 53 of the 1994 Law provides that the States may, by Ordinance, permit the Housing Department to inscribe any dwelling in Part A (or Part B) of the Housing Register.

On 14th March 2001, the States approved proposals from the then Housing Authority for the inclusion of Open Market accommodation in prestigious or important developments[2].

The proposals were summarised in that States Report as follows:

1. *The policy would not apply to small one-off sites or single dwellings.*

2. *It can apply to sites:*

[1] Section 30 of the Housing (Control of Occupation) (Guernsey) Law, 1994 refers
[2] Billet d'Etat III 2001 page 188 refers.

- *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: 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.

3. The former La Salerie Inn, La Salerie, St Peter Port

Seahorse Limited has been given planning permission by the Environment Department to provide twelve residential units on the site of the former La Salerie Inn, La Salerie, St Peter Port.

Seahorse Limited is seeking the 'transfer' of three Open Market inscriptions in order that three of the twelve new apartments on this site can be inscribed in Part A of the Housing Register under the terms of the policy referred to above (hereafter referred to as "the Policy").

The site in question is situated within the area referred to as 'The Glategny MURA' and, overall, well in excess of 100 new dwellings have been created across the various developments that have taken place within this MURA.

In respect of this particular development, three inscriptions are being sought, and this is less than one third of the number of dwellings being built on the site. The Developer has also confirmed its intention to delete three dwellings from Part A of the Housing Register in exchange for the three new inscriptions on this site so that, overall, there is no numerical loss to the Island's Local Market housing stock as a result of this request.

It should be noted that, under the provisions of section 33 of the 1994 Law, any dwelling deleted from the Housing Register at the request of the owner cannot thereafter be re-inscribed in the Register.

The Developer's request sits squarely within the Policy approved by the States in 2001, and it should also be noted that the Developer has confirmed that, in as much as it is able given the limitations of the site, it has applied Lifetime Homes Standards to the construction of these twelve apartments, all of which have two bedrooms.

4. Proposals

Accordingly, the Department asks the States to agree in principle that they will be prepared to approve an Ordinance allowing it, on application being made by the owners in the appropriate manner, to inscribe the three dwellings to be referred to as numbers 8, 9 and 10, La Salerie Apartments, La Salerie, St Peter Port, which are being developed by Seahorse Limited, in Part A of the Housing Register.

It should be noted that the inscription of the three dwellings cannot take place until such time as the building works on this site have progressed to the extent that the Department is content, as a result of a site inspection, that the three dwellings to be inscribed can be classified as 'dwellings', as defined by section 71(1) of the 1994 Law, that is to say until they are useable for the purposes of human habitation.

5. Consultation with the Law Officers of the Crown

The contents of this report have been discussed with the Law Officers of the Crown.

6. Principles of Good Governance

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

7. Recommendations

In light of all of the above, the Housing Department recommends that the States agree that an Ordinance be prepared, in accordance with section 52 of the Housing (Control of Occupation) (Guernsey) Law, 1994, to permit the Department to inscribe individually in Part A of the Housing Register three apartments, to be known as numbers 8, 9 and 10,

La Salerie Apartments, La Salerie, St Peter Port, on the former La Salerie Inn site, subject to:

(i) application being made by the owners within 6 months from the commencement date of the Ordinance; and

(ii) three Open Market Part A dwellings located elsewhere in the Island first being deleted from Part A of the Housing Register at the request of the owner of each of those dwellings, provided each of the dwellings is either unoccupied or occupied by an unrestricted qualified resident.

Yours faithfully

D B Jones
Minister

M P J Hadley
Deputy Minister

B J E Paint
P R Le Pelley
P A Sherbourne
States Members

D R Jehan
Non States Member

(N.B. As there are no resource implications in this Policy Letter, 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 report complies with the Principles of Good Governance as defined in Billet d'État IV of 2011.)

The States are asked to decide:-

XXII.- Whether, after consideration of the Policy Letter dated 7th May, 2015, of the Housing Department, they are of the opinion to agree that an Ordinance be prepared, in accordance with section 52 of the Housing (Control of Occupation) (Guernsey) Law, 1994, to permit the Department to inscribe individually in Part A of the Housing Register three apartments, to be known as numbers 8, 9 and 10, La Salerie Apartments, La Salerie, St Peter Port, on the former La Salerie Inn site, subject to:

(a) application being made by the owners within 6 months from the commencement date of the Ordinance; and

(b) three Open Market Part A dwellings located elsewhere in the Island first being deleted from Part A of the Housing Register at the request of the owner of each of those dwellings, provided each of the dwellings is either unoccupied or occupied by an unrestricted qualified resident.

TREASURY AND RESOURCES DEPARTMENT

FORT RICHMOND – ADDITION TO PART A OF THE HOUSING REGISTER ONCE CONVERTED

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

8th May 2015

Dear Sir

1. Executive Summary

i. Fort Richmond is an empty historic property in States' ownership that offers an opportunity for private investment to give it new life and purpose. Indeed, the best way to ensure the protection and regeneration of the Fort itself is through such investment, so securing its future viability and long term use. Its sale also presents an opportunity to generate capital funds for the public purse.

ii. The Fort consists of land, buildings and other archaeological features. The most prominent element is a mid-19th century fortified barrack block. Further details setting out the history of the Fort are set out in Appendix 2.

iii. In November 2007 the States agreed to sell Fort Richmond as it was not required for future service delivery or strategic objectives. This is in accordance with the States' property rationalisation strategy. The location and historic nature of the property has required significant preparatory work to regularise boundaries and formally establish the significance of the Fort prior to its disposal.

iv. The Treasury and Resources Department ('the Department') proposes that the property be offered for sale for residential use with an undertaking from the States that, following its conversion into residential accommodation, Fort Richmond will be inscribed in Part A of the Housing Register[1]. That will reduce the limitations on the number of possible purchasers and also

[1] Under the provisions of The Housing (Control of Occupation) (Guernsey) Law, 1994, inscription in the Housing Register applies only to dwellings. Section 71 of the 1994 Law defines a dwelling as *"any premises or any part of any premises used or usable for the purposes of human habitation ".*

increase the potential sale price. The scope for marketing this property needs to be as diverse as possible for such a unique property to attract the attention of the right buyer. By ensuring that the property could, once converted, be occupied by persons without limitation by residential qualifications, the true potential of this building should be realised. It is considered that the current most attractive proposition for purchasers is the potential to create one single imposing dwelling, rather than multiple dwellings.

2. Strategic Context

i. During the past ten years, there have been a number of States' decisions regarding property management which are relevant to the sale of Fort Richmond and its transfer to the Part A of the Housing Register.

ii. In 2006, the States approved the Department's recommendations on the management and administration of the States' property portfolio – including a Rationalisation Strategy, which in turn led to a further resolution in November 2007, when the States resolved [2] "*To approve the disposal by sale or lease … of (a) Vale Mill; (b) Fort Richmond; (c) Nelson Place.*"

iii. In 2009 the States considered the Department's Corporate Property Plan and approved its States-wide application. The plan states that "*in order to maximise the potential of the sale of substantial and prestigious properties the Department considered that the greatest benefit for the community would be obtained by selling them as Open Market properties.*" [3]

iv In 2010, the Department recommended the streamlining of processes to dispose of historic properties owned by the States[4]. The recommendation included a copy of the Historic Sites Strategy [5] (dated November 2006) – produced by the Treasury and Resources, Environment and Culture and Leisure Departments. That Strategy includes the topic of disposals. It recognised that "*use gives value to buildings, and is usually the best way of securing their long-term future*." It states that there is a presumption in favour of disposing of heritage assets that do not meet defined retention criteria, "*rather than their remaining under-used or un-used*." A primary objective in disposing of the properties is securing their long-term future. Fort Richmond does not meet the retention criteria as set out in the Historic Sites Strategy.

v. Further details of the relevant States decisions supporting the Strategic Context for the disposal of Fort Richmond are set out in Appendix 1.

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[2] Resolution XI.2, Billet d'État XXIV, 2007: 30 November 2007

[3] This quote from p1801 of Treasury and Resources Department – 'Corporate Property Plan', Billet d'État XXIV, 2009 (p1784 et seq)

[4] Treasury and Resources Department – 'Sale or Lease of States Properties of Historic Importance', Billet d'État XXIII, 2010 (p1677 et seq)

[5] p1682 et seq of 2010 Report

3. Private Sale of Fort Richmond

i. When sold into private ownership, the property would still be protected from inappropriate or unsympathetic development by its classification as a protected monument (in part) and as a protected building (the other part) and by the Island's extant planning legislation (see Appendix 4).

ii. Advantages for the property include investment in the fabric and structure of the buildings which would enable preservation, restoration and rejuvenation of the property. The States of Guernsey would divest itself of responsibility for maintenance and repair. The new owner would acquire a special property in a prominent coastal setting and have the opportunity to develop a unique dwelling on the site. The monies generated from the sale would be maximised by its ability to be added to Part A of the Housing Register once converted.

4. Housing Register Considerations – the 'Open Market'

Part A of the Housing Register – 'Open Market' dwellings

i. The Housing Register is a list, maintained by the Housing Department, of Open Market dwellings. Dwellings listed on the Housing Register are exempt, to varying degrees, from controls in terms of who may occupy them. Part A of that Register is for private houses and flats. It is recognised that Open Market dwellings can generally command a higher price than Local Market dwellings given that those are limited in number and that there are fewer controls in place in respect of who may occupy them.

ii. The Housing Register is currently governed by The Housing (Control of Occupation) (Guernsey) Law, 1994 (as amended), together with relevant Ordinances. Section 52 of the Law allows the States, by Ordinance, to inscribe any dwelling in Part A of the Housing Register should they so wish. In 2013, the States resolved that the 1994 law will "*remain in force until 31 December 2018 or until such time as a new population management regime and related legislation is in place, whichever is the sooner*." [6]

iii. Other than by States' Resolution, the Housing Register has been closed to new inscriptions since the commencement of The Housing (Control of Occupation) (Guernsey) Law 1982. The criteria against which requests for new inscriptions are considered are defined in 'the MURA Policy', which can be applied to sites outside the Island's three MURAs "*where there are other **strategic** issues*."[7] The MURA policy is set out in Appendix 5.

[6] Resolution 43 relating to Billet d'État XI, 2013: 28 June 2013
[7] Billet d'Etat III 2001 page 188 refers

iv. As with any other policy, there might be occasions when there is good reason to deviate from the criteria of the 'MURA Policy'. Indeed, the 2014 decision of the States to inscribe further dwellings within a particular residential development in Part A of the Housing Register meant that the number of Open Market dwellings on that site increased beyond the cap set by the 2001 Policy. In its 2014 Report[8], the Housing Department stated, *"Whether or not to deviate from the Policy is entirely a matter for the States. No policy ought to be followed so slavishly that requests falling beyond the bounds of the policy are dismissed out of hand, but rather [such] requests … need to be considered on their merits."* [9] The Housing Department also said that, *"…. although it is impossible to make any meaningful projections about the extent of any 'knock-on' fiscal and economic benefits that might accrue to the Island either from newcomers to the Open Market or from a chain of movements in the Island's property market, it remains a fact that whilst these units remain mismatched to the requirements of potential purchasers, they will remain unsold and the fiscal benefits that will accrue to the States upon their sale and fit-out, and any wider economic benefits that would ordinarily follow, will be delayed."* [10]

v. The Treasury and Resources Department supported the proposal for that privately-owned site and commented that, *"… until the properties are sold, no [fiscal and economic] benefits will be realised. Notwithstanding that the potential benefits cannot be quantified, it is anticipated that they will be positive ..."* [11]

vi. All of the above comments set out in paragraphs (iv) and (v) can be applied to this current proposal in relation to Fort Richmond.

5. Proposal that Fort Richmond becomes an Open Market dwelling

i. The global economic crisis of 2008-9 and the changes to the Economic and Taxation Strategy in 2006 mean that, more than ever, the States have limited financial resources and must use them carefully. Therefore, the Department believes it is important that the possibility of maximising income for the public purse is of the utmost importance. The Department considers that the greatest benefit for the community would be obtained by offering Fort Richmond for sale with an assurance that, once converted into a habitable dwelling, it can be inscribed in Part A of the Housing Register.

[8] Housing Department – 'Housing (Control of Occupation) (Guernsey) Law, 1994 Variation to the Housing Register', Billet d'État XVI (Vol.2), 2014 (p1879 et seq)
[9] Section 5 of the Housing Department's 2014 Report (p1883)
[10] Section 7 of the Housing Department's 2014 Report (p1883)
[11] Treasury and Resources Department's comment on Housing Department's 2014 Report (p1888)

ii. Fort Richmond's sale price is likely to be higher if it is offered as a potential Open Market dwelling than if it were a Local Market dwelling or used for non-residential purposes. The likelihood of successfully selling the property is increased as the opportunity to obtain this unique building would be available to a wider range of potential purchasers wishing to occupy the property following its redevelopment. There is a greater probability that the purchaser will have the funds necessary to restore, update and convert the property to an imposing residence if it is sold with the certainty of Open Market Part A status following its conversion. Estate Agents have highlighted that without an Open Market inscription the property may prove more difficult to sell.

iii. The 1994 Housing Control Law's primary purpose is to preserve a stock of Local Market housing for occupation by Qualified Residents and existing Housing Licence holders. It is to ensure that there is no loss to the Local Market housing stock that the 'MURA Policy' envisages a compensatory deletion from the Housing Register for each new inscription. The number of Local Market dwellings would not be reduced if Fort Richmond were to be converted from an unused property that does not, at present, have residential use, to an Open Market residential dwelling. It is also accepted that, were it to be sold without an inscription, the Local Market would no doubt gain a dwelling. On balance, the benefits to the States of offering Fort Richmond for sale with the potential to become an Open Market dwelling far outweigh any perceived loss to the Local Market housing stock from doing so.

iv. In its 2001 States Report reviewing the Open Market, the Housing Department (the 'Housing Authority' at that time) acknowledged that there may be, "***strategic*** *grounds*" other than housing needs which could justify the expansion of the Open Market. It suggested that those arguments should be, "*… at the instigation of a body other than the* [then named] *Housing Authority. If, for example, it is desirable to increase the number of Open Market dwellings in order to increase revenue income then that should not be an initiative of the Authority.*" [12]

v. In order to inscribe Fort Richmond in Part A of the Housing Register, it will be necessary to rescind (or at least amend) a Resolution [13] from 2007 which specified that the Housing Department's report exploring the feasibility of expanding the size of the Open Market by adding States-owned properties to the Housing Register had to be considered by the States' first (Resolution 4(b) in Appendix 6). At the time that Resolution was made, it was intended that the report would have been placed before the States by no later than September 2008. However, as was explained to the States in a Statement

[12] Housing Department – 'Review of the Open Market', Billet d'État III, 2001 (p188 et seq). This quote taken from Section B of that Report, p189.
[13] Resolution 4(b) relating to Item XI, Billet d'État XXIV, 2007: 30 November 2007

from the Housing Minster in September 2008, the formation of the Policy Council's Population Policy Group following the 2008 General Election, and the decision that its work would include issues relating to the Open Market, resulted in the Housing and Treasury and Resources Departments agreeing that any such report would, of necessity, be delayed until such time as matters relating to the operation of the Population Management regime had been debated.

vi. Notwithstanding the above, given amongst other things the ongoing maintenance costs and opportunity to raise revenue from the sale of Fort Richmond it is thought to be entirely appropriate to commit to transfer the property to Part A of the Housing Register.

6. Planning Considerations and Potential as a Private Residence

Planning Use Class – Change to 'Residential'

i. The Department proposes to sell Fort Richmond as a private residential property capable of inscription in Part A of the Housing Register. Key to this proposal is to ensure that the property has a Use Class which permits residential use under The Land Planning and Development (Use Classes) Ordinance, 2007.

ii. Fort Richmond is included within the Rural Area Plan. The headland on which it is situated is designated as an 'Area of High Landscape Quality'.

iii. Pre-application discussions concerning future use and design and conservation issues have taken place with the Environment Department.

iv. Following the above, an application to the Environment Department has been made which seeks planning permission to convert the building to residential use.

v. It will be necessary for the Environment Department to give permission for works to the protected building and protected monument which together form Fort Richmond and for the building and its curtilage to become residential before Open Market registration can be obtained.

7. Consultations

i. Consultations have taken place between representatives of the Housing and Treasury and Resources Departments and it was agreed that a States' Report would be prepared to recommend the inscription of Fort Richmond on the Housing Register as an Open Market property. A letter of comment from the Housing Department is appended (Appendix 3).

ii. Consultation has also taken place with other Departments and feedback received from them has been incorporated into the body of this report where appropriate.

iii. The contents of this report have been discussed with the Law Officers of the Crown. They have confirmed that should the States resolve to permit an inscription on Part A of the Housing Register in accordance with the recommendation, an Ordinance will be required.

8. Drafting of Legislation

i. If the States of Deliberation resolves to permit Fort Richmond to be inscribed in Part A of the Housing Register, there will be a requirement, as noted above, to prepare an Ordinance as this is the only mechanism via which to achieve the necessary variation to the Housing Register. The Law Officers of the Crown have advised this is a relatively standard and short piece of drafting for them to undertake.

9. Resource Implications

i. If the Fort were to remain in States' ownership the cost of repairs and essential maintenance would inevitably increase over time. This would, for example, include replacement of some of the roof covering as well as periodic grounds' maintenance. Furthermore, over the medium to longer term it would be inevitable that other significant parts of the external envelope would deteriorate beyond the point of cost effective repair and replacement would be required. If the Fort were not sold the costs of carrying out the works would need to be funded by reducing spend on other States' properties, which are used daily to deliver services to the public.

ii. As regards the capital income receipt, in recent years the capital proceeds arising from the disposal of States' property assets have been transferred to the capital reserve, including those from the sale of Belvedere House and Nelson Place. The funding for the States Capital Investment Portfolio includes allowance for receipts from property sales. In 2007, the States approved that the net proceeds of the sale of Fort Richmond should be treated as capital income and credited to the General Revenue Account. It was agreed that the funds would be available to fund the States' capital expenditure or for the transfer to Reserves as appropriate. It is, therefore, recommended that the net capital proceeds from the sale of Fort Richmond be transferred to the Capital Reserve.

iii. There are no additional financial or staff resource implications for the States associated with the proposals and recommendations set out in this Report. No additional staff members need to be employed in order to implement the recommendations. The preparation for the property's sale will require time

from existing staff and property professionals, the cost of which will be recovered from the sale price.

10. Principles of Good Governance

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

11. Recommendations

The Department therefore recommends the States to:

i. Note that the inscription of Fort Richmond in Part A of the Housing Register will be a deviation from the policy statement, commonly referred to as the "MURA Policy", approved by the States in Resolution VIII.2 of Billet d'Ētat No. III of 2001.

ii. Approve the inscription of Fort Richmond in Part A of the Housing Register as an exception to Resolution XI.4(b) of Billet d'Ētat No. XXIV of 2007.

iii. Instruct the Housing Department (or whichever arm of Government is managing the Housing Register at that time) to do whatever is necessary to allow Fort Richmond to be inscribed as a unit of accommodation in Part A of the Housing Register following its conversion into a residential dwelling.

iv. Agree that an Ordinance be prepared, in accordance with section 52 of the Housing (Control of Occupation) (Guernsey) Law, 1994, to permit the Housing Department to inscribe in Part A of the Housing Register the property known as Fort Richmond, subject to the Housing Department being satisfied that a usable dwelling for residential purposes has been created.

v Approve that the net capital proceeds from the sale of Fort Richmond be transferred from the General Revenue Account to the Capital Reserve.

vi. Direct the preparation of such legislation as may be necessary to give effect to their above decisions.

Yours faithfully

G A St Pier
Minister

J Kuttelwascher
Deputy Minister

A H Adam
R A Perrot
A Spruce
Mr J Hollis (Non-States Member)

APPENDIX 1

THE STRATEGIC CONTEXT

i. In 2006, the States considered the Department's recommendations on the management and administration of the States' property portfolio – including a Rationalisation Strategy[14]. In February 2006, the States approved the aims and objectives of the Department's Report and directed the Department to "*commence the implementation of that* [property Rationalisation] *Strategy.*" [15] Thereby, the States agreed that disposal of certain buildings should provide "*an economic solution for the States*", and that the Rationalisation Strategy would "*unlock the potential of the property portfolio*" [16].

ii. The Rationalisation Strategy noted that "*the buildings which present the highest liabilities to the States tend to be those which (i) have particularly high costs associated with them (perhaps due to poor condition and/or underinvestment), (ii) are unfit for purpose, and/or (iii) are otherwise inappropriate or unsuitable for the States' needs (due to their size, shape and/or location).*" [17]

iii. In order to restore/convert Fort Richmond from its current state into a viable building, substantial public funding would have to be found. This would only be possible by diverting limited public resources from other priority building repairs. Also because of its size, location and layout Fort Richmond is not suitable for any core States' functions.

iv. In 2007, the Department recommended the sale of properties which were considered surplus to the requirements of the States [18]. In November 2007, the States resolved [19] "*To approve the disposal by sale or lease … of (a) Vale Mill; (b) Fort Richmond; (c) Nelson Place.*" Both Vale Mill and Nelson Place (the former Post Office on Smith Street) have now been sold.

v. In 2009 the States considered the Department's Corporate Property Plan and approved its States-wide application. The plan states that "*in order to maximise the potential of the sale of substantial and prestigious properties the Department considered that the greatest benefit for the community would be obtained by selling them as Open Market properties.*" [20] It was agreed at

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[14] Treasury and Resources Department – 'States' Land and Property – Management and Administration', Billet d'État V, 2006 (p351 et seq)
[15] Resolution 4 relating to Billet d'État V, 2006: 22 February 2006
[16] Paragraphs 5.4 and 5.5, p366, of aforementioned 2006 Report
[17] Paragraph 5.5, p367, of aforementioned 2006 Report
[18] Treasury and Resources Department – 'States Property Rationalisation', Billet d'État XXIV, 2007 (p2300 et seq)
[19] Resolution XI.2, Billet d'État XXIV, 2007: 30 November 2007
[20] This quote from p1801 of Treasury and Resources Department – 'Corporate Property Plan', Billet d'État XXIV, 2009 (p1784 et seq)

that time that one property, Belvedere House, Fort George, could be sold with an undertaking from the States that, once converted into a single dwelling, it could be inscribed in Part A of the Housing Register, in exchange for the deletion of another Part A dwelling in the States' ownership from that Register, so as to offer a compensatory deletion from the Register, that being in line with an earlier Resolution of the States.[21] However, following an amendment from the Housing Department, decisions on further inscriptions in Part A were deferred (the full text of the relevant Resolutions is shown in Appendix 6).

vi. Also in 2009, the Department noted that, with regard to potentially expanding Part A of the Housing Register by inscribing States-owned properties, "*The Treasury and Resources and Housing Departments have jointly and carefully considered this matter. At the present time, a review of the Housing Control regime is being carried out by the Policy Council's Population Policy Group and the findings and recommendations will not be known for some time. For this reason, therefore, the Treasury and Resources Department does not currently consider it appropriate to propose that any States owned properties be inscribed in Part A of the Housing Register. However, as and when the results of the review are made known, the Department might consider it appropriate to return to the States with proposals for certain States owned properties to be so inscribed*." [22]

vii. Whilst the Policy Council's work in this regard is progressing, it is not yet complete. The new Population Management regime will, in due course, replace the Housing Control regime. However, it is the Department's view that such ongoing work need not delay a decision on Fort Richmond. Indeed, the States have resolved to inscribe other privately owned dwellings on the Housing Register whilst work on the new Population Management regime is ongoing. In respect of those Resolutions the Housing Department has ensured, by way of obtaining a disclaimer from the owners/developers of these sites, that the States will not be held liable if it transpires that the building works and thus the completion of the inscription process are not completed within the lifetime of the Housing Control regime. Given that and the likely time required for the development of the Fort Richmond site, it should be noted that the States are again being asked to make a commitment for inscription on part A of the Housing Register, which can only take place once the property is habitable. That might not come to fruition until the new Population Management regime is in place. In this regard, the States is reminded that it has already resolved that "*… an Open Market, largely in its current form, should be retained as part of the new population management regime…*"[23]

[21] Billet d'Etat III 2001 page 188 refers
[22] Treasury and Resources Department – 'Corporate Property Plan', Billet d'État XXIV, 2009 p1802
[23] Resolution 20 relating to Billet d'État XI, 2013: 28 June 2013

viii. In October 2009, the States resolved [24] "*To note the progress made against the previous States' Resolutions of 2006 and 2007 regarding land, property and construction practices*." There was no specific mention of Fort Richmond in the Department's 2009 property Report. However, the States did resolve "*To approve the States-wide application of the Corporate Property Plan [25] as set out in that Report*." The framework of that Corporate Property Plan included a statement that (pp1795-1796) "*Assets will be retained if they are shown to be required for effective service delivery and strategic objectives. Money generated from the sale of any properties can be used to help fund other States' projects as approved under the Capital Prioritisation process*." [26]

ix. In 2010, the Department recommended the streamlining of processes to dispose of historic properties owned by the States [27]. In November 2010, the States resolved [28] "*To delegate to the Treasury and Resources Department the authority to approve such transactions involving the sale or lease of historic properties exceeding 21 years subject to the prior agreement of the Environment Department."*

x. Therefore, the Department can now approve the sale of historic properties such as Fort Richmond, without seeking a decision by the States as long as it has obtained the prior agreement of the Environment Department. This would ordinarily apply to Fort Richmond but in this instance the States had previously decided to sell the property by the extant resolution (*i.e.* in 2007).

xi. The 2010 Report included a copy of the Historic Sites Strategy [29] (dated November 2006) – produced by the Treasury and Resources, Environment and Culture and Leisure Departments. That Strategy includes the topic of disposals. It recognised that "*use gives value to buildings, and is usually the best way of securing their long-term future*." It states that there is a presumption in favour of disposing of heritage assets that do not meet defined retention criteria, "*rather than their remaining under-used or un-used*." A primary objective in disposing of the properties is securing their long-term future. Fort Richmond does not meet the retention criteria as set out in the Historic Sites Strategy.

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[24] Resolutions relating to Item VIII of Billet d'État XXIV, 2009: 29 September 2009

[25] The framework of the Corporate Property Plan for the period 2009-2013 is set out in the 2009 Report. "*The process of reviewing and updating the Corporate Property Plan, and obtaining approval for revisions will be vested with the Treasury and Resources Department, in consultation with other Departments as appropriate. Major revisions will be brought back to the States*." (p1791)

[26] That part of the Corporate Property Plan framework, entitled 'Rationalisation of Surplus Land and Property', also states, " *Property Asset Management Plans will help to ensure that the States holds only those properties that are needed for current or future strategic use. Properties will be identified for alternative use or disposal.*" and "*Changes to the Island economy, evolving public needs, and the way in which Department's* [sic] *carry out their business will be taken into account when reviewing the portfolio with Departments. Strategic, social, planning and environmental issues will be amongst those to be considered, not solely financial issues.*"

[27] Treasury and Resources Department – 'Sale or Lease of States Properties of Historic Importance', Billet d'État XXIII, 2010 (p1677 et seq)

[28] Resolutions relating to Item XI of Billet d'État XXIII, 2010: 24 November 2010

[29] p1682 et seq of 2010 Report

APPENDIX 2

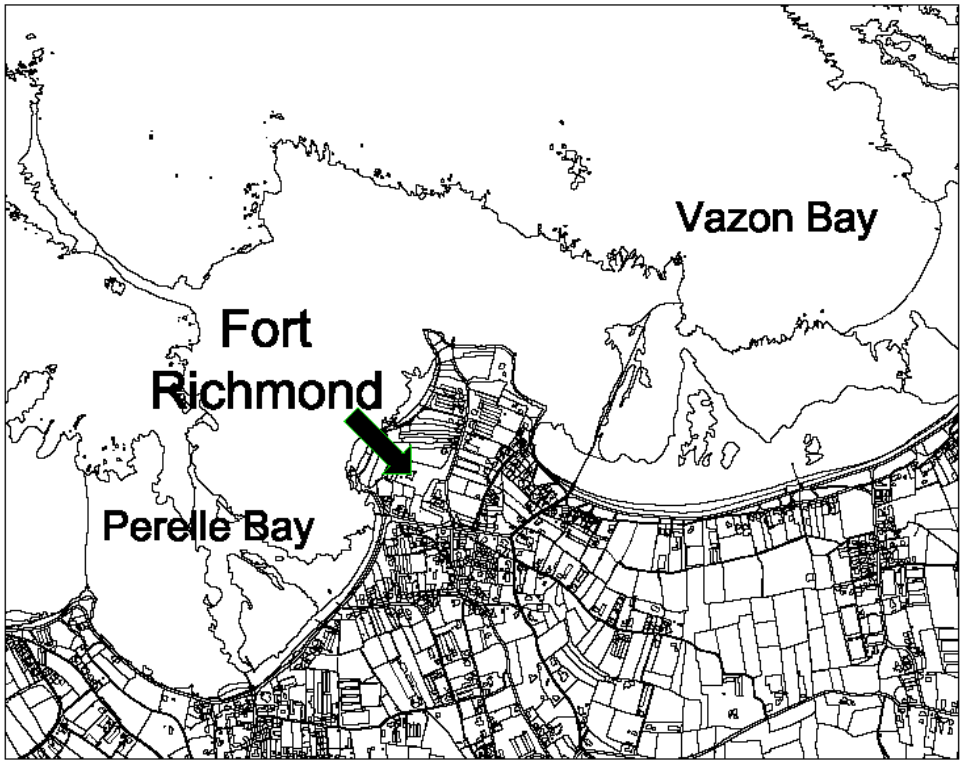
FORT RICHMOND
LOCATION, HISTORY AND CONDITION

Location and Layout

i. Fort Richmond is located on the coastal headland between Vazon and Perelle Bays on the west coast of Guernsey. The most prominent feature is a mid-19th century fortified barrack block. The property also comprises an associated west facing embankment and gun battery. There are fortifications dating from the German occupation of Guernsey during World War II and remnants from other periods. The property is owned by the States of Guernsey and administered by the Department.

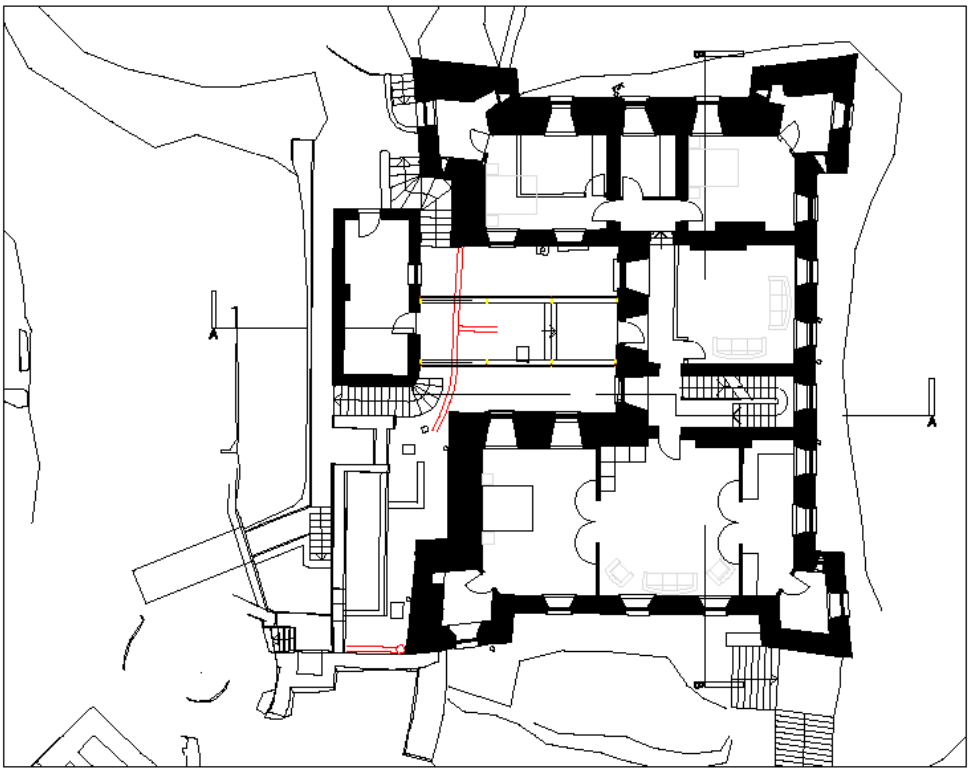
ii. The location of Fort Richmond is shown in Figure 1 below. The site is approximately 8,111 sq m or 40 vergee 38perch and is set the headland between Vazon and Perelle.

iii. Figure 1- Location of Fort Richmond



iv. The layout of the mid-19th century barrack block), is shown in Figure 2 below. The building comprises approximately 644 sqm and is set over two levels.

v. Figure 2 – Layout plan, Fort Richmond



History

vi. There is some limited evidence of human activity at the headland dating back to the prehistoric period. However the most significant remaining features are from the 19th century onwards. Many of these features are now in need of repair and investment to ensure their survival.

vii. A defensive gun battery was constructed at Fort Richmond headland in 1780, to counter the threat of French invasion. The position was upgraded to a defensible artillery barracks and 'Richmond Hill Fort and Barracks' was built in 1856 (there were some later modifications). The Fort never saw any action and by the end of the 19th century it had become disused. Ownership of the site transferred back and forth between the English War Office and the States of Guernsey during the early years of the 20th century.

viii. Fort Richmond has been in the continuous ownership of the States of Guernsey since 1922. From time to time, the States have carried out repairs or modifications to the structure. From the 1920s, the Fort was divided up and used as social housing. It was used as a fortification by the German occupying forces during World War II. The property was used for housing again after the War. Its age, condition and costs for social housing led the Housing Department to transfer responsibility to the Culture and Leisure Department. It was then leased to two different clubs until the mid-1990s. The property, which can be accessed externally by the public, has not been actively used for

over 10 years, but it remains the responsibility of the States to ensure that it is wind and watertight and does not represent an undue hazard.

Historic Importance

ix. Consideration was given to protecting Fort Richmond as a 'Scheduled Ancient Monument' in 1966, but it was only added to the official list in 1983. Part of the site is on the Protected Monuments List and part on the Protected Buildings List. The intention is to safeguard the long-term survival of the most significant aspects of the site. In 2014, the extent of the protected monument and protected building elements of the site was altered and clarified. The relevant Notices are appended to this report under Appendix 4.

x. Re-use of a property such as Fort Richmond is often the best (and sometimes the only) option to preserve a historically significant site. Fort Richmond has historic significance but that does not mean that it must be owned in perpetuity by the States. Also the property is protected by existing planning legislation.

Current Condition

xi. The Treasury and Resources Department has had responsibility for Fort Richmond since late 2005. Repairs and maintenance are managed by States Property Services and the main barracks building is generally weather-tight and sound, but requires regular inspection and minor works to ensure it is kept in that condition. Essential maintenance spending on the building results in inefficient use of limited States resources, diverting funds away from other public buildings that are currently used on a full time basis to deliver key services. Furthermore over the medium to longer terms it is inevitable more significant parts of the external envelope will deteriorate beyond the point of cost effective repair and replacement will be required.

APPENDIX 3

HOUSING
A STATES OF GUERNSEY GOVERNMENT DEPARTMENT

Housing
Sir Charles Frossard House
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St Peter Port, Guernsey
GY1 1FH
Tel +44 (0) 1481 717000
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Deputy G St Pier
Minister
Treasury & Resources Department
Sir Charles Frossard House
La Charroterie
St Peter Port
Guernsey
GY1 1FH

7 May 2015

Dear Deputy St Pier

Amendment of the Housing Register to include Fort Richmond as a Part A dwelling

Thank you for the opportunity to comment on the Treasury and Resources Department's Report via which the States is asked to agree to the inscription of Fort Richmond in Part A of the Housing Register, following its conversion into a dwelling.

Ordinarily, the Housing Department would seek to ensure that priority was given to the creation of Local Market housing, not least because successive Housing Needs Surveys have indicated a shortfall in the supply of units of accommodation to meet the Island's housing needs and sites upon which to create new housing are in limited supply.

Notwithstanding the above, in the case of Fort Richmond the Housing Department recognises that, as parts of the structure are inscribed in the protected buildings and protected monuments lists, options for the future use of this site are limited, and it does not readily lend itself to conversion into multiple units of Local Market accommodation.

Given this, the Housing Department raises no objections to your recommendation that Fort Richmond is, following its conversion to a dwelling, inscribed in Part A of the Housing Register.

Of course, whether to deviate from the States' 2001 Policy (the so-called 'MURA Policy'), which requires a compensatory deletion from the Housing Register, is a matter for the States to decide.

Yours sincerely

D Jones
Minister

POLITICAL RESPONSIBILITIES
Housing Strategy, Corporate Housing Programme, States Housing, Rent Control, Housing Associations (regulation and funding), Residential Homes (Maison Maritaine/Longue Rue House), Housing Control and Right to Work Laws

APPENDIX 4

ENVIRONMENT
A STATES OF GUERNSEY GOVERNMENT DEPARTMENT

The Land Planning and Development (Guernsey) Law, 2005 ("the Law")
ENTRY IN THE PROTECTED BUILDINGS LIST
Pursuant to Section 33 of the Law

Reference Number: E005370000-PB1335

Date of entry in the list: 25/10/1983

Date of amendement of entry in the list: 14/02/2014

Name of Building (if applicable): Fort Richmond

LOCATION: Route De La Marette, St Saviour, Guernsey, GY7 9XB

Extent of Listing: The whole of the building including the barrack block, the guardhouse, artillery store, shifting room, former WCs and the courtyard as referred to above and indicated on the plan below.

Summary of Significance: Fort Richmond is of outstanding historic interest, high archaeological interest and moderate architectural interest, and is the only known example of a fortified barracks associated with its nineteenth century fortifications in Guernsey. There are also assocaited pre Victorian and German Occupation (Stutzpunckt Reichenberg) features of significance.

Site Plan Image:

LOCATION AND EXTENT OF AREA SHOWN IN RED TO BE REGARDED AS PART OF THE PROTECTED BUILDING FOR THE PURPOSES OF CHAPTER 2 OF PART IV OF THE LAW

ENVIRONMENT
A STATES OF GUERNSEY GOVERNMENT DEPARTMENT

The Land Planning and Development (Guernsey) Law, 2005 ("the Law")
ENTRY IN THE PROTECTED MONUMENTS LIST
Pursuant to Section 29 of the Law

Reference Number: PM173

Date of entry in the list : 25/10/1983

Date of amendment of entry in the list: 14/2/14

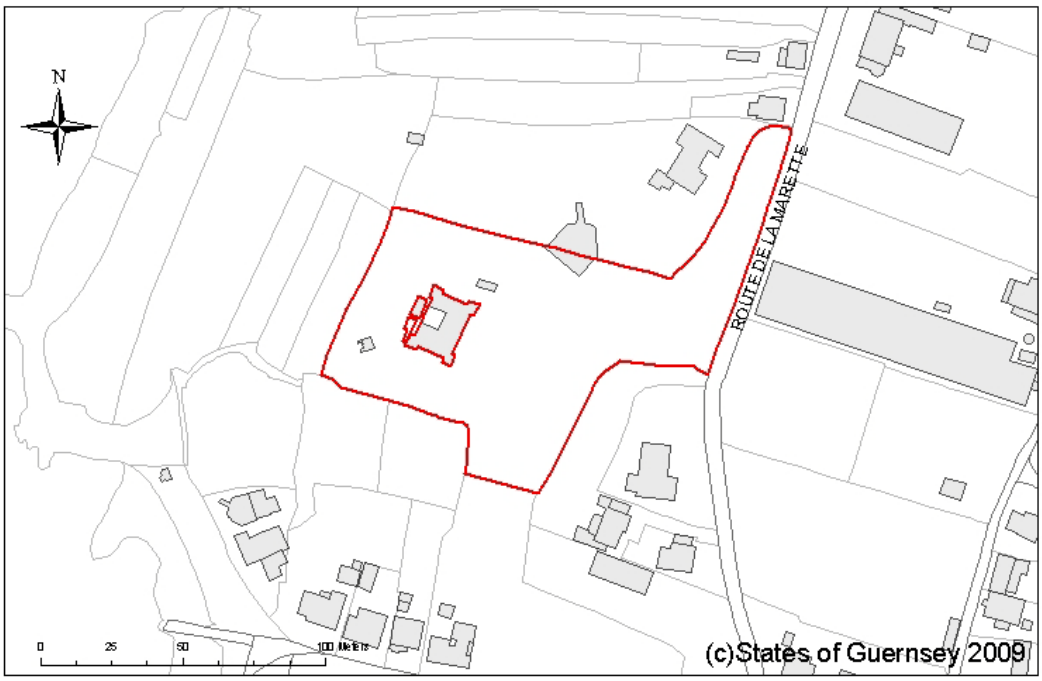
Name/description of monument: Fort Richmond

LOCATION: Route De La Marette, St. Saviour, Guernsey

Extent of Listing: The whole of the exterior and interior of the Fort Richmond site, the moat, gun casement and associated structures in the area referred to above and indicated in the plan below. The barrack block, guardhouse, artillery store, shifting room, former WCs and the courtyard are excluded from the area of the protected monument.

Summary of Significance: Fort Richmond is of outstanding historic interest, high archaeological interest, and moderate architectural interest, and is the only known example of a fortified barracks associated with its nineteenth century fortifications in Guernsey. There are also assocaited pre Victorian and German Occupation (Stutzpunckt Reichenberg) features of significance.

Site Plan Image:



LOCATION AND EXTENT OF AREA SHOWN IN RED TO BE REGARDED AS PART OF THE PROTECTED MONUMENT FOR THE PURPOSES OF CHAPTER 2 OF PART IV OF THE LAW

APPENDIX 5

THE 'MURA' POLICY

EXTRACT FROM RESOLUTIONS & BILLET D'ETAT No. III DATED 9th MARCH 2001
(***emphasis added for this Report***)

IN THE STATES OF THE ISLAND OF GUERNSEY
ON THE 14TH DAY OF MARCH, 2001
The States resolved as follows concerning Billet d'Etat No. III
dated 9th February, 2001
(Meeting adjourned from 1st March, 2001)
STATES HOUSING AUTHORITY
REVIEW OF THE OPEN MARKET

VIII. After consideration of the Report dated the 29th December, 2000, of the States' Housing Authority:-

1. *To note that the States' Housing Authority does not recommend any legislative measure directly to expand or contract the size of the Open Market.*
2. ***To approve the policy statement set out in section C of that Report,*** *subject to the modification that the term "qualified resident" used in point 5 of that policy statement shall be construed as excluding persons subject to restrictions under Part V of the Housing (Control of Occupation) (Guernsey) Law, 1994.*

The approved policy statement referred to in Resolution VIII.2 above (commonly referred to as the 'MURA Policy') is as follows:

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 a 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 - 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.

APPENDIX 6

EXTRACT FROM RESOLUTIONS

(***emphasis added for this Report***)

In the States of the Island of Guernsey
on the 30th November, 2007
(meeting adjourned from 29th November 2007)
The States resolved as follows concerning Billet d'État No XXIV
dated 9th November 2007

TREASURY AND RESOURCES DEPARTMENT
STATES PROPERTY RATIONALISATION

XI. - After consideration of the Report dated 25th October, 2007, of the Treasury and Resources Department:-

1. To note the progress made on the Rationalisation Strategy to date as set out in that Report.

2. ***To approve the disposal by sale or lease***, as set out in Section 2 of that Report, of:

   (a) Vale Mill;
   (b) ***Fort Richmond***;
   (c) Nelson Place.

3. ***To direct the Housing Department, in conjunction with the Treasury and Resources Department, to review all the issues, advantages and disadvantages of expanding the Open Market by inscribing States-owned properties and to report back to the States with their findings and any recommended policy changes by not later than September 2008.***

4. (a) To direct that an Ordinance be prepared to enable the Housing Department to inscribe in Part A of the Housing Register by virtue of Section 52 of the Housing (Control of Occupation) (Guernsey) Law, 1994 one dwelling only at Belvedere House, subject to the States-owned property known as "Longacre", Les Baissieres, St Peter Port, being deleted from Part A of the Housing Register.

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

5. TO NEGATIVE THE PROPOSITION to direct that an Ordinance be prepared to suspend the provisions of Section 65(1) of the Housing (Control of Occupation) (Guernsey) Law, 1994 in relation to specified properties in the possession or ownership of the States of Guernsey, as set out in that Report.

6. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

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

The States are asked to decide:-

XXIII.- Whether, after consideration of the Policy Letter dated 8th May, 2015, of the Treasury and Resources Department, they are of the opinion:-

1. To note that the inscription of Fort Richmond in Part A of the Housing Register will be a deviation from the policy statement, commonly referred to as the "MURA Policy", approved by the States in Resolution VIII.2 of Billet d'Ētat No. III of 2001.

2. To approve the inscription of Fort Richmond in Part A of the Housing Register as an exception to Resolution XI.4(b) of Billet d'Ētat No. XXIV of 2007.

3. To instruct the Housing Department to do whatever is necessary to allow Fort Richmond to be inscribed as a unit of accommodation in Part A of the Housing Register following its conversion into a residential dwelling.

4. To agree that an Ordinance be prepared, in accordance with section 52 of the Housing (Control of Occupation) (Guernsey) Law, 1994, to permit the Housing Department to inscribe in Part A of the Housing Register the property known as Fort Richmond, subject to the Housing Department being satisfied that a usable dwelling for residential purposes has been created.

5. To approve that the net capital proceeds from the sale of Fort Richmond be transferred from the General Revenue Account to the Capital Reserve.

6. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

HOUSING DEPARTMENT

MINOR CONSTITUTIONAL CHANGES TO THE HOUSING APPEALS TRIBUNAL AND APPOINTMENT OF MEMBERS TO THE HOUSING APPEALS PANEL

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

7th May 2015

Dear Sir

1. Executive Summary

1.1 The Housing Appeals Panel was established in 2005 by the States Housing (Tribunal and Appeals) (Guernsey) Regulations, 2005 ("the regulations") for the purpose of hearing appeals by social housing tenants against decisions of the Housing Department relating to the operation of the rent rebate scheme and other matters concerning States housing. The regulations also apply to relevant decisions of the Guernsey Housing Association (GHA).

1.2 The purpose of this Policy Letter is to ask the States to appoint six new members to the Housing Appeals Panel, including a Chairman and Deputy Chairman, as listed in Section 11.1 (recommendation (c)) and as specified in Appendix 2. As a matter of "housekeeping", the States is also asked to formally acknowledge and accept the resignations of a number of members who were appointed to the Housing Appeals Panel in 2005 but who have since stepped down from their duties (their names are specified in Appendix 1).

1.3 Finally, the States is asked to agree some minor tidying up of the regulations, specifically:

(i) to agree that a minimum number of eight individuals should be maintained to serve the Panel (this is currently unspecified in the regulations);

(ii) to clarify how members of the Panel may resign from their duties, which includes setting a maximum age limit for members of 72 years, with special provisions for continued service to the age of 75 years; and

(iii) to enhance the regulations to introduce maximum time periods for the stages associated with processing a request for an internal review of a decision taken by the Housing Department or GHA.

1.4 The changes specified in 1.3 above, if agreed, bring these provisions in line with similar States' tribunal functions, as described further below in sections 6 and 7.

2. Introduction and background

2.1 If the Housing Department or GHA makes a decision in relation to a tenant or applicant which that person feels is unreasonable, unfair, or against the law, that person has the right to ask the Housing Appeals Tribunal (HAT) to review that decision. Ordinarily, the first step is for an internal review to be carried out within the Department, usually by a senior officer who has not yet been involved in the case. If after an internal review has been carried out the tenant or prospective tenant continues to feel aggrieved by the decision, they can apply to have their case heard by the HAT.

2.2 The Tribunal consists of a panel of independent members who are appointed by the States and who meet as required to hear and determine appeals. The current Panel of 15 members, including a Chairman and Deputy Chairman, was appointed by the States in 2005 as part of a wide review of States house tenancies[1]. Three members from the Panel form a Tribunal to hear each individual case.

2.3 Panel members are paid for their time in accordance with the attendance allowance rates set for non-States Members. This is currently set at £69 per half day.

2.4 In addition to the above, the Housing Department provides administrative support to the Tribunal by way of a Clerk. All costs associated with operating the Tribunal are met from the Housing Department's General Revenue budget.

2.5 Since the inception of the HAT in 2005, the number of active members has dwindled from 15 to six. Having approached the remaining members to ascertain whether they wish to remain on the Panel, four further members, including the Chairman, have indicated a desire to resign at an opportune time, or have reached an age – subject to the States agreeing recommendation (c) of this Policy Letter – where they are no longer able to remain as a Panel member. It is therefore an appropriate time to review the membership of the Panel and to report to the States with a request to approve minor changes to the constitution of the HAT.

[1] Housing Department - 'States House Tenancies' – Billet d'État III 2005

3. Recent Activity of the HAT

3.1 The Housing Appeals Panel has met on very few occasions in recent years, due to there being fewer requests for reviews of decision taken by the Department. The Panel has yet to hear a case relating to a tenancy or allocations decision taken by the GHA, although the same procedures would apply.

3.2 A summary of the number of appeals since 2005 is outlined in Figure 1 below. The 'spike' in 2006 and 2007 coincides with the introduction of the Department's 'Review of Tenancy' policy, where long-standing tenants on higher incomes were directed to leave social housing.

Figure 1: Number of appeals relating to decisions taken by the Housing Department since 2005.

Year	Number of Appeals relating to decisions taken by the Housing Department
2005	1
2006	6
2007	10
2008	2
2009	0
2010	1
2011	0
2012	1
2013	1
2014	0

4. Reducing the number of members serving the Housing Appeals Panel

4.1 In 2005 the States approved the appointment of 15 individuals to the new Housing Appeals Panel, from which three members would be drawn at any one time to form a Tribunal to hear a specific case.

4.2 The appointment of quite a high number of individuals to serve the Tribunal has helped to ensure the availability of members to serve the Panel at all times, particularly during busy periods in 2006 and 2007. However, over time, nine of the original members appointed to the Panel have stood down, for various reasons, by submitting their resignation to the Chairman. Furthermore, the Chairman and three other members wish to step-down from the Panel with immediate effect, or have reached the age where they are no longer able to serve the Panel. The number of members actively available for hearings will therefore reduce to two.

4.3 The current regulations do not specify a minimum number of Members that should form the Panel, but provide that, *'The Panel shall consist of such number*

of persons as in the opinion of the States is necessary for the purpose of hearing and determining appeals against relevant decisions.'[2]

4.4 The Housing Department does not consider that it is necessary to maintain a Panel of 15 individuals to serve the HAT and, having taken legal advice, considers that a minimum number of eight individuals would be sufficient for this purpose. It makes this recommendation on the basis that it does not foresee any circumstance in which it would be unable to recruit the required three Panel members for a hearing based on the activity levels of the Tribunal in recent years.

4.5 The States is asked to agree that the regulations be amended to specify that a minimum number of eight persons must be appointed to the Housing Appeals Panel for the purpose of hearing and determining appeals against relevant decisions (recommendation (a)).

5. Appointing new members to the Housing Appeals Panel

5.1 As described above, of the 15 original members of the Panel who were appointed in 2005, nine members have resigned and a further four members have indicated their intention to step down from the Panel or have reached an age when they are no longer able to serve. The remaining two members have indicated a willingness to be reappointed to the Panel: one for a further period of two years, and the other for a period of four years.

5.2 In recruiting additional members for the Panel, the regulations specify that the following persons are <u>not</u> eligible to be appointed to the Panel:

(a) Members of the States of Deliberation and States of Election;
(b) Members of the States of Alderney and the Chief Please of Sark;
(c) any Constable or Douzenier; and
(d) any Procureur or Overseer of the Poor or a member of a Parochial Outdoor Assistance Board.

5.3 In February 2015 the Housing Department placed an advertisement for new members in the Guernsey Press. Following full consideration of the expressions of interest received against the selection criteria set out for this role, the Department wishes to recommend the appointment of six new members to the Panel, the names of whom are specified in recommendation (c) of this Policy Letter and in Appendix 2.

5.4 As described in Appendix 2, two of the proposed candidates will have limited involvement in the Housing Appeals Panel due to conflicting interests in other areas. The Department sought legal advice about their expressions of interest and was advised that, although a candidate may be excluded from hearing

[2] The States Housing (Tribunal and Appeals) (Guernsey) Regulations, 2005 – Part 1. Section 1

certain cases, they should not be precluded from sitting on the Panel if they have demonstrated that they have the appropriate skills and abilities to do so. The Housing Department is confident that these conflicting interests will not affect the ability of the Tribunal to fulfil its obligations.

5.5 As requested by the recommendations and as described in Appendix 2, the States is asked to approve the re-appointment of the two of the existing members of the Panel. One of those members wishes to be considered for re-appointment for a further two-year period ending on 31st July 2017. It is recommended that the other seven members, including one member who currently serves on the Panel, are appointed/re-appointed for a term of office of approximately four years ending on 31st July 2019.

5.6 Recommendation (c) of this Policy Letter asks the States to approve the proposed list of appointees to the Panel for a specified term of office, and to approve the designation of a Chairman and Deputy Chairman, as described in recommendation (c) and in Appendix 2.

5.7 Paragraph 6.2 below deals with the resignation of the members of the Panel who were appointed by the States in 2005.

5.8 The Housing Department wishes to place on record its grateful thanks to the retiring Panel members for their service in fulfilling the business of the Tribunal since 2005.

6. Specifying how members may resign from the Panel

6.1 The Regulations as presently drafted do not specify how members of the Panel may step down from their duties. To date, those members who have wished to resign have submitted written notification to the Chairman and this has been accepted.

6.2 However, with regard to the resignation of the Chairman, the lack of clarification in the current regulations has placed the Department in a difficult position with regard to the process for accepting this resignation. **Therefore, for the sake of completeness, recommendation (b) has been included in this Policy Letter to ask the States to formally acknowledge the resignation of the individuals appointed to the Panel in 2005 who have resigned from their duties. This includes acknowledgement of the resignation of the Chairman.**

6.3 In order to formalise this position moving forward, and having taken legal advice, the Department considers that it would be helpful for provisions to be introduced into the regulations to clarify the steps that should be taken in the event that members wish to step down from their duties before the natural expiration of their term of office. This will ensure that these regulations are in line with the provisions governing other similar States' functions.

6.4 One particular element of the proposed changes to the regulations is to introduce a maximum age limit beyond which individuals are no longer able to remain members of the Panel. The recommended changes state that there should be an upper age limit for members serving on the Panel, as outlined below, which are the same as the provisions relating to other similar tribunal functions, such as the Guernsey Tax Tribunal.

6.5 Recommendation (d) of this Policy Letter asks the States to agree that the regulations may be amended to clarify that Panel members cease to be members when/if:

- They reach the end of their term of appointment as specified by the States decision which confirmed their appointment;
- They reach the age of 72 years or, if the Royal Court sitting as a Full Court so determines, by reason of special circumstances in any particular case, 75 years;
- They resign from their duties:
    - In the case of the Chairman, they should submit their resignation to the Bailiff; and
    - In the case of any other member, they should submit their resignation to the Tribunal's Chairman.
- They are removed from office by the Royal Court sitting as a Full Court if it appears that they:
    - Have misbehaved in their office;
    - Are incapable of continuing as a member by reason of physical or mental illness;
    - Have been declared insolvent; or
    - Have been unavailable without reasonable cause to sit as a member of the Tribunal for a period in excess of six consecutive months.

7. Introducing maximum time periods associated with an internal review

7.1 If a tenant or prospective tenant disagrees with a decision made by the Department or GHA, the first step would be for an internal review to be carried out by the Department or Association, usually by a senior officer who has not yet been involved in the decision-making process for a particular case.

7.2 At present, Part II of the Tribunal regulations which deals with appeals does not specify the period of time within which the Department must complete the steps associated with an internal review.

7.3 The Department considers that in order to manage an appeal case within a suitable period of time, it would be in the interest of both parties - the Department and the appellant/applicant - for the regulations to specify a maximum period of 28 days in which:

(i) the Department is required to fulfil its obligation to carry out an internal review of a decision;

(ii) an appellant or applicant is required to furnish the Department with additional information and documents as the Department thinks fit; and

(iii) the Department has, from the date of the receipt of any additional information required from the appellant or applicant, further time to complete the internal review.

7.4 Recommendation (e) of this Policy Letter asks the States to agree that Part II of the regulations be amended in such a way as to achieve (i) to (iii) above.

8. Principles of Good Governance

8.1 This Policy Letter is produced in compliance with the principles of good governance. Particularly *'Focusing on the organisation's purpose and on outcomes for citizens and the service user'* and *'Taking informed, transparent decisions and managing risk'*.

9. Resource Implications

9.1 There are no additional resource implications arising from this Policy Letter.

10. Consultation

10.1 The Law Officers' Chambers were consulted in connection with the preparation of this Policy Letter.

11. Recommendations

11.1 The Housing Department recommends the States to:

(a) agree that the Housing Appeals Panel should comprise of a minimum number of eight members and to amend the regulations accordingly;

(b) formally acknowledge the resignations of those 12 individuals appointed to the Housing Appeals Panel by the States in 2005: the names of whom are listed in Appendix 1;

(c) appoint Mrs Natasha Newell as Chairman of the Housing Appeals Panel for a term of office ending on 31st July 2019;

(d) appoint Reverend Mrs Linda Susan Le Vasseur as Deputy Chairman of the Housing Appeals Panel for a term of office ending on 31st July 2017;

(e) appoint Mrs Judith Mary Dyke to the Housing Appeals Panel for a term of office ending on 31st July 2019;

(f) appoint Mrs Patricia Ann Holland to the Housing Appeals Panel for a term of office ending on 31st July 2019;

(g) appoint Mrs Lesley Mary Elizabeth Le Page for a term of office ending on 31st July 2019;

(h) appoint Ms Suzanna Marie Morgan for a term of office ending on 31st July 2019;

(i) appoint Dr Elina Steinerte to the Housing Appeals Panel for a term of office ending on 31st July 2019;

(j) appoint Mr John Martyn Weir to the Housing Appeals Panel, for a term of office ending on 31st July 2019;

(k) approve the introduction into the regulations the means by which members may resign from the Housing Appeals Panel. This includes the introduction of new provisions which specify that Panel members cease to be members when/if:

- They reach the end of their term of appointment as specified by the States decision which confirmed their appointment;
- They reach the age of 72 years or, if the Royal Court sitting as a Full Court so determines, by reason of special circumstances in any particular case, 75 years;
- They resign from their duties:
    - In the case of the Chairman, submitting their resignation to the Bailiff; and
    - In the case of any other member, submitting their resignation to the Tribunal's Chairman.
- They are removed from office by the Royal Court sitting as a Full Court if the Court is satisfied that they:
    - Have misbehaved in their office;
    - Are incapable of continuing as a member by reason of physical or mental illness;
    - Have been declared insolvent; or
    - Have been unavailable without reasonable cause to sit as a member of the Tribunal for a period in excess of six consecutive months.

(l) approve an amendment to Part II of the regulations to specify the maximum time period associated with the internal review process, as detailed in paragraph 7.3.

Yours faithfully

D B Jones
Minister

M P J Hadley
Deputy Minister

B J E Paint
P R Le Pelley
P A Sherbourne
States Members

D R Jehan
Non States Member

APPENDIX 1

The States is asked to acknowledge the resignations of the following persons who were appointed to the Housing Appeals Tribunal by the States in 2005:

Mr J Allez (Chairman)
Mrs B Amy
Mrs B Bartie
Mr R Bruce
Mrs J Dyke
Mr J S Guilbert
Mrs A Hood
Mrs V Kitts
Mr R Reed
Mr M Roberts
Mrs P Torode
Very Reverend M Trickey
Mr R Watts

APPENDIX 2

Recommended appointees to the Panel

Unless otherwise stated, the States is asked to agree the appointment of the following individuals to the Housing Appeals Panel for a term of office expiring on 31st July 2019.

1. Chairman

Ms Natasha Newell

Ms Newell is a Senior Associate/Barrister with Mourant Ozannes working on complex litigation in the areas of trust disputes and financial services and has previous experience relating to employment law. She is currently studying for the Guernsey Bar exams.

2. Deputy Chairman

Reverend Linda Susan Le Vasseur

Reverend Le Vasseur is currently Deputy Chairman of the Housing Appeals Panel and wishes to be considered for re-appointment in this role for a two-year term of office ending on 31st July 2017.

3. Members

(a) Mrs Patricia Ann Holland

Mrs Holland is currently a member of the Housing Appeals Panel and wishes to be considered for re-appointment for a further term.

(b) Ms Judith Mary Dyke

Ms Dyke is currently a member of the Adoption and Permanence Panel and Fostering Panel and has a good range of skills in challenging complex information and making evidence-based and unbiased decisions.

(c) Mr John Martyn Weir

Mr Weir is currently employed as part-time Manager of Alderney Housing Association (AHA) and is also a member of the Planning Appeals Panel and the Tax on Real Property Appeals Panel. He has a strong real estate and property consultancy background.

Mr Weir's current employment as part-time manager of the AHA means that his role in the Housing Appeals Panel would be limited to hearing cases relating to

decisions taken by the Housing Department only, and in such instances whereby a policy decision does not directly relate to the GHA or AHA.

(d) Mrs Lesley Mary Elizabeth Le Page

Ms Le Page is a former Principal of Blanchelande College and acted as Child Protection Officer for the school. In her professional career, Mrs Le Page was required to make critical judgements without bias or favour, following careful consideration of difficult situations.

(e) Ms Suzanna Marie Morgan

Ms Morgan is currently employed by the Health and Social Services Department as a PA in the family placement service and as Panel Administrator to the Adoption and Permanence Panel. Ms Morgan has a strong social housing background in a variety of tenancy management positions in the UK.

Ms Morgan's currently employment with the States of Guernsey means that her role in the Housing Appeals Panel will be limited to hearing cases relating to decisions taken by the GHA only.

(f) Dr Elina Steinerte

Dr Steinerte is a trained Lawyer with a special research interest in international human rights. Dr Steinerte also has extensive teaching experience at undergraduate and postgraduate level at a number of UK universities.

April 2015

(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 Report complies with the Principles of Good Governance as defined in Billet d'État IV of 2011.)

The States are asked to decide:-

XXIV.- Whether, after consideration of the Housing Department dated 7th May, 2015, of the Housing Department, they are of the opinion:-

1. To agree that the Housing Appeals Panel should comprise of a minimum number of eight members and to amend the regulations accordingly.

2. To formally acknowledge the resignations of those 12 individuals appointed to the Housing Appeals Panel by the States in 2005: the names of whom are listed in Appendix 1 of that Policy Letter.

3. To appoint Mrs Natasha Newell as Chairman of the Housing Appeals Panel for a term of office ending on 31st July 2019.

4. To appoint Reverend Mrs Linda Susan Le Vasseur as Deputy Chairman of the Housing Appeals Panel for a term of office ending on 31st July 2017;

5. To appoint Mrs Judith Mary Dyke to the Housing Appeals Panel for a term of office ending on 31st July 2019.

6. To appoint Mrs Patricia Ann Holland to the Housing Appeals Panel for a term of office ending on 31st July 2019.

7. To appoint Mrs Lesley Mary Elizabeth Le Page for a term of office ending on 31st July 2019.

8. To appoint Ms Suzanna Marie Morgan for a term of office ending on 31st July 2019.

9. To appoint Dr Elina Steinerte to the Housing Appeals Panel for a term of office ending on 31st July 2019.

10. To appoint Mr John Martyn Weir to the Housing Appeals Panel, for a term of office ending on 31st July 2019.

11. To approve the introduction into the regulations the means by which members may resign from the Housing Appeals Panel. This includes the introduction of new provisions which specify that Panel members cease to be members when/if:

a) they reach the end of their term of appointment as specified by the States decision which confirmed their appointment;
b) they reach the age of 72 years or, if the Royal Court sitting as a Full Court so determines, by reason of special circumstances in any particular case, 75 years;
c) they resign from their duties:
    - in the case of the Chairman, submitting their resignation to the Bailiff; and
    - In the case of any other member, submitting their resignation to the Tribunal's Chairman.
d) they are removed from office by the Royal Court sitting as a Full Court if the Court is satisfied that they:
    - have misbehaved in their office;
    - are incapable of continuing as a member by reason of physical or mental illness;
    - have been declared insolvent; or
    - have been unavailable without reasonable cause to sit as a member of the Tribunal for a period in excess of six consecutive months.

12. To approve an amendment to Part II of the regulations to specify the maximum time period associated with the internal review process, as detailed in paragraph 7.3 of that Policy Letter.

APPENDIX

COMMERCE AND EMPLOYMENT DEPARTMENT

GUERNSEY COMPETITION AND REGULATORY AUTHORITY
ANNUAL REPORT AND AUDITED ACCOUNTS 2014

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

7th May 2015

Dear Sir

GUERNSEY COMPETITION AND REGULATORY AUTHORITY ANNUAL REPORT AND AUDITED ACCOUNTS 2014

In accordance with section 13(5) of the Guernsey Competition and Regulatory Authority Ordinance, 2012, I enclose the Annual Report and Audited Accounts of the Guernsey Competition and Regulatory Authority, for the year ending 31 December 2014, as set out within the Channel Islands Competition and Regulatory Authorities' Annual Report for the same year.

I would be grateful if you would arrange for it to be published as an Appendix to the next available Billet d'État.

Yours faithfully

K A Stewart
Minister

ANNUAL REPORT
2014

FOREWORD

This is the third annual report of the Channel Islands Competition and Regulatory Authorities (CICRA) and is presented to Jersey's Economic Development Minister and Guernsey's Commerce and Employment Department pursuant to provisions set out in the Competition Regulatory Authority (Jersey) Law 2001 and The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001. It also fulfils the requirements of the obligations on CICRA as set out in the Islands' competition laws and sector specific legislation.

What is CICRA?

The Channel Islands Competition and Regulatory Authorities (CICRA) is the name given to the Jersey Competition Regulatory Authority (JCRA) and the Guernsey Competition and Regulatory Authority (GCRA). The JCRA was established under the Competition Regulatory Authority (Jersey) Law, 2001, and the GCRA was established under the Guernsey Competition and Regulatory Authority Ordinance, 2012.

By working together, sharing resources and expertise between the islands, CICRA's aim is to ensure that consumers receive the best value, choice and access to high quality services, in addition to promoting competition and consumers' interests.

CICRA's functions

Competition

CICRA is responsible for administering and enforcing competition law in Jersey and Guernsey. The aim of this legislation is to prevent consumers being harmed by anti-competitive or exploitative behaviour in the market (such as price-fixing or abuse of market power).

Advisory

CICRA can be called on to advise Jersey's Economic Development Minister and Guernsey's Commerce and Employment Department on matters of economic regulation and competition. During 2014 we advised on ferries, marine fuel and the future regulation of the Ports of Jersey in Jersey, primary health care in Guernsey and aviation fuel on a pan-Channel Islands basis.

Economic regulation

In common with many other jurisdictions, Jersey and Guernsey have decided to structure particular previously States-run businesses as separate companies – which are, with the exception of Sure in Guernsey, wholly-owned by the States. In Jersey's case this decision was taken in respect of the telecommunications and postal businesses now run by JT and Jersey Post. In Guernsey's case this decision was taken in respect of the telecommunications, postal and electricity businesses now run by Sure, Guernsey Post and Guernsey Electricity. CICRA is responsible for the economic regulation of these sectors.

Who we are

CICRA is led by a joint board. The board consists of a Chairman, three non-executive directors and two executive directors. In addition, at 31 December 2014 CICRA had eight staff and offices in Jersey and Guernsey.

How to find out more

More information on CICRA and its activities can be found on the website www.cicra.je or www.cicra.gg.

CHAIRMAN'S STATEMENT

The Channel Islands Competition and Regulatory Authorities (CICRA) is, by any standards, unusual. In effect it is the "trading name" of two legally separate bodies, the Jersey Competition Regulatory Authority (JCRA) and the Guernsey Competition and Regulatory Authority (GCRA). CICRA has a single board, staff and organisation but operates under two different, but broadly similar, laws and two different political-sponsoring departments. It is a prime example of pragmatic working together between Jersey and Guernsey, to the benefit of both islands, through sharing resources and thereby reducing costs. However such an arrangement is not without its challenges as, while the islands share many characteristics, there are, at any one time, differences in priorities and approaches accentuated by different political cycles.

In 2014 CICRA had the benefit of a fairly stable political environment in both islands and was able to concentrate on its mainstream regulatory and competition policy work. The elections in Jersey in November 2014 were followed by a re-alignment of ministerial responsibilities so the JCRA now comes within the remit of Senator Philip Ozouf as Assistant Chief Minister and Assistant Economic Development Minister. There is no reason to believe that this should present any difficulties for CICRA; indeed putting regulation and competition policy closer to the centre of government may well mean a better alignment with other policies.

Like any good regulator CICRA has to take changing market conditions into account. Electronic communication has provided increasing competition to postal services, demand has declined and the nature of the service has switched from "urgent mail" to parcel delivery. This requires a much lighter regulatory touch, which has been duly implemented by CICRA, with a resultant reduction in resources and lower regulatory fees. In Guernsey the political wish has been for a lighter regulatory touch on electricity (which is not a regulated activity in Jersey) and again CICRA has responded.

Telecommunication services play a vital role in people's lives and in business. The mobile phone has become indispensable and fast broadband is almost regarded as a human right. Expenditure on business and residential telecommunications services has soared. Providing modern telecommunications services in two relatively small islands is challenging as there are limited economies of scale and a reduced incentive for a significant number of competitors compared with larger communities. Quite properly telecommunications now accounts for the major part of CICRA's work – 60% in 2014.

The Chief Executive's report documents the work in 2014 in detail. In particular, significant progress has been made on leased lines, bringing 4G services to the islands and introducing competition in the provision of landline services; the benefits of these developments will reach customers in 2015. A key innovation by CICRA was conducting opinion surveys on telecommunications customer satisfaction. The first results were published in September and showed that there was significant scope for improvement in a number of areas. Customer satisfaction in respect of some operators fell well short of acceptable levels. The impact of the first set of results demonstrated their efficacy so CICRA has committed to conducting the surveys every six months for as long as they are considered valuable.

CICRA has continued its programme of work on competition issues, handling mergers that require approval, investigating ferries, marine fuel and the future regulation of the Ports of Jersey in Jersey, primary healthcare in Guernsey and aviation fuel on a pan-Channel Island basis.

CICRA is a tiny organisation and is dependent on its non-executive board members being more directly involved in some projects than would be normal and on its staff team to operate across a wide range of areas. Recruiting suitable staff is difficult in both islands and, increasingly, CICRA is using outside consultants albeit with extensive executive input.

Early in 2014 Peter Neville resigned as a board member. Hannah Nixon, then with Ofgem but subsequently appointed Managing Director of the new UK payments regulator, was appointed to replace him. Hannah Nixon, Regina Finn and Philip Marsden all are highly qualified in regulatory and competition issues and their expertise is invaluable to CICRA. In February CICRA's Chief Executive Andrew Riseley resigned as he wished to return to his native Australia. The previous Deputy Chief Executive Michael Byrne, was appointed to replace him and the other Executive Director, Louise Read, took on a wider role across the whole organisation. A number of other appointments were made and the new staff team quickly became an effective unit.

I am grateful to my fellow board members and the executive team for a good year's work in challenging circumstances.

Mark Boleat

CHIEF EXECUTIVE'S REPORT

CICRA's achievements during 2014 reflect our broad and challenging remit.

We place the interests of consumers at the heart of what we do to make markets in the Channel Islands work better and deliver good outcomes that benefit the islands.

We have delivered a great deal for islanders during 2014 despite our relatively small size and I am grateful to my team and the support of my board in delivering an extensive work programme over 2014.

Telecoms

Over 2014 CICRA worked closely with telecoms operators before reaching a decision to require JT in Jersey and Sure in Guernsey to open up access to their networks. This will allow other operators, for the first time, to offer the full range of landline services. This is a significant development for all consumers. From mid 2015 it will improve choice and remove a long-standing obstacle to fairer competition in the marketplace. We expect consumers to see the benefits of this decision by CICRA, with telecoms operators able to offer full bundled packages, i.e. landline, mobile, broadband and multimedia services to their customers. Through the exercise of that choice available to consumers we anticipate a market that is more responsive and delivers better value to islanders.

During 2015 consumers will see a significant step change in the functionality of mobile devices through 4G mobile services in the Channel Islands. We recognised that to deliver the best outcome for islanders this major project would involve designing and implementing a small island solution aimed at choosing the telecoms operators who would best utilise the spectrum needed to support this technology. The successful completion of that process is testimony to the synergies that can be achieved by operating on a pan Channel Island basis between Guernsey and Jersey that benefit consumers across the islands and reduce the costs of

providing services across two jurisdictions. The outcome of CICRA's work will be a healthier, more competitive mobile market, with world-class services supporting a range of needs of businesses and households as our reliance on portability of telecoms services grows.

CICRA is mindful of the issues faced by consumers and where it has powers to do so will intervene on their behalf. A particular area that has affected mobile users is exposure to data charges when they roam outside the Channel Islands. This can leave them facing 'bill shock', i.e. receiving an unusually large bill for using their mobile device. CICRA took the opportunity, as part of the introduction of 4G to place significant obligations on mobile providers providing these services. JT, Sure and Airtel are now required to provide the same level of protection to Channel Islanders using 4G services that is available to European mobile users roaming within Europe. This includes limits on roaming charges and caps on per unit data charges accompanied by appropriate information and advice.

Until CICRA's intervention during 2014, consumers with fixed term mobile telephone contracts had little protection when operators varied the price of their contract in that they did not have the ability to walk away from the agreement. This was clearly unfair. Our decision in 2014 that allowed consumers to take their business elsewhere in situations where their operator altered that contract to their detriment affords consumers important additional protection. The high profile publication of telecom customer satisfaction statistics over 2014, as measured by our survey of their customers, demonstrates how CICRA can give consumers a voice. Through publishing customer views of their telecom providers we sought to encourage providers to raise their standards but to also give recognition of positive customer experience. CICRA is confident that operators will take account of the views of their customers with improvements seen over 2015.

The way businesses connect internally, and with the wider world using telecoms is critical to the success of the Channel Islands' ability to deliver sustainable economic growth. Having listened to concerns expressed by businesses and government we were concerned that the market was not delivering the best value outcomes for consumers. In 2014 we carried out a comprehensive review of the extent of competition in business connectivity markets. The review sought to ensure consumers were appropriately protected either through competition or by regulation. As a result of the review we determined that further regulatory action is required and so during 2015 we will be implementing price controls on various services to ensure the interests of business customers are safeguarded

Post

CICRA believes in reducing the regulatory burden when it is appropriate to do so. Light-touch regulation continues to be appropriate in the postal sector across the Channel Islands in the context of rapid technology substitution and given the low average expenditure by households on postal services. We will continue to monitor the quality of service in postal provision in both Jersey and Guernsey and, to this end, have set targets and published performance by Jersey Post and Guernsey Post against those targets.

Electricity

CICRA has contributed to the ongoing review of the form of regulation appropriate to the electricity sector in Guernsey and has provided evidence to scrutiny committees on security of supply issues.

Ports incorporation in Jersey

Over 2014 preparation for the proposed incorporation of Ports of Jersey was ongoing. CICRA has supported the States of Jersey to develop this workstream and we anticipate this will continue as key legislation is placed before the States of Jersey in 2015.

Competition Law

As the competition authority across the Channel Islands one of our areas of focus is to review markets that don't seem to be delivering the best outcomes for consumers. During 2014 a number of fuel markets were reviewed, including marine fuel, aviation fuel and heating oil. A significant transaction relevant to the Jersey fuel market also received CICRA's approval in 2014, subject to a series of stringent conditions, which we consider puts users of the La Collette Terminal facilities in an improved position compared to what was in place prior to the transaction.

We also completed a review of the primary healthcare sector in Guernsey at the request of the Commerce and Employment Department board. This initial review covered what is a complex and wide range of issues many of which go beyond pure market considerations. The review provides a perspective on some of the issues which we hope will support consideration by the States of a subject that touches on a key aspect of the lives of all Guernsey people.

CICRA considered ten formal merger applications and four exemption applications over 2014. Much of our work on competition law matters is advising and providing informal guidance to individual businesses and institutions. Waste recycling in Guernsey, the ferry service in Jersey, the cap on general practitioner numbers in Guernsey and reporting on margins of heating oil providers in Jersey are all areas where the expertise of CICRA's staff was called on under our competition law remit. We have worked closely with other local consumer bodies such as the Jersey Consumer Council and Trading Standards in both islands to help resolve consumer issues, raise consumer awareness and to provide consumers with the information they need to make informed choices.

CICRA itself

The commitment and expertise of a small team of eight people working across the Channel Islands has been a key foundation on which the work programme for 2014 has been delivered and I am fortunate to have a team of dedicated, professional colleagues working for the benefit of islanders.

Michael Byrne

THE BOARD

Mark Boleat
Chairman

Mark has extensive experience in regulatory policy and practice and the handling of complex public policy issues. He holds, or has held, numerous board level appointments in commercial, public and charitable organisations including Chairman of the States of Jersey Development Company and Chairman of the City of London Policy and Resources Committee.
He has strong ties to Jersey having been born and educated in the island. He has written extensively on Jersey and has undertaken three significant reviews for the States of Jersey including one on consumer policy.

Philip Marsden
Non-Executive Director

Philip is a competition lawyer with a particular interest in abuse of dominance, consumer welfare, innovation incentives and international competition issues.

He is a Deputy Chair of the UK Competition and Markets Authority, Professor of Law and Economics at the College of Europe, Bruges and is co-founder and general editor of the European Competition Journal and the Oxford Competition Law case reporter series. Philip is also a member of the Legal Services Consumer Panel.

Regina Finn
Non-Executive Director

Regina has extensive experience in competition and regulatory regimes, including in the telecommunications post, electricity and gas sectors.

She set up and ran the Channel Islands' first economic regulator, the Office of Utility Regulation in Guernsey, from 2001 to 2005, which has since merged with the JCRA to form CICRA.

Regina is also a non-executive Director of Mutual Energy Holdings Ltd, a Belfast based energy company and a Director of Lucerna Partners, a consultancy partnership specialising in regulation and public policy.

Hannah Nixon
Non-Executive Director

Appointed in March 2014, Hannah has extensive experience in economic regulation and competition issues, working across a range of industries in the public and private sectors.

She is currently the Managing Director of the newly established Payment Systems Regulator. Hannah was previously a Senior Partner at Ofgem, the GB gas and electricity regulator, she was also Ofgem's Head of Profession for Economics.

THE BOARD (CONTINUED)

Michael Byrne
Chief Executive

Michael has extensive experience applying regulation and competition law in the UK energy, media and telecoms sectors.

Michael holds a diploma in Company Direction from the IoD, an MBA, a post graduate qualification in European Competition Law, and a BSc Honours degree in Mathematical Statistics.

Louise Read
Director

Louise is a chartered accountant, with extensive experience of managing finance, personnel and operational aspects of business. She is the Board and Audit and Risk Committee secretary.

Louise was previously the Group Financial Accountant at Jersey Post, and has worked with many of Jersey's businesses during her time at PwC.

Louise holds a diploma in Company Direction from the IoD, is a fellow of the Institute of Chartered Accountants in England and Wales and holds a BSc in Accounting and Management Sciences from the University of Southampton.

Andrew Riseley
Former Chief Executive

Andrew is a competition and regulatory lawyer, who has worked at large law firms in both the UK and Australia, at one of the UK's competition regulators, and in-house at a major UK utility. He has extensive experience in utility regulation, competition law and public procurement.

Andrew's resignation from the board became effective on 5 June 2014.

Peter Neville
Non-Executive Director

Peter is the former director general of the Guernsey Financial Services Commission having headed the financial watchdog for over eight years. He is currently chairman of Kleinwort Benson (Channel Islands) Limited.

Peter's resignation from the board became effective on 23 February 2014.

MEETINGS OF THE AUTHORITIES, MEMBER FEES AND EXPENSES

Since 1 August 2012, CICRA has been led by a joint board. The Chairman is appointed concurrently as Chair of the GCRA by the States of Deliberation in Guernsey and Chair of the JCRA by the States of Jersey. Members are appointed to the boards of the GCRA and JCRA by the Commerce and Employment Board and the Minister for Economic Development Department respectively.

Meetings

During 2014, attendance at meeting of the Boards and their Committees was as follows:

Member	GCRA		JCRA	
	Board	Audit and Risk	Board	Audit and Risk
Mark Boleat	10/10	2/2	11/11	2/2
Philip Marsden	10/10	2/2	11/11	2/2
Peter Neville	0/1	0/0	0/1	0/0
Regina Finn	10/10	2/2	11/11	2/2
Hannah Nixon	9/9	2/2	10/10	2/2
Andrew Riseley	4/4	1/1	4/4	1/1
Michael Byrne	9/10	2/2	10/11	2/2
Louise Read	10/10	2/2	11/11	2/2

Member fees and expenses

The Chairman's and Member's fees are approved by the Minister for Economic Development in Jersey and the Commerce and Employment Board in Guernsey. Each member's fees are split equally between the GCRA and JCRA. There has been no increase in fees since the inception of the Authority in 2012. The following table shows the actual fees paid to each member by the two Authorities.

Member	GCRA		JCRA		Shared expenses	
	2014	2013	2014	2013	2014	2013
	£	£	£	£	£	£
Mark Boleat	26,406	26,406	26,406	26,406	3,588	2,901
Philip Marsden	12,000	12,000	12,000	12,000	2,382	1,507
Peter Neville*	1,692	12,000	1,692	12,000	-	2,842
Regina Finn	12,000	7,000	12,000	7,000	2,043	1,846
Hannah Nixon*	9,619	-	9,619	-	1,232	-
Richard Povey*	-	4,277	-	4,277	-	211
Total	61,717	61,683	61,717	61,683	9,245	9,307

*Part year only

Michael Byrne and Louise Read are executive directors, i.e. members of each authority and employees of the GCRA and JCRA respectively (as was Andrew Riseley until his resignation). They continue to receive no fees as members of the authorities but do receive remuneration, which is split between the JCRA and GCRA as follows:

	GCRA		JCRA		Notes
	2014	2013	2014	2013	
	£	£	£	£	
Andrew Riseley	45,000*	67,500*	45,000*	67,500	Resigned
Michael Byrne	79,301	69,022	79,301	69,022	Appointed Chief Executive mid-2014
Louise Read	53,739*	48,993*	53,739*	48,993*	Changed role mid-2014
Total	178,040	185,515	178,040	185,515	

* Excludes employer's pension contribution of 13.6%

FINANCIAL STATEMENTS 2014

Consistent with 2013, the Guernsey Competition and Regulatory Authority (GCRA) made an accounting surplus of £1 in 2014, effectively breakeven. The GCRA accounts for income only in order to meet its actual costs during the year. It must also ensure that it receives enough income during the year in each of the areas that it covers – competition law administration and enforcement, and regulation of the telecoms, postal and electricity sectors - to fund them separately, given that cross-subsidisation is not permitted. A working balance and an appropriate level of reserves are maintained at all times, but for the purpose of the financial statements, deferred income adjustments are made to match income with costs.

Overall costs in 2014 were £661k, slightly lower than 2013 (£674k). Expenditure continues to be closely controlled by the GCRA maintaining strict internal guidelines with regard to purchasing and tendering procedures which, combined with appropriate corporate governance in line with best practice, helps to ensure that it is run as an effective and efficient organisation. An audit of policies and procedures is undertaken each year, by independent internal auditors, to ensure that high standards are maintained and that appropriate processes and procedures are in place.

In line with the service level agreement between the GCRA and the Commerce and Employment Department (C&E), grant funding for work under The Competition (Guernsey) Ordinance, 2012 continued to be received quarterly in advance. During 2014 a grant of £140k (2013: £140k) was received. In the event that the cost of work undertaken in respect of Guernsey's competition law exceeds the grant the GCRA must inform C&E and 'make good' the deficit from future grant funding. As at 31 December 2014 the deficit was £15k (2013: £14k).

Income of £1k (2013: £26k) was received in the form of mergers and acquisitions fees. Merger and acquisitions applications and costs are by their nature unpredictable. The fees received are lower than the costs incurred in dealing with matters relating to merger and acquisition. This shortfall of £5k has to be funded from competition law grant funding which is a contributory factor to the continuing funding deficit in that area.

During 2014 £519k (2013: £490k) in fees was received from telecoms licensees and at the year end telecoms licence fees exceeded costs by £51k (2013: £62k), this balance was accounted for as deferred telecommunications licence fee income. Based on budgeted costs the licence fees for 2014 were set at 0.75% (2013:0.5%) of licensable turnover.

Postal licence fees from Guernsey Post continued to be received on a monthly basis. During 2014 £40k (2013: £90k) of licence fees were received and at the year end postal licence fees exceeded costs by £22k. (2013: £60k). This balance was accounted for as deferred postal licence fee income which will be returned to Guernsey Post in 2015.

Electricity licence fees from Guernsey Electricity continued to be received on a monthly basis. During 2014 £40k (2013: £110k) of licence fees were received and at the year end electricity licence fees exceeded costs by £20k (2013: £58k). This balance was accounted for as deferred electricity licence fee income which will be returned to Guernsey Electricity in 2015.

GUERNSEY COMPETITION AND REGULATORY AUTHORITY

(Incorporated in Guernsey, Channel Islands)

NON EXECUTIVE MEMBERS

Mark Boleat	Chairman	
Philip Marsden		
Regina Finn		
Hannah Nixon	appointed 13 March 2014	
Peter Neville	resigned effective 23 February 2014	

EXECUTIVE MEMBERS

Andrew Riseley	Chief Executive	resigned effective 5 June 2014
Michael Byrne	Chief Executive	
Louise Read	Director	

SECRETARY

Louise Read

INDEPENDENT AUDITOR

BDO Limited
P O Box 180
Place Du Pre
Rue Du Pre
St Peter Port
Guernsey
GY1 3LL

BANKERS

Barclays Private Clients International Limited
Jersey International Banking Centre
PO Box 8
St Helier
Jersey
JE4 8NE

REGISTERED OFFICE

Suites B1 & B2
Hirzel Court
St Peter Port
Guernsey
GY1 2NH

GUERNSEY COMPETITION AND REGULATORY AUTHORITY
MEMBERS' REPORT

The Members of the Guernsey Competition and Regulatory Authority (GCRA) present their report and financial statements for the year ended 31 December 2014.

ACTIVITIES
The principal activities of the GCRA during the year were the regulation of the telecommunications, electricity and postal sectors and the administration and enforcement of The Competition (Guernsey) Ordinance, 2012.

RESULTS
There was a surplus for the year of £1 (2013: surplus £1).

MEMBERS
The Members in office during the year and when these financial statements were approved are shown on page 11.

INDEPENDENT AUDITOR
The auditor, BDO Limited, who was appointed in accordance with Section 13(4)(a) of The Guernsey Competition and Regulatory Authority Ordinance, 2012, has indicated its willingness to continue in office.

By order of the Members

Louise Read
Secretary

GUERNSEY COMPETITION AND REGULATORY AUTHORITY
STATEMENT OF MEMBERS' RESPONSIBILITIES IN RESPECT OF THE FINANCIAL STATEMENTS

The Guernsey Competition and Regulatory Authority Ordinance, 2012, (the "Ordinance") requires Members to prepare financial statements in accordance with generally accepted accounting principles which show a true and fair view of the surplus or deficit of the GCRA for the year and of the state of the GCRA's affairs at the end of the year.

In preparing the financial statements the Members are required to:

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

The Members are responsible for keeping accounting records which are sufficient to show and explain the GCRA's transactions and are such as to disclose with reasonable accuracy, at any time, the financial position of the GCRA at that time and to enable them to ensure that the financial statements comply with the Ordinance. They are also responsible for safeguarding the assets of the GCRA and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

The Members confirm that these financial statements comply with these requirements.

The Ordinance also requires the GCRA's financial statements to be audited annually by auditors appointed by the States of Guernsey on the recommendation of the Public Accounts Committee and the financial statements to be submitted, together with the auditor's report, to the Commerce and Employment Department. The Commerce and Employment Department, in turn, must submit the financial statements and the auditor's report thereon to the States of Guernsey.

INDEPENDENT AUDITOR'S REPORT
TO THE MEMBERS OF THE GUERNSEY COMPETITION AND REGULATORY AUTHORITY

We have audited the financial statements of the Guernsey Competition and Regulatory Authority for the year ended 31 December 2014 which comprise the Income and Expenditure Account, the Balance Sheet, the Statement of Total Recognised Gains and Losses, the Cash Flow Statement and the related notes 1 to 9. 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 Authority's members, as a body, in accordance with Section 13 of The Guernsey Competition and Regulatory Authority Ordinance, 2012. Our audit work is undertaken so that we might state to the Authority's members those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Authority and the Authority's members as a body, for our audit work, for this report, or for the opinions we have formed.

Respective responsibilities of the members and auditor

As explained more fully in the Statement of Members' Responsibilities on page 13, the members are responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view.

Our responsibility is to audit and express an opinion on the financial statements in accordance with applicable law and International Standards on Auditing (UK and Ireland). Those standards require us to comply with the 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 Authority's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the members; 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. If we become aware of any apparent misstatements or inconsistencies we consider the implications for our report.

Opinion on the financial statements

In our opinion the financial statements:

- give a true and fair view of the state of the Authority'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 Generally Accepted Accounting Practice; and
- have been properly prepared in accordance with the requirements of The Guernsey Competition and Regulatory Authority Ordinance, 2012.

CHARTERED ACCOUNTANTS
Place du Pré
Rue du Pré
St Peter Port
Guernsey

Date:25 March 2015

GUERNSEY COMPETITION AND REGULATORY AUTHORITY
INCOME AND EXPENDITURE ACCOUNT
FOR THE YEAR ENDED 31 DECEMBER 2014

	Notes	*2014*	*2013*
		£	£
INCOME			
Telecommunications licence fees		468,586	427,998
Electricity licence fees		19,873	52,200
Postal licence fees		18,049	29,644
Competition law grant		140,736	131,355
Mergers and acquisitions fees		1,250	25,750
Bank interest received		12,031	7,297
		660,525	674,244
EXPENDITURE			
Salaries and staff costs		373,550	485,889
Consultancy fees		118,670	49,510
Operating lease rentals		37,164	36,206
Travel and entertainment		25,281	15,265
Conference and course fees		9,297	7,544
Depreciation		2,040	3,591
Administration expenses		13,035	13,235
Legal and professional fees		21,236	-
Audit and accountancy fee		7,575	9,923
Advertising and publicity		14,833	12,987
Repairs and maintenance		23,136	23,650
Heat, light and water		2,807	3,303
Recruitment		5,782	4,493
General expenses		6,118	8,647
		660,524	674,243
SURPLUS FOR THE YEAR	5	1	1

STATEMENT OF TOTAL RECOGNISED GAINS AND LOSSES

		2014	*2013*
		£	£
Surplus for the year		1	1
Repayment from the Public Utilities Regulation Fund (PURF)		-	(90,451)
Release from PURF to finance current year activities		-	(159,549)
Amounts previously provided for in the PURF		-	184,649
Total gains and losses recognised since last annual report	6	1	(65,350)

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

Continuing operations
All the items dealt with in arriving at the surplus in the income and expenditure account relate to continuing operations.

The notes form an integral part of these financial statements.

GUERNSEY COMPETITION AND REGULATORY AUTHORITY
BALANCE SHEET
AS AT 31 DECEMBER 2014

	Notes	*2014* £	*2013* £
FIXED ASSETS			
Tangible fixed assets	2	2,096	4,136
CURRENT ASSETS			
Debtors and prepayments	3	37,401	16,915
Cash at bank		291,092	408,921
		328,493	425,836
CURRENT LIABILITIES			
Creditors: amounts falling due within one year	4	130,591	229,975
NET CURRENT ASSETS		197,902	195,861
TOTAL ASSETS LESS CURRENT LIABILITIES		199,998	199,997
RETAINED SURPLUS	5	199,998	199,997

The financial statements on pages 15 to 22 were approved and authorised for issue by the members and signed on their behalf by:

Mark Boleat

The notes form an integral part of these financial statements.

GUERNSEY COMPETITION AND REGULATORY AUTHORITY
CASH FLOW STATEMENT
FOR THE YEAR ENDED 31 DECEMBER 2014

	Note	*2014* £	*2013* £
Net Cash Outflow from Operating Activities	7	(129,860)	(311,786)
Returns on Investment and Servicing of Finance			
Interest received		12,031	7,297
Capital Expenditure and Financial Investment			
Payments to acquire tangible fixed assets		-	(1,796)
Management of Liquid Resources			
Movement in one month fixed term deposit account		150,000	(250,000)
Increase / (Decrease) in Cash		32,171	(556,285)

RECONCILIATION OF NET CASH FLOW TO MOVEMENT IN NET FUNDS

	2014 £	*2013* £
Increase / (Decrease) in cash in year	32,171	(556,285)
(Decrease) / Increase in liquid resources	(150,000)	250,000
Change in net funds	(117,829)	(306,285)
Net funds at 1 January	408,921	715,206
Net funds at 31 December	291,092	408,921

ANALYSIS OF NET FUNDS

	1 Jan 2014 £	*Cash flows* £	*31 Dec 2014* £
Cash at bank	158,921	32,171	191,092
Fixed term deposit account	250,000	(150,000)	100,000
Total	408,921	(117,829)	291,092

The notes form an integral part of these financial statements.

GUERNSEY COMPETITION AND REGULATORY AUTHORITY
NOTES TO THE FINANCIAL STATEMENTS
FOR YEAR ENDED 31 DECEMBER 2014

1. ACCOUNTING POLICIES

The financial statements are prepared under the historical cost convention and in accordance with accounting principles generally accepted in Guernsey, incorporating United Kingdom accounting standards.

A summary of the more important accounting policies that the Members have applied is set out below.

a) Interest received
Interest received on deposits held with Guernsey's Treasury and Resources Department was accounted for on a cash received basis. Interest on other bank deposits is accrued on a daily basis.

b) Fixed assets
Fixed assets are stated at cost less depreciation.

Depreciation is provided on all tangible fixed assets at rates calculated to write down their cost on a straight line basis to their estimated residual values over their expected useful economic lives. The depreciation rates used are as follows:

Office equipment	- 20% per annum
Fixtures and fittings	- 20% per annum
Computer equipment	- 20% per annum
Website costs	- 33% per annum

c) Leasing commitments
All leases entered into by the GCRA are operating leases. Rentals payable under operating leases are charged in the income and expenditure account on a straight line basis over the lease term.

d) Grants
Grants received from the Commerce and Employment Department are accounted for in the period to which they relate. The grant received for 2014 was £140,000 (2013:£140,000). £140,736 is reflected in the income and expenditure account in order to match the expenditure on competition law matters during 2014. Any unused funds at the financial year end are either deferred or repaid to the Department. Deferred grant income as at 31 December amounted to (£14,957) (2013: (£14,171)).

e) Telecoms licence fees
Licence fees are set on the basis of cost recovery in accordance with section 6 of The Telecommunications (Bailiwick of Guernsey) Law, 2001. The GCRA's costs are determined on an annual basis and these are recovered by applying a percentage to the licensed revenues of the various licensed telecoms operators on the basis of relevant turnover, or if appropriate an annual fee. The percentage for 2014 was 0.75% (2013: 0.5%).

Fee income is recognised in the period to which it relates. Should fee income exceed costs, the balance is transferred to deferred income. Deferred licence fee income as at 31 December 2014 amounted to £54,411 (2013: £46,271).

f) Postal licence fees
Licence fees are set on the basis of cost recovery in accordance with section 6 of The Post Office (Bailiwick of Guernsey) Law, 2001. The GCRA's costs are determined on an annual basis and these are recovered through charging an annual fee.

The fee for 2014 was set at £40,000 (2013: £90,000).

GUERNSEY COMPETITION AND REGULATORY AUTHORITY
NOTES TO THE FINANCIAL STATEMENTS
FOR YEAR ENDED 31 DECEMBER 2014

1. ACCOUNTING POLICIES (CONTINUED)

Fee income is recognised in the period to which it relates. Should fee income exceed costs, the balance is transferred to deferred income. Deferred licence fee income as at 31 December 2014 amounted to £21,951 (2013: £60,356).

g) Electricity licence fees

Licence fees are set on the basis of cost recovery in accordance with section 6 of The Electricity (Guernsey) Law, 2001. The GCRA's costs are determined on an annual basis, and these are recovered through charging an annual fee.

The fee for 2014 was set at £40,000 (2013: £110,000).

Fee income is recognised in the period to which it relates. Should fee income exceed costs, the balance is transferred to deferred income. Deferred licence fee income as at 31 December 2014 amounted to £20,127 (2013: £57,804).

h) Taxation

Under section 12 of The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 the GCRA is exempt from Guernsey income tax.

i) Expenditure

Expenditure is accounted for on an accruals basis.

2. TANGIBLE FIXED ASSETS

	Office equipment	*Fixtures and Fittings*	*Computer equipment*	*Website costs*	*Total*
	£	£	£	£	£
Cost					
At 1 January 2014	31,108	2,365	22,312	4,125	59,910
Disposals	(9,459)	-	(7,041)	-	(16,500)
At 31 December 2014	21,649	2,365	15,271	4,125	43,410
Depreciation					
At 1 January 2014	31,084	2,148	19,348	3,194	55,774
Charge in the year	14	58	1,037	931	2,040
On disposals	(9,459)	-	(7,041)	-	(16,500)
At 31 December 2014	21,639	2,206	13,344	4,125	41,314
Net book value:					
At 31 December 2014	10	159	1,927	-	2,096
At 31 December 2013	24	217	2,964	931	4,136

GUERNSEY COMPETITION AND REGULATORY AUTHORITY
NOTES TO THE FINANCIAL STATEMENTS
FOR YEAR ENDED 31 DECEMBER 2014

3. DEBTORS AND PREPAYMENTS

	2014	*2013*
	£	£
Prepayments	15,076	16,090
Trade debtors	9,251	825
Other debtors	13,074	-
	37,401	16,915

4. CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR

	2014	*2013*
	£	£
Accruals	20,246	44,084
Deferred licence fee income	104,398	173,326
Trade creditors	5,947	12,565
	130,591	229,975

5. MOVEMENT ON RETAINED SURPLUS

Income and Expenditure Account	*2014*	*2013*
	£	£
At 1 January	199,997	265,347
Surplus for the year	1	1
Other recognised gains and losses (note 6)	-	(65,351)
At 31 December	199,998	199,997

6. STATEMENT OF TOTAL RECOGNISED GAINS AND LOSSES

The amounts contained with the Statement of Total Recognised Gains and Losses in 2013 reflected a decision taken during the year by the Members to reduce the surplus held within the GCRA by returning amounts to licensees. No similar decision was taken in respect of 2014.

7. CASH FLOW STATEMENT

Reconciliation of surplus for the year to net cash outflow from operating activities:

	2014	*2013*
	£	£
Operating surplus	1	1
Depreciation	2,040	3,591
Bank interest	(12,031)	(7,297)
(Increase) / Decrease in debtors	(20,486)	45,938
Decrease in creditors	(99,384)	(288,668)
Release of amounts held in Public Utilities Regulation Fund	-	(65,351)
Net cash outflow from operating activities	(129,860)	(311,786)

GUERNSEY COMPETITION AND REGULATORY AUTHORITY
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 DECEMBER 2014

8. RELATED PARTIES

a) Transacting parties

The transacting parties are the Commerce and Employment Department and the GCRA.

Relationship

The GCRA acts independently of the States, but is accountable to the Commerce and Employment Department in respect of its funding for the administration and enforcement of The Competition (Guernsey) Ordinance, 2012, which is also covered by a Service Level Agreement. The Commerce and Employment Department acts as a conduit for requests from other States departments who may request the GCRA to carry out projects. The GCRA reports formally to the Commerce and Employment Board on an annual basis.

Transactions

In 2014, the Commerce and Employment Department provided funds to the GCRA to finance the administration and enforcement of The Competition (Guernsey) Ordinance, 2012.

Amounts involved

- £140,000 received during the year under the provisions of The Guernsey Competition and Regulatory Authority Ordinance, 2012.

There were no amounts due to the Commerce and Employment Department at the balance sheet date. The accumulated funding deficit at 31 December 2014, which has been notified to the Commerce and Employment Department as required under the service level agreement, amounted to £14,957 (2013: deficit £14,171).

b) Transacting parties are:

The transacting parties are the GCRA and the Jersey Competition Regulatory Authority (JCRA).

Relationship

The GCRA and the JCRA work together under the aegis of the Channel Islands Competition and Regulatory Authorities (CICRA) sharing a board, resources and expertise between the islands, whilst retaining their own separate legal identities.

Transactions

The GCRA and JCRA share resources and expertise and recharge each other for expenses incurred (including staff costs) on a no gain no loss basis.

Amounts involved

- £246,975 invoiced during 2014 by the GCRA to the JCRA
- £122,445 invoiced during 2014 by the JCRA to the GCRA

Amounts due to and from the Jersey Competition Regulatory Authority at the balance sheet date

	2014	*2013*
	£	£
Amounts due to the JCRA from the GCRA (included within trade creditors)	5,124	8,435
Amounts due by the JCRA to the GCRA (included within trade debtors)	19,259	825

GUERNSEY COMPETITION AND REGULATORY AUTHORITY
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 DECEMBER 2014

9. FINANCIAL COMMITMENTS

At 31 December 2014 the GCRA had annual commitments under non-cancellable operating leases as set out below:

	Buildings	
	2014	*2013*
	£	£
Operating leases which expire:		
Not later than one year	17,758	-
In more than one year but less than five years	-	35,516
Later than five years	-	-
	17,758	35,516

The operating lease held by the Guernsey Competition and Regulatory Authority in respect of Suites B1 & B2 of Hirzel Court, St Peter Port, Guernsey expires in June 2015 and the landlord has requested vacant possession. In December 2014, the GCRA signed non-binding heads of terms to lease office accommodation at La Plaiderie Chambers, La Plaiderie, St Peter Port, Guernsey. In accordance with the provisions contained within the service level agreement in place between the GCRA and the Commerce and Employment Department the GCRA sought and obtained the Department's consent to enter in a six and a half year lease, at a cost of £54,000 per annum, including service charge and parking. This was duly signed in February 2015.

GUERNSEY COMPETITION AND REGULATORY AUTHORITY
CORPORATE GOVERNANCE GUIDELINES

The GCRA is an autonomous body and independent in its decision making from the States of Guernsey. But under powers in section 3 of The Guernsey Competition and Regulatory Authority Ordinance, 2012 (The "Ordinance"), the Commerce and Employment Department "may, if it considers it desirable in the public interest to do so, and after consulting the GCRA, give to the GCRA written guidance on matters relating to corporate governance, that is to say, matters relating to the system and arrangements by and under which the GCRA is directed and controlled". The following are the Corporate Governance Guidelines as agreed between the Department and the GCRA.

What is Corporate Governance?

"Corporate Governance is the system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the company objectives are set, and the means of attaining those objectives and monitoring performance." – OECD April 1999

Constitution of the GCRA

The GCRA is a statutory body corporate established under Section 1 of the Ordinance. The governing body is a Board of Members which directs regulatory, licensing, financial, operational and strategic policies of the GCRA.

Functions of the GCRA

The functions of the GCRA are as set out in Section 4 of the Ordinance and may be summarised as follows:

a) To advise the Department generally in relation to the administration and enforcement of competition legislation and the related practice and procedures.
b) To advise the Department generally in relation to competition matters, and in particular:
    - The abuse of or suspected abuse of a dominant position by undertakings
    - Anti-competitive practices or suspected anti-competitive practices of undertakings
    - Mergers or Acquisitions of undertakings.
c) Subject to the provisions of The Competition (Guernsey) Ordinance, 2012, to investigate:
    - Any abuse or suspected abuse of a dominant position by an undertaking
    - Any anti-competitive practice or suspected anti-competitive practice of an undertaking
    - Any merger or acquisition of undertakings.
d) To administer its office and undertaking.
e) To determine the fees payable and costs and expenses recoverable in respect of the exercise of its functions, including interest and penalties payable in the event of default.
f) Any other functions assigned or transferred to the GCRA by legislation or Resolution of the States.

Constitution of the Board

Paragraph 1(1) of Schedule 1 to the Ordinance requires that the GCRA shall consist of a minimum of three members, one of whom shall be the Chairman.

Members of the Board are appointed by the Department after consultation with the Chairman. Vacancies which arise on the Board are filled through the use of an open and transparent process. A vacancy is usually advertised and once a suitable candidate is identified, a recommendation is made to the Department.

GUERNSEY COMPETITION AND REGULATORY AUTHORITY
CORPORATE GOVERNANCE GUIDELINES (CONTINUED)

Under the provisions of the Ordinance, the appointment of the Chairman is a matter reserved for decision by the States of Guernsey on the recommendation of the Department.

On appointment, a member will receive an induction to the work of the Board and the GCRA. This includes an opportunity to meet all members of staff.

Under the provisions of Paragraph 2(2) of Schedule 1 to the Ordinance, members are appointed for a period not exceeding five years and upon expiry of such a period are eligible for reappointment.

Operations of the Board

The Board sets strategic policy and the implementation of these policies is undertaken by the Executive.

The Board has eight scheduled meetings a year and holds additional meetings when circumstances require it. Under the provisions of paragraph 6 of Schedule 1 to the Ordinance, the quorate number of members to hold a Board meeting is the nearest whole number above one half of the number of members. Currently, therefore, the quorate number is four. The Chairman or person presiding over the meeting has no vote unless there is an equality of votes, in which case he or she has a casting vote.

In advance of each meeting, members are provided with comprehensive briefing papers on the items under consideration. The Board is supported by the Board Secretary who attends and minutes all meetings of the Board.

Paragraph 13 of Schedule 1 to the Ordinance empowers the Board to delegate by an instrument in writing any of its functions to any of its members, officers or employees named or described in the instrument, including to a committee of members, officers and/or employees. However, the Board is not authorised to delegate this power of delegation, nor the function of considering representations concerning a proposed decision against which there is a right of appeal, any obligation to submit a report to the Department, nor to determine the Chief Executive's minimum term of office.

The GCRA publishes an annual work programme detailing a number of annual objectives and prepares annual budgets. These are finalised in the last quarter of each year and may incorporate, amongst other things, any strategic issues raised by the Board, and comments received during consultation with key stakeholders including the Department. This is considered by the Board prior to the start of the financial year.

The Board monitors the performance of the GCRA against the annual objectives and budget through reports at its regular Board meetings.

The Chairman makes recommendations to the Department in respect of fees paid to members.

Committees of the Board

Paragraph 5 of Schedule 1 to the Ordinance enables the GCRA to establish committees.

During 2014, the Board established one committee, an Audit and Risk Committee. The members of this committee comprise the non-executive members and are appointed by the Board.

GUERNSEY COMPETITION AND REGULATORY AUTHORITY
CORPORATE GOVERNANCE GUIDELINES (CONTINUED)

The key duties of the Audit and Risk Committee are:-

- To review annually the GCRA's application of corporate governance best practice;
- To review the mechanisms for ensuring the effectiveness of the GCRA's internal controls;
- To review and agree the internal auditor's annual work plan, monitor and review the effectiveness of any internal audit work carried out and review all reports from the internal auditors, monitoring the Executive's responsiveness to the findings and recommendations.
- To meet the internal auditors at least once a year, without the presence of the Executive.
- To consider certain matters relating to the external audit of the GCRA's annual financial statements (including reviewing those financial statements prior to their consideration by the Board).

The members of the Audit and Risk Committee at the balance sheet date of 31 December 2014 were Philip Marsden (Chairman), Regina Finn, Hannah Nixon and Mark Boleat. The Executive is expected to attend the meetings of the Audit and Risk Committee in an advisory capacity.

Openness, Integrity and Accountability

The GCRA abides by the principles of openness, integrity and accountability – and those standards which are widely recognised as being applicable to public service, and to the conduct of all involved in public life. In the discharge of its duties, the GCRA will ensure:

- That subject to the appropriate level of confidentiality, it maintains an openness in its public affairs, in order that the public can have confidence in the decision-making processes and actions of public service bodies, in the management of the GCRA's activities, and in the Board members and staff of the GCRA itself;
- That it maintains at all times an appropriate degree of integrity in the conduct of its affairs. Integrity comprises both straightforward dealing and completeness. The GCRA bases its integrity upon honesty, selflessness and objectivity, and high standards of propriety and probity in the stewardship of its funds and management of its affairs;
- That it is fully accountable in the application of the public funds with which it is entrusted and that these are properly safeguarded, and are used economically, efficiently and effectively.

The three fundamental principles, defined above in terms of public sector bodies, have been refined to include the findings and recommendations of the Nolan Committee on Standards in Public Life. The GCRA will make its best efforts to abide by Nolan's seven general principles that underpin public life, namely: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.

Audit and Accounts

While the GCRA is an independent body, it is accountable for its overall performance to the States of Guernsey through the Department.

Section 13(3) of the Ordinance requires that the GCRA shall keep proper accounts and proper records in relation to those accounts and prepare in respect of each year, and submit to the Department, a statement of account giving a true and fair view of the state of affairs of the GCRA. These accounts shall be audited annually by an auditor appointed by the States on the recommendation of the Public Accounts Committee and submitted, together with the auditor's report to the Department.

The Department will in turn submit the accounts to the States in the form of an Annual Report which also details the work that the GCRA has undertaken during the relevant year.

General Conditions regarding States Grant Funding

The GCRA complies with the general conditions set out by the Department which apply to external bodies in receipt of grant funding.

FINANCIAL STATEMENTS 2014

Consistent with prior years, the Jersey Competition Regulatory Authority (JCRA) made an accounting surplus of £1 in 2014, effectively breaking even. The JCRA accounts for income only in order to meet its actual costs during the year. It must also ensure that it receives enough income during the year in each of the areas that it covers – competition law administration and enforcement, and the regulation of the telecoms and postal sectors – to fund them separately, given that cross-subsidisation is not permitted. A working balance is maintained at all times but, for the purpose of the financial statements, deferred income adjustments are made to match income with costs.

Overall costs in 2014 were £1,092k, £112k lower than 2013 (£1,204k).

Expenditure continues to be closely controlled by the JCRA maintaining strict internal guidelines with regard to purchasing and tendering procedures which, combined with appropriate corporate governance in line with best practice, helps to ensure that it is run as an effective and efficient organisation. An audit of policies and procedures is undertaken each year, by independent internal auditors, to ensure that high standards are maintained and that appropriate processes and procedures are in place.

In line with the service level agreement between the JCRA and the Economic Development Department (EDD), grant funding for work under the Competition (Jersey) Law 2005 continued to be received quarterly in advance. During 2014, a total of £380k was received in cash. In addition the JCRA obtained approval from EDD to release £80k of deferred grant income during the year. There was deferred grant income carried forward at the year end of £95k (2013: £133k) of which £94k related to competition law funding and £1k related to ports incorporation funding (2013: £132k related to competition law funding and £1k related to ports incorporation funding.

Income of £86k (2013: £68k) was received in the form of mergers and acquisitions fees. There was no deferred income relating to applications for approval of mergers and acquisitions that were on-going at the year end (2013: £2k).

During 2014 £644k (2013: £854k) of telecoms licence fees were received. At the year end telecoms licence fees exceeded costs by £80k (2013: £28k), this balance was therefore accounted for as deferred telecommunications licence fee income. Based on budgeted costs, the Class III and Class II licence fees for 2014 were set at 0.75% (2013: 0.95%) of regulated turnover.

During 2014, £45k (2013: £96k) of postal licence fees were received. At the year end there was deferred postal licence fee income of £21k (2013: £61k).

JERSEY COMPETITION REGULATORY AUTHORITY

(Incorporated in Jersey, Channel Islands)

NON EXECUTIVE MEMBERS

Mark Boleat	Chairman	
Philip Marsden		
Regina Finn		
Hannah Nixon	appointed 13 March 2014	
Peter Neville	resigned effective 23 February 2014	

EXECUTIVE MEMBERS

Andrew Riseley	Chief Executive	resigned effective 5 June 2014
Michael Byrne	Chief Executive	
Louise Read	Director	

SECRETARY

Louise Read

INDEPENDENT AUDITORS

BDO Limited
P O Box 180
Place Du Pre
Rue Du Pre
St Peter Port
Guernsey
GY1 3LL

BANKERS

Barclays Private Clients International Limited
Jersey International Banking Centre
PO Box 8
St Helier
Jersey
JE4 8NE

REGISTERED OFFICE

2nd Floor Salisbury House
1-9 Union Street
St Helier
Jersey
JE2 3RF

JERSEY COMPETITION REGULATORY AUTHORITY
MEMBERS' REPORT

The Members of the Jersey Competition Regulatory Authority (JCRA) present their report and financial statements for the year ended 31 December 2014.

ACTIVITIES

The principal activities of the JCRA during the year were the regulation of the telecommunications and postal sectors and the administration and enforcement of the Competition (Jersey) Law 2005.

RESULTS

There was a surplus for the year of £1 (2013: surplus £1).

MEMBERS

The Members in office during the year and when these financial statements were approved are shown on page 27.

INDEPENDENT AUDITOR

The auditor, BDO Limited, who was appointed in accordance with Article 17 of the Competition Regulatory Authority (Jersey) Law 2001, has indicated its willingness to continue in office.

By order of the Members

Louise Read
Secretary

JERSEY COMPETITION REGULATORY AUTHORITY
STATEMENT OF MEMBERS' RESPONSIBILITIES IN RESPECT OF THE FINANCIAL STATEMENTS

The Competition Regulatory Authority (Jersey) Law 2001 (the "Law") requires Members to prepare financial statements in accordance with generally accepted accounting principles which show a true and fair view of the surplus or deficit of the JCRA for the year and of the state of the JCRA's affairs at the end of the year.

In preparing financial statements the Members are required to:

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

The Members are responsible for keeping accounting records which are sufficient to show and explain the JCRA's transactions and are such as to disclose with reasonable accuracy, at any time, the financial position of the JCRA at that time and to enable them to ensure that the financial statements comply with the Law. They are also responsible for safeguarding the assets of the JCRA and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

The Members confirm that these financial statements comply with these requirements.

The Law also requires the JCRA's financial statements to be audited annually by auditors appointed by the Minister for Treasury and Resources and the financial statements to be submitted, together with the auditor's report to the Economic Development Department. The Economic Development Department, in turn, must submit the financial statements and auditor's report thereon to the States of Jersey.

INDEPENDENT AUDITOR'S REPORT
TO THE MEMBERS OF JERSEY COMPETITION REGULATORY AUTHORITY

We have audited the financial statements of the Jersey Competition Regulatory Authority for the year ended 31 December 2014 which comprise the Income and Expenditure Account, the Balance Sheet, the Cash Flow Statement and the related notes 1 to 10. 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 Authority's members, as a body, in accordance with Article 17 of the Competition Regulatory Authority (Jersey) Law 2001. Our audit work is undertaken so that we might state to the Authority's members those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Authority and the Authority's members as a body, for our audit work, for this report, or for the opinions we have formed.

Respective responsibilities of the members and auditor

As explained more fully in the Statement of Members' Responsibilities on page 29, the members are responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view.

Our responsibility is to audit and express an opinion on the financial statements in accordance with applicable law and International Standards on Auditing (UK and Ireland). Those standards require us to comply with the 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 Authority's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the members; 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 misstatements or inconsistencies we consider the implications for our report.

Opinion on the financial statements

In our opinion the financial statements:

- give a true and fair view of the state of the Authority'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 Generally Accepted Accounting Practice; and
- have been properly prepared in accordance with the requirements of the Competition Regulatory Authority (Jersey) Law 2001.

CHARTERED ACCOUNTANTS
Place du Pré
Rue du Pré
St Peter Port
Guernsey

Date: 25 March 2015

JERSEY COMPETITION REGULATORY AUTHORITY
INCOME AND EXPENDITURE ACCOUNT
FOR THE YEAR ENDED 31 DECEMBER 2014

	Note	*2014*	*2013*
		£	£
INCOME			
Telecommunications licence fees		564,384	825,673
Postal licence fees		23,851	34,914
Ports of Jersey incorporation grant		42,710	11,589
Competition law grant and other income from EDD		374,859	263,059
Mergers and acquisitions fees		85,638	68,000
Bank interest		591	985
Sundry income		191	-
		1,092,224	1,204,220
EXPENDITURE			
Salaries and staff costs		601,776	636,277
Consultancy fees		227,133	98,837
Operating lease rentals		54,126	55,377
Travel and entertainment		23,613	15,632
Conference and course fees		10,357	9,897
Depreciation		8,336	7,970
Administration expenses		13,221	15,448
Legal and professional fees		80,031	246,325
Audit and accountancy fee		9,083	9,004
Advertising and publicity		17,029	14,979
Repairs and maintenance		19,200	20,575
Heat, light and water		3,478	3,556
Recruitment		5,849	40,140
General expenses		18,991	30,202
		1,092,223	1,204,219
SURPLUS FOR THE YEAR	6	1	1

Recognised gains and losses
There are no recognised gains and losses other than the surplus of the JCRA of £1 in the years ended 31 December 2014 and 31 December 2013.

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

Continuing operations
All the items dealt with in arriving at the surplus in the income and expenditure account relate to continuing operations.

The notes form an integral part of these financial statements.

JERSEY COMPETITION REGULATORY AUTHORITY
BALANCE SHEET
AS AT 31 DECEMBER 2014

	Notes	*2014* £	*2013* £
FIXED ASSETS			
Tangible assets	2	11,700	19,525
CURRENT ASSETS			
Debtors and prepayments	3	96,800	345,192
Cash at bank	4	1,441,335	104,478
		1,538,135	449,670
CURRENT LIABILITIES			
Creditors: amounts falling due within one year	5	1,424,382	343,743
NET CURRENT ASSETS		113,753	105,927
TOTAL ASSETS LESS CURRENT LIABILITIES		125,453	125,452
RETAINED SURPLUS	6	125,453	125,452

The financial statements on pages 31 to 38 were approved and authorised for issue by the members and signed on their behalf by:

Mark Boleat
Chairman

The notes form an integral part of these financial statements.

JERSEY COMPETITION REGULATORY AUTHORITY
CASH FLOW STATEMENT
FOR THE YEAR ENDED 31 DECEMBER 2014

	Note	*2014* £	*2013* £
Net Cash Inflow / (Outflow) from Operating Activities	7	1,336,586	(357,822)
Returns on Investment and Servicing of Finance			
Interest received		782	985
Capital Expenditure and Financial Investment			
Payments to acquire tangible fixed assets		(511)	(5,210)
Management of Liquid Resources			
Movement in one month fixed term deposit account		(300,000)	300,000
Increase / (Decrease) in Cash		1,036,857	(62,047)

RECONCILIATION OF NET CASH FLOW TO MOVEMENT IN NET FUNDS

	2014 £	*2013* £
Increase / (Decrease) in cash in year	1,036,857	(62,047)
Increase / (Decrease) in liquid resources	300,000	(300,000)
Change in net funds	1,336,857	(362,047)
Net funds at 1 January	104,478	466,525
Net funds at 31 December	1,441,335	104,478

ANALYSIS OF NET FUNDS

	1 Jan 2014 £	*Cash flows* £	*31 Dec 2014* £
Cash at bank – JCRA current accounts	104,478	(63,238)	41,240
Monies held in respect of commitments given by telecoms operators	-	1,100,095	1,100,095
Total cash at bank	104,478	1,036,857	1,141,335
Fixed term deposit account	-	300,000	300,000
Total	104,478	1,336,857	1,441,335

The notes form an integral part of these financial statements.

JERSEY COMPETITION REGULATORY AUTHORITY
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 DECEMBER 2014

1. ACCOUNTING POLICIES

The financial statements are prepared under the historical cost convention and in accordance with accounting principles generally accepted in Jersey, incorporating United Kingdom accounting standards.

A summary of the more important accounting policies that the members have applied is set out below

a) Interest receivable
Interest on bank deposits is accrued on a daily basis.

b) Fixed assets
Fixed assets are stated at cost less depreciation.

Depreciation is provided on all tangible fixed assets at rates calculated to write down their cost on a straight line basis to their estimated residual values over their expected useful economic lives. The depreciation rates used are as follows:

Leasehold improvements	– shorter of remaining length of lease or expected useful life
Computer equipment	– 33% per annum
Website	– 33% per annum
Fixtures and fittings	– 10% per annum
Other equipment	– 20% per annum

c) Leasing commitments
All leases entered into by the JCRA are operating leases. Rentals payable under operating leases are charged in the income and expenditure account on a straight line basis over the lease term.

d) Pensions
The JCRA provides a defined contribution pension scheme to some of its employees. Contributions are charged in the income and expenditure account as they become payable in accordance with the rules of the scheme.

e) Grants
Grants received from the Economic Development Minister are accounted for in the period to which they relate. The grant received for 2014 was £300,000 (2013: £300,000) in cash. In addition the Economic Development Department approved the release of £80,000 (2013: £nil) from deferred grant income held. Any unused funds at the financial year end are either deferred or repaid to the Minister. Any deficits are funded from future grants. Deferred grant income as at 31 December 2014 amounted to £94,927 (2013: £132,689) of which £93,447 related to competition law funding and £1,480 related to ports incorporation funding (2013: £131,278 related to competition law funding and £1,411 related to ports incorporation funding).

f) Telecoms licence fees
Licence fees are set on the basis of cost recovery in accordance with Article 17 of the Telecommunications (Jersey) Law 2002. The JCRA's costs are determined on an annual basis and these are recovered by applying a percentage to the licensed revenues of the various licensed telecoms operators on the basis of relevant turnover, or if appropriate an annual fee. The percentage for 2014 was 0.75% (2013: 0.95%).

Fee income is recognised in the period to which it relates. Should fee income exceed costs, the balance is treated as deferred income. Deferred licence fee income as at 31 December 2014 amounted to £85,953 (2013: £28,125).

JERSEY COMPETITION REGULATORY AUTHORITY
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 DECEMBER 2014

ACCOUNTING POLICIES – CONTINUED

g) Postal licence fees

Licence fees are set on the basis of cost recovery in accordance with Article 18 of the Postal Services (Jersey) Law 2004. The JCRA's costs are determined on an annual basis and these are recovered through charging an annual fee.

The fees for 2014 were set at £40,000 (2013: £90,873) for Jersey Post Limited and £1,000 (2013: £1,000) for Class I Operators.

Fee income is recognised in the period to which it relates. Should fee income exceed costs, the balance is treated as deferred income. Deferred licence fee income as at 31 December 2014 amounted to £24,482 (2013: £64,292).

h) Taxation

Article 16 of the Competition Regulatory Authority (Jersey) Law 2001 provides that the income of the JCRA shall not be liable to income tax under the Income Tax (Jersey) Law 1961.

i) Expenditure

Expenditure is accounted for on an accruals basis.

2. TANGIBLE FIXED ASSETS

	Leasehold improvements £	*Computer equipment* £	*Website* £	*Fixtures and fittings* £	*Other equipment* £	*Total* £
Cost						
At 1 January 2014	35,944	66,572	4,125	21,827	3,936	132,404
Additions	-	511	-		-	511
Disposals	-	(32,413)	-	(361)	(2,227)	(35,001)
At 31 December 2014	35,944	34,670	4,125	21,466	1,709	97,914
Depreciation						
At 1 January 2014	25,279	62,198	3,176	18,396	3,830	112,879
Charge in the year	4,249	2,011	949	1,069	58	8,336
Disposals	-	(32,413)	-	(361)	(2,227)	(35,001)
At 31 December 2014	29,528	31,796	4,125	19,104	1,661	86,214
Net book value:						
At 31 December 2014	6,416	2,874	-	2,362	48	11,700
At 31 December 2013	10,665	4,374	949	3,431	106	19,525

JERSEY COMPETITION REGULATORY AUTHORITY
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 DECEMBER 2014

3. DEBTORS AND PREPAYMENTS

	2014	*2013*
	£	£
Prepayments	23,535	37,167
Trade debtors	72,310	303,680
Sundry debtors	955	4,345
	96,800	345,192

4. CASH AT BANK

Cash at bank includes £1,100,095 (2013: £nil) in respect of financial commitments given as part of telecoms' operators bids to be awarded spectrum to enable the roll out of 4G services in the Channel Islands. The monies will be repaid to operators once they have met their commitments or will be withheld in the event that they do not meet the commitments given.

5. CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR

	2014	*2013*
	£	£
Monies held in respect of commitments given by telecoms operators	1,100,095	-
Accruals	55,082	67,685
Deferred grant income	94,927	132,689
Deferred licence fee income	110,435	92,417
Other deferred income	-	1,667
Trade creditors	59,368	43,002
Social security	4,475	6,283
	1,424,382	343,743

6. MOVEMENT ON RETAINED SURPLUS

	2014	*2013*
	£	£
Income and Expenditure Account		
At 1 January	125,452	125,451
Surplus for the year	1	1
At 31 December	125,453	125,452

7. NOTE TO THE CASH FLOW STATEMENT

Reconciliation of surplus for the year to net cash inflow from operating activities:

	2014	*2013*
	£	£
Operating surplus	1	1
Depreciation	8,336	7,970
Interest	(782)	(985)
Decrease / (increase) in debtors	248,392	(191,791)
Increase / (decrease) in creditors	1,080,639	(173,017)
NET CASH INFLOW / (OUTFLOW) FROM OPERATING ACTIVITIES	1,336,586	(357,822)

JERSEY COMPETITION REGULATORY AUTHORITY
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 DECEMBER 2014

8. RELATED PARTIES

a) Transacting parties

The transacting parties are the Economic Development Minister and the JCRA.

Relationship

The JCRA acts independently of the States, but is accountable to the Economic Development Minister in respect of its funding for the administration and enforcement of the Competition (Jersey) Law 2005 which is also covered by a Service Level Agreement. The Minister acts as a conduit for requests from other Ministers who may request the JCRA to carry out projects. The JCRA reports formally to the Minister on an annual basis.

Transactions

In 2014, the Economic Development Minister provided funds to the JCRA to finance the administration and enforcement of the Competition (Jersey) Law 2005 and also to advise on the possible future regulation of the Ports of Jersey.

Amounts involved

- £132,689 brought forward as deferred grant income, as agreed from 2013
- £380,000 received in competition law funding during the year
- £42,780 received and receivable to provide advice on the possible future regulation of Ports of Jersey
- £80,000 released from deferred grant income as agreed with the Economic Development Department

Amounts due to the Economic Development Department at the balance sheet date

	2014	*2013*
	£	£
Deferred grant income (included in creditors)	94,927	132,689

b) Transacting parties

The transacting parties are the JCRA and the Guernsey Competition and Regulatory Authority (GCRA).

Relationship

The JCRA and the GCRA work together under the aegis of the Channel Islands Competition and Regulatory Authorities (CICRA) sharing a board, resources and expertise between the islands, whilst retaining their own separate legal identities.

Transactions

The JCRA and GCRA share resources and expertise and recharge each other for expenses (including staff costs) on a no gain no loss basis.

Amounts involved

- £246,975 invoiced during 2014 by the GCRA to the JCRA
- £122,445 invoiced during 2014 by the JCRA to the GCRA

Amounts due to and from the Guernsey Competition and Regulatory Authority at the balance sheet date

	2014	*2013*
	£	£
Amounts due to the JCRA from the GCRA (included within trade debtors)	5,124	8,435
Amounts due by the JCRA to the GCRA (included within trade creditors)	19,259	825

JERSEY COMPETITION REGULATORY AUTHORITY
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 DECEMBER 2014

9. FINANCIAL COMMITMENTS

At 31 December 2014 the JCRA had annual commitments under non-cancellable operating leases as set out below:

	Buildings	
	2014	*2013*
	£	£
Operating leases which expire:		
Not later than one year	-	-
In more than one year but less than five years	64,686	64,886
Later than five years	-	-
	64,686	64,686

10. PENSION COMMITMENTS

The JCRA provides a defined contribution pension scheme (the Public Employees Contributory Retirement Scheme) for some of its employees. The assets of the scheme are held separately from those of the JCRA in an independently administered fund. Contributions of £41,134 (2013: £62,793) were charged in the year. There were no unpaid contributions at the year end.

JERSEY COMPETITION REGULATORY AUTHORITY
CORPORATE GOVERNANCE GUIDELINES

The JCRA and the Economic Development Minister (the Minister)

The JCRA is an autonomous body and entirely independent in its decision taking from the States of Jersey. But under powers in Article 10(1) of the Competition Regulatory Authority (Jersey) Law 2001 (the "CRA Law"), the Minister, "may give to the Authority written guidance, or general written directions, on matters relating to corporate governance, that is relating to the systems and arrangements by and under which the Authority is directed and controlled". The following are the Corporate Governance Guidelines as agreed between the Minister and the JCRA.

What is Corporate Governance?

"Corporate Governance is the system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the company objectives are set, and the means of attaining those objectives and monitoring performance." – OECD April 1999

Constitution of the JCRA

The JCRA is a statutory body corporate established under Article 2 of the CRA Law. The governing body is a Board of Members which directs regulatory, licensing, financial, operational and strategic policies of the JCRA.

Functions of the JCRA

The functions of the JCRA are set out in Article 6 of the CRA Law which states:-

a) The JCRA shall have such functions as are conferred on it by or under this or any other Law or any other enactment.
b) The JCRA may recognise or establish, or assist or encourage the establishment of, bodies that have expertise in, or represent persons having interests in, any matter concerning competition, monopolies, utilities or any matter connected with the provision of goods and services to which the JCRA's functions relate.
c) The functions of those bodies shall include one or more of the following –
    i. the provision to the JCRA of advice, information and proposals in relation to any one or more of those matters;
    ii. the representation of the views of any one or more of those persons.
d) The JCRA may, on request by the Minister, provide the Minister with reports, advice, assistance and information in relation to any matter referred to in paragraph (b).
e) The JCRA shall have power to do anything that is calculated to facilitate, or is incidental or conducive to, the performance of any of its functions.

Constitution of the Board

Article 3 of the CRA Law requires that the JCRA shall consist of a Chairman and at least two other members. The appointment of Board Members is undertaken by the Minister after he has consulted with the Chairman. Vacancies which arise on the Board are filled through the use of an open and transparent process. The Minister follows the procedures recommended by the Jersey Appointments Commission – a body set up by the States of Jersey to oversee certain public sector appointments. A vacancy is usually advertised and once a suitable candidate is identified, a recommendation is made to the Minister.

Under the provisions of the CRA Law, the appointment of the Chairman is a matter reserved for decision by the States of Jersey on the recommendation of the Minister. The Minister must notify the States of the appointments.

JERSEY COMPETITION REGULATORY AUTHORITY
CORPORATE GOVERNANCE GUIDELINES (CONTINUED)

On appointment, a Member will receive an induction to the work of the Board and the JCRA. This includes an opportunity to meet all members of staff.

Under the provisions of the CRA Law, Members are appointed for a period not exceeding five years and upon expiry of such a period are eligible for reappointment.

Operations of the Board

The Board sets strategic policy and the implementation of these policies is undertaken by the Executive.

The Board has eight scheduled meetings each year and holds additional meetings when circumstances require it. The quorate number of Members to hold a Board meeting is three, two of whom must be Non-Executives, with one acting as Chair.

In advance of each meeting, Members are provided with comprehensive briefing papers on the items under consideration. The Board is supported by the Board Secretary who attends and minutes all meetings of the Board.

Article 9 of the CRA Law empowers the Board to delegate any of its powers to the Chairman, one or more Members, or an officer or employee of the JCRA or a committee whose member or members are drawn only from the Members, officers and employees of the JCRA. However, the Board is not authorised to delegate the power of delegation or the function of reviewing any of its decisions.

The JCRA publishes an annual business plan detailing a number of annual objectives and prepares annual budgets. These are finalised in the last quarter of each year and incorporate, amongst other things, any strategic issues raised by the Board, and comments received during consultation with key stakeholders. This is considered by the Board prior to the start of the financial year.

The Board monitors the performance of the JCRA against the annual objectives and annual budget through reports at its regular Board meetings.

The JCRA has agreed a policy on travel with the Economic Development Department.

The Chairman makes recommendations to the Minister in respect of fees paid to the Non- Executive Board members.

Committees of the Board

Article 7(1) of the CRA Law enables the JCRA to establish committees.

During 2014 the Board had established one committee; an Audit and Risk Committee. The members of this committee comprise the Non-Executive Directors and are appointed by the Board.

The key duties of the Audit and Risk Committee are:-

- To review annually the JCRA's application of corporate governance best practice;
- To review the mechanisms for ensuring the effectiveness of the JCRA's internal controls;
- To review and agree the internal auditor's annual work plan, monitor and review the effectiveness of any internal audit work carried out and review all reports from the internal auditors, monitoring the Executive's responsiveness to the findings and recommendations.
- To meet with the internal auditors at least once a year, without the presence of the Executive.
- To consider certain matters relating to the external audit of the JCRA's annual financial statements (including reviewing those financial statements prior to their consideration by the Board).

JERSEY COMPETITION REGULATORY AUTHORITY
CORPORATE GOVERNANCE GUIDELINES (CONTINUED)

Whilst the Audit and Risk Committee's Charter includes the consideration of the annual appointment of the external auditor, the actual appointment of the auditor is a matter reserved to the Treasury and Resources Minister under Article 17 of the CRA Law.

The members of the Audit and Risk Committee at the balance sheet date of 31 December 2014 were Philip Marsden (Chairman), Regina Finn, Hannah Nixon and Mark Boleat. The Executive is expected to attend the meetings of the Audit and Risk Committee in an advisory capacity.

Openness, Integrity and Accountability

The JCRA abides by the principles of openness, integrity and accountability – and those standards which are widely recognised as being applicable to public service, and to the conduct of all involved in public life. In the discharge of its duties, the JCRA will ensure:

- That subject to the appropriate level of confidentiality, it maintains an openness in its public affairs, in order that the public can have confidence in the decision-making processes and actions of public service bodies, in the management of the JCRA's activities, and in the Board Members and staff of the JCRA itself;
- That it maintains at all times an appropriate degree of integrity in the conduct of its affairs. Integrity comprises both straightforward dealing and completeness. The JCRA bases its integrity upon honesty, selflessness and objectivity, and high standards of propriety and probity in the stewardship of its funds and management of its affairs;
- That it is fully accountable in the application of the public funds entrusted to it and that these are properly safeguarded, and are used economically, efficiently and effectively.

The three fundamental principles, defined above in terms of public sector bodies, have been refined to include the findings and recommendations of the Nolan Committee on Standards in Public Life. The JCRA will make its best efforts to abide by Nolan's seven general principles that underpin public life, namely: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.

Audit and Accounts

While the JCRA is an independent body, it is accountable for its overall performance to the States of Jersey through the Minister.

Article 17 of the CRA Law requires that the JCRA shall keep proper accounts and proper records in relation to the accounts and prepares a report and financial statements in respect of each financial year and provide these to the Minister no later than four months after the year end. The Minister must lay a copy of the financial statements provided before the States as soon as practicable after he receives the report.

It is also a requirement of the CRA Law that the financial statements are audited by auditors appointed by the Treasury and Resources Minister and that they are prepared in accordance with generally accepted accounting principles.

Other Matters

Under powers granted by Article 10 of the CRA Law, the Minister may, after first consulting with the JCRA and where it considers that it is necessary in the public interest to do so, give the JCRA written guidance, or general written directions, on matters relating to corporate governance which may include matters relating to accountability, efficiency and economy of operation of the JCRA.