



# BILLET D'ÉTAT

WEDNESDAY, 25th FEBRUARY, 2015

III  
2015

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# BILLET D'ÉTAT

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

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I hereby give notice that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY**, the **25th FEBRUARY, 2015** at **9.30 a.m.**, to consider the items contained in this Billet d'État which have been submitted for debate.

R. J. COLLAS  
Bailiff and Presiding Officer

The Royal Court House  
Guernsey

16<sup>th</sup> January 2015

## **PROJET DE LOI**

entitled

### **THE PAROCHIAL CHURCH PROPERTY (GUERNSEY) LAW, 2015**

The States are asked to decide:-

I.- Whether they are of the opinion to approve the draft Projet de Loi entitled “The Parochial Church Property (Guernsey) Law, 2015”, and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

#### **EXPLANATORY MEMORANDUM**

This Law vests the majority of the rectories of the 10 ancient parishes, the glebe land of the parishes and other specified buildings in the respective Constables on behalf of their parishes and introduces a statutory mechanism for the sale of rectories. The Law also creates Management Boards for each ancient parish which will make recommendations on the management of the ancient parish church, its churchyard and the glebe land of the parish, oversee works approved at parochial meetings and encourage suitable additional uses of the ancient parish church. This Law does not affect the status of the ancient parish churches and churchyards themselves.

### **THE DRIVING LICENCES (GUERNSEY) (AMENDMENT) ORDINANCE, 2015**

The States are asked to decide:-

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

#### **EXPLANATORY MEMORANDUM**

This Ordinance introduces a High Risk Drink Driver Scheme which is intended to deal with drivers whose apparent dependency on alcohol presents a risk to road safety. Under the scheme, when a driver has been convicted of an offence in circumstances which meet the "High Risk" criteria, that individual will be required to satisfy the Medical Advisor at the Driver and Vehicle Licensing section of the Environment Department that they do not have an alcohol misuse problem and are fit to drive before consideration can be given to the reissue of his or her driving licence.

***ORDINANCES LAID BEFORE THE STATES***

**THE CHARITIES AND NON PROFIT ORGANISATIONS (REGISTRATION)  
(GUERNSEY) LAW, 2008 (AMENDMENT) ORDINANCE, 2014**

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) Ordinance, 2014 made by the Legislation Select Committee on the 10<sup>th</sup> December, 2014, is laid before the States.

**EXPLANATORY MEMORANDUM**

This Ordinance amends Schedule 1 to the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 in the following ways -

- (1) by inserting a subparagraph to clarify that a Non Profit Organisation ("NPO") that has been struck off the Register of NPOs is not registered for the purposes of the Law and that an offence is committed under section 1(5),
- (2) by inserting a paragraph which introduces some new criminal offences for failing to comply with some of the existing requirements of the Law, which are currently not underpinned by criminal sanction, including the requirements to provide information and to pay fees, and
- (3) by amending paragraph 13 of Schedule 1 in order to widen the legal gateways under which the Registrar can provide information to other authorities, in two respects: firstly, it remedies the current situation whereby the gateway enabling information to be provided to corresponding authorities outside the Bailiwick does not permit the provision of information to the Sark Registrar of NPOs (an office which did not exist when the Law was drafted), secondly, it enables information to be shared with the Director of Income Tax. This latter amendment is to spare NPOs that wish to obtain tax relief from having to make two separate applications, for registration and tax relief respectively, as a result of the office of Registrar of NPOs having been transferred from the Director of Income Tax to the Companies Registrar with effect from 1<sup>st</sup> July 2014.

The Ordinance was made by the Legislation Select Committee in exercise of its powers under Article 66(3) of the Reform (Guernsey) Law, 1948, and came into force on the 10<sup>th</sup> December, 2014. Under the proviso to Article 66(3) of the Reform (Guernsey) Law, 1948, the States of Deliberation have the power to annul the Ordinance.

**THE INCOME TAX (GUERNSEY) (AMENDMENT) (NO. 2) ORDINANCE,  
2014**

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, The Income Tax (Guernsey) (Amendment) (No. 2) Ordinance, 2014 made by the Legislation Select Committee on the 15<sup>th</sup> December, 2014, is laid before the States.

**EXPLANATORY MEMORANDUM**

This Ordinance amends the Income Tax (Guernsey) Law, 1975 in the following ways -

- (1) by providing that the tax credit available to tax capped individuals on a distribution from a company subject to tax at the company intermediate or higher rate is restricted and is not repayable (clause 2),
- (2) by amending section 71 so that a return as to lodgers is required where an individual has been accommodated for a period or periods amounting to 91 days or more (clause 3),
- (3) by introducing provisions to allow interest payments in Guernsey to be reported to Income Tax, in particular: to permit the Director to require that financial institutions carrying on banking business provide information regarding interest paid to Guernsey residents in respect of bank and savings accounts and interest received from Guernsey residents in respect of mortgage accounts, on an annual basis; to make it mandatory for individuals to provide financial institutions with their TIN ("Tax Identification Number") and mandatory for financial institutions to use the TIN in all communications with the Director, and to permit the Director to disclose a person's TIN to their financial institution to facilitate the reporting and processing of this information (clauses 5 and 6),
- (4) by amending sections 153(3) and (4) to ensure the taxation of pension benefits, irrespective of where the services in respect of which those benefits were paid was performed (clauses 9 to 11),
- (5) by amending section 199 to ensure that late payment surcharges may be imposed when a return is submitted late, following the giving of notice to file a return rather than requiring the issue of the return itself (clauses 12 to 18),
- (6) by introducing a new section 199AA which enables the Director to impose surcharges from the original due date in circumstances where the Director considers a suspension request was excessive and was not made in good faith, made negligently or fraudulently, or made without proper regard to the amount likely to be payable (clauses 4, 7, 8, 19 and 20),
- (7) by amending section 201 to enable the prosecution of a person who fails to submit a tax return, notwithstanding that penalty proceedings have been taken under section 190 or section 200 in relation to that contravention (clause 21),

- (8) by extending the definition of "partnerships" to include limited liability partnerships (following the commencement of the Limited Liability Partnerships (Guernsey) Law, 2013 in May 2014) (clause 22(b)),
- (9) by amending the Sixth Schedule so that income derived by an individual from an exempt body, in respect of offices or employments held or exercised in Guernsey, is treated as "non qualifying income" and by removing the reference to categories A, B and C to reflect the removal of these categories following the revision of the Exempt Bodies Ordinance (clause 23), and
- (10) by amending the individual tax cap to exclude income derived from Guernsey land and property (clause 24).

The Ordinance was made by the Legislation Select Committee in exercise of its powers under Article 66(3) of the Reform (Guernsey) Law, 1948, and came into force on the 1<sup>st</sup> January, 2015. Under the proviso to Article 66(3) of the Reform (Guernsey) Law, 1948, the States of Deliberation have the power to annul the Ordinance.

### **THE INCOME TAX (GUERNSEY) (AMENDMENT) (NO. 3) ORDINANCE, 2014**

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, The Income Tax (Guernsey) (Amendment) (No. 3) Ordinance, 2014 made by the Legislation Select Committee on the 15<sup>th</sup> December, 2014, is laid before the States.

#### **EXPLANATORY MEMORANDUM**

This Ordinance amends the Income Tax (Guernsey) Law, 1975 in the following ways -

- (1) by providing that where one party to a marriage is not resident in Guernsey, the resident party may only claim the allowances against taxation applicable to a single person (clause 2),
- (2) by restricting the personal allowances that may be claimed by non-resident individuals, and individuals not solely or principally resident, against taxation on Guernsey source income to the allowances applicable to a single person (clauses 3 to 9),
- (3) by making amendments to the information-gathering provisions of Part VIA, and in particular by empowering the Royal Court to direct persons appearing to have relevant documents in their possession, when requiring them to deliver the documents to the Director of Income Tax, not to inform the taxpayer of the investigation or to disclose information that might prejudice the inquiry (clauses 10 to 17),

- (4) by amending section 172, which empowers the States by resolution to give legal effect to double tax arrangements with other governments, so that such arrangements can make provision which is not strictly limited to affording relief from double taxation, such as apportioning taxing rights, varying the rate of tax to be collected and ancillary matters (clauses 18 and 19),
- (5) by enabling the imposition of penalties on employers who submit incorrect or incomplete returns relating to their employees under the ETI regulations and who fail to remedy the default when required to do so (clause 20), and
- (6) by amending the definition of "emoluments" in section 209 to clarify for the avoidance of doubt that compensatory awards for unfair dismissal made by the Employment and Discrimination Tribunal under the Employment Protection Law are an emolument and thus subject to taxation as income from employment, subject to the authorised deductions (clause 21).

The Ordinance was made by the Legislation Select Committee in exercise of its powers under Article 66(3) of the Reform (Guernsey) Law, 1948, and came into force on the 1<sup>st</sup> January, 2015. Under the proviso to Article 66(3) of the Reform (Guernsey) Law, 1948, the States of Deliberation have the power to annul the Ordinance.

#### ***STATUTORY INSTRUMENT LAID BEFORE THE STATES***

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

#### **THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (LEGAL PROFESSIONALS, ACCOUNTANTS AND ESTATE AGENTS) (BAILIWICK OF GUERNSEY) (AMENDMENT) (NO. 2) REGULATIONS, 2014**

In pursuance of section 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) (No. 2) Regulations, 2014, made by the Policy Council on 3<sup>rd</sup> December, 2014, are laid before the States.

#### **EXPLANATORY NOTE**

These Regulations update the fees payable by prescribed businesses under the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.

These Regulations came into force on the 1<sup>st</sup> January, 2015.



## **THE FINANCIAL SERVICES COMMISSION (FEES) REGULATIONS, 2014**

In pursuance of section 21 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, section 60 of the Banking Supervision (Bailiwick of Guernsey) Law, 1994, section 86 of the Insurance Business (Bailiwick of Guernsey) Law, 2002 and section 63 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, the Financial Services Commission (Fees) Regulations, 2014, made by the Guernsey Financial Services Commission on the 5<sup>th</sup> day of December, 2014, are laid before the States.

### **EXPLANATORY NOTE**

These Regulations prescribe for the purposes of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, the Banking Supervision (Bailiwick of Guernsey) Law, 1994, the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, the Insurance Business (Bailiwick of Guernsey) Law, 2002 and the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 the fees payable in respect of the licensing of controlled investment business and the authorisation and registration of collective investment schemes, a designated territory investment business notification, a non-Guernsey open-ended collective investment scheme notification, the licensing of a bank, the licensing of fiduciaries, the licensing of an insurer, the service of notice of an application to the Royal Court for an order sanctioning a transfer of long term insurance business, the licensing of an insurance manager, the licensing of an insurance intermediary, and the fees payable annually thereafter.

These Regulations came into force on the 1<sup>st</sup> January, 2015.

## **THE PROTECTED CELL COMPANIES AND INCORPORATED CELL COMPANIES (FEES FOR INSURERS) REGULATIONS, 2014**

In pursuance of section 86 of the Insurance Business (Bailiwick of Guernsey) Law, 2002 and Section 537 of the Companies (Guernsey) Law, 2008, the Protected Cell Companies and Incorporated Cell Companies (Fees for Insurers) Regulations, 2014, made by the Guernsey Financial Services Commission on the 5<sup>th</sup> day of December, 2014, are laid before the States.

### **EXPLANATORY NOTE**

These Regulations prescribe the fees payable to the Guernsey Financial Services Commission by any company which is a protected cell company or an incorporated cell company, and by an incorporated cell, and which applies to be licensed to conduct insurance business under the Insurance Business (Bailiwick of Guernsey) Law, 2002, and the fees payable periodically thereafter by such a company or cell when licensed and also for the creation of a new cell or the reactivation of a dormant cell by a licensed protected cell company. Furthermore, the Regulations prescribe the fee payable to the

Guernsey Financial Services Commission by any company for consent for the conversion of a licensed company into a protected cell company or an incorporated cell company, for the conversion of an existing licensed protected cell company into an incorporated cell company, or for the conversion of a licensed protected cell company or incorporated cell company into a non-cellular company. The Regulations also specify a fee for the conversion (when the Companies (Guernsey) Law, 2008 so permits) of an existing cell of a protected cell company into a non-cellular company.

These Regulations came into force on the 1<sup>st</sup> January, 2015.

### **THE REGISTRATION OF NON-REGULATED FINANCIAL SERVICES BUSINESSES (BAILIWICK OF GUERNSEY) (FEES) REGULATIONS, 2014**

In pursuance of section 31(c) of the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) (Fees) Regulations, 2014, made by the Guernsey Financial Services Commission on the 5<sup>th</sup> day of December 2014, are laid before the States.

#### **EXPLANATORY NOTE**

These Regulations make provision in respect of the payment of an application fee and an annual fee for the purposes of the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008.

These Regulations came into force on the 1<sup>st</sup> January, 2015.

### **THE AMALGAMATION AND MIGRATION OF COMPANIES (FEES PAYABLE TO THE GUERNSEY FINANCIAL SERVICES COMMISSION) REGULATIONS, 2014**

In pursuance of section 537 of the Companies (Guernsey) Law, 2008, the Amalgamation and Migration of Companies (Fees payable to the Guernsey Financial Services Commission) Regulations, 2014, made by the Guernsey Financial Services Commission on the 5<sup>th</sup> day of December 2014, are laid before the States.

#### **EXPLANATORY NOTE**

These Regulations amend the Amalgamation and Migration of Companies (Fees payable to the Guernsey Financial Services Commission) Regulations, 2013 by increasing the fee payable to the Guernsey Financial Services Commission which must accompany an application for its consent for the amalgamation of companies pursuant to the provisions of Part VI of the Companies (Guernsey) Law, 2008 and for the removal of a supervised company from the Register of Companies for the purposes of becoming registered as a company under the law of a district, territory or place outside Guernsey in accordance with the provisions of Part VII of that Law.

There continues to be no fee payable to the Guernsey Financial Services Commission when a non-Guernsey company migrates "inwardly" to become registered as a Guernsey company.

These Regulations came into force on the 1<sup>st</sup> January, 2015.

### **THE SUPPLEMENTARY BENEFIT (GUERNSEY) REGULATIONS, 2014**

In pursuance of Section 15B of the Supplementary Benefit (Guernsey) Law, 1971, the Supplementary Benefit (Guernsey) Regulations, 2014, made by the Social Security Department on 28<sup>th</sup> November, 2014, are laid before the States.

#### **EXPLANATORY NOTE**

These Regulations are made under the Supplementary Benefit (Guernsey) Law, 1971 ("the principal Law") as recently amended by the Supplementary Benefit (Guernsey) (Amendment) Law, 2014. They make modifications to and exemptions from the provisions of the principal Law.

Regulation 1 exempts certain young persons under the age of 18 years from the requirement to be over the age of 18 years for the purposes of eligibility for a supplementary benefit.

Regulation 2 creates exemptions for certain individuals, who are engaged in or undertaking a qualifying course of education or training, from the requirement to be no longer in full-time education for the purposes of eligibility for a supplementary benefit.

Regulations 3, 4, 5 and 6 are deeming provisions which have the effect of prescribing, or providing for, the circumstances in which individuals are deemed to be in full-time remunerative work or acting in compliance with work requirements relating to them for the purposes of eligibility for a supplementary benefit.

Regulation 7 defines how the phrase "full-time remunerative work" is to be interpreted for the purposes of the principal Law. In summary, a person is engaged in full-time remunerative work if the person works for a minimum of 35 hours a week and remunerated at a rate that is at least equal to the minimum wage.

Regulations 8, 9 and 10 prescribe the types and amounts of medical expenses that may be paid under the principal Law.

Regulation 11 prescribes the benefits, allowances and pensions payable under the Social Insurance (Guernsey) Law, 1978 that can be abated under the principal Law, at the discretion of the Social Security Department, in respect of supplementary benefit payable under the principal Law.

Regulations 12, 13 and 14 deal respectively with interpretation, extent and citation and commencement.

These Regulations came into force on the 1<sup>st</sup> December, 2014.

**THE COPYRIGHT (APPLICATION TO BERNE CONVENTION COUNTRIES)  
(BAILIWICK OF GUERNSEY) REGULATIONS, 2014**

In pursuance of Section 221(3) of the Copyright (Bailiwick of Guernsey) Ordinance, 2005, The Copyright (Application to Berne Convention Countries) (Bailiwick of Guernsey) Regulations, 2014 made by the Commerce and Employment Department on 18<sup>th</sup> November, 2014, are laid before the States.

**EXPLANATORY NOTE**

These Regulations apply certain provisions of the Copyright (Bailiwick of Guernsey) Ordinance, 2005, to works originating in a Berne Convention country, whether by reference to the author's residence or domicile, or the country of first publication, with the effect that those works receive copyright protection in the Bailiwick of Guernsey.

These Regulations came into force on the 21<sup>st</sup> November, 2014.

**THE COPYRIGHT (APPLICATION TO THE UNITED KINGDOM)  
(BAILIWICK OF GUERNSEY) (AMENDMENT) REGULATIONS, 2014**

In pursuance of Section 221(3) of the Copyright (Bailiwick of Guernsey) Ordinance, 2005, The Copyright (Application to the United Kingdom) (Bailiwick of Guernsey) (Amendment) Regulations, 2014, made by the Commerce and Employment Department on 18<sup>th</sup> November, 2014, are laid before the States.

**EXPLANATORY NOTE**

These Regulations make some consequential amendments to the Copyright (Application to the United Kingdom) (Bailiwick of Guernsey) (Amendment) Regulations, 2014.

These Regulations came into force on the 21<sup>st</sup> November, 2014.

**THE COMPANIES (RECOGNISED STOCK EXCHANGES) (AMENDMENT)  
REGULATIONS, 2014**

In pursuance of 537 of the Companies (Guernsey) Law, 2008, The Companies (Recognised Stock Exchanges) (Amendment) Regulations, 2014 made by the Registrar of Companies on 18<sup>th</sup> November, 2014, are laid before the States.

**EXPLANATORY NOTE**

These regulations amend the Companies (Recognised Stock Exchanges) Regulations, 2009 by substituting, for the reference to the Channel Islands Stock Exchange, a reference to the new exchange, the Channel Islands Securities Exchange. A company

which is listed on a recognised exchange is exempt from the beneficial ownership regime of Part XXIX of the Companies (Guernsey) Law, 2008.

These regulations came into operation on the 20<sup>th</sup> December, 2014.

### **THE COMPANIES (GUERNSEY) LAW, 2008 (AMENDMENT OF PART XVIA) REGULATIONS, 2014**

In pursuance of section 537 of the Companies (Guernsey) Law, 2008, The Companies (Guernsey) Law, 2008 (Amendment of Part XVIA) Regulations, 2014, made by the Commerce and Employment Department on 2<sup>nd</sup> December 2014, are laid before the States.

#### **EXPLANATORY NOTE**

These regulations amend Part XVIA of the Companies (Guernsey) Law, 2008 by providing that the date on which recognised auditors must apply to renew their registration each year with the Registrar of Companies may be prescribed by the Registrar by regulation. The regulations also amend the definition of "market traded company" (which are the companies to which the restrictions on acting as auditor in Part XVIA apply) by excluding open-ended investment companies.

These regulations came into operation on the 2<sup>nd</sup> December, 2014.

### **THE COMPANIES (RECOGNITION OF AUDITORS) (RENEWAL OF REGISTRATION) REGULATIONS, 2014**

In pursuance of section 537 of the Companies (Guernsey) Law, 2008, The Companies (Recognition of Auditors) (Renewal of Registration) Regulations, 2014, made by the Registrar of Companies on 2<sup>nd</sup> December 2014, are laid before the States.

#### **EXPLANATORY NOTE**

These regulations provide that for the purposes of section 274C of the Companies (Guernsey) Law, 2008 recognised auditors must apply to renew their registration each year with the Registrar of Companies during and before the end of September in each calendar year.

These regulations came into operation on the 2<sup>nd</sup> December, 2014.

**THE COMPANIES (AUDIT EXEMPTION) (AMENDMENT) (NO. 2)  
REGULATIONS, 2014**

In pursuance of section 537 of the Companies (Guernsey) Law, 2008, The Companies (Audit Exemption) (Amendment) (No. 2) Regulations, 2014, made by the Commerce and Employment Department on 2<sup>nd</sup> December, 2014, are laid before the States.

**EXPLANATORY NOTE**

These regulations amend the Companies (Audit Exemption) (Amendment) Regulations, 2014, by substituting, in regulation 2, for "2014", a reference to "2008" and came into force on 2<sup>nd</sup> December, 2014.

**THE HOUSING (CONTROL OF OCCUPATION) (FEES) (GUERNSEY)  
REGULATIONS, 2013**

In pursuance of section 66A (3) of the Housing (Control of Occupation) (Guernsey) Law, 1994, as amended, The Housing (Control of Occupation) (Fees) (Guernsey) Regulations, 2013, made by the Housing Department on 16<sup>th</sup> December 2013, are laid before the States.

**EXPLANATORY NOTE**

These Regulations increase the fees charged for certain applications made under the Housing (Control of Occupation) (Guernsey) Law, 1994, as amended, the current fees having been in place since 2009.

The fee increase took effect on 1<sup>st</sup> January, 2014.

**THE HOUSING (CONTROL OF OCCUPATION) (FEES) (GUERNSEY)  
REGULATIONS, 2014**

In pursuance of section 66A (3) of the Housing (Control of Occupation) (Guernsey) Law, 1994, as amended, The Housing (Control of Occupation) (Fees) (Guernsey) Regulations, 2014, made by the Housing Department on 24<sup>th</sup> November 2014 are laid before the States.

**EXPLANATORY NOTE**

These Regulations increase the fees charged for certain applications made under the Housing (Control of Occupation) (Guernsey) Law, 1994, as amended, the current fees having been in place since 2009.

The fee increase took effect on 1<sup>st</sup> January, 2015.

**THE STATES HOUSING (RENT AND REBATE SCHEME) (GUERNSEY)  
(AMENDMENT) REGULATIONS, 2013**

In pursuance of section 5 (3) of the States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004, the States Housing (Rent and Rebate Scheme) (Guernsey) (Amendment) Regulations, 2013, made by the Housing Department on 17<sup>th</sup> December, 2013, are laid before the States.

**EXPLANATORY NOTE**

These Regulations amend the States Housing (Rent and Rebate Scheme) (Guernsey) Regulations, 2005 by making changes to the States Rental Formula and to the charges applied to non-dependent persons residing in the household of a statutory tenant, and to the allowances given to dependent children residing in the household of a statutory tenant.

**THE STATES HOUSING (RENT AND REBATE SCHEME) (GUERNSEY)  
(AMENDMENT) REGULATIONS, 2014**

In pursuance of section 5 (3) of the States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004, the States Housing (Rent and Rebate Scheme) (Guernsey) (Amendment) Regulations, 2014, made by the Housing Department on 28<sup>th</sup> November, 2014, are laid before the States

**EXPLANATORY NOTE**

These Regulations amend the States Housing (Rent and Rebate Scheme) (Guernsey) Regulations, 2005 by making changes to the States Rental Formula and to the charges applied to non-dependent persons residing in the household of a statutory tenant, and to the allowances given to dependent children residing in the household of a statutory tenant.

**THE MILK (RETAIL PRICES) (GUERNSEY) (REVOCATION) ORDER, 2014**

In pursuance of section 8(4) of the Milk (Control) (Guernsey) Ordinance, 1958, the Milk (Retail Prices) (Guernsey) (Revocation) Order, 2014, made by the Commerce and Employment Department on 18<sup>th</sup> November, 2014, is laid before the States.

**EXPLANATORY NOTE**

This Order revokes the Milk (Retail Prices) (Guernsey) Order, 2014 with effect from 1<sup>st</sup> January, 2015, which will have the effect of allowing milk to be sold at any price when it is sold by retail on and after that date.



## **POLICY COUNCIL**

### **INVESTIGATING A LIVING WAGE STATISTIC FOR GUERNSEY**

#### **1. EXECUTIVE SUMMARY**

- 1.1 This report summarises investigations into the implications of establishing a Living Wage Statistic for Guernsey, in accordance with the terms of a successful amendment placed by Deputy Langlois in August 2013. This arose from the States' consideration of a Report from the Commerce and Employment Department regarding a proposed increase to the level of the statutory Minimum Wage (Billet d'Etat XV of 2013).
- 1.2 This Report examines the differences between the statutory Minimum Wage and the concept of a voluntary Living Wage.
- 1.3 Having examined the arguments for and against its introduction, and consulted with interested parties in both Guernsey and Alderney, the report concludes that while low pay may be an issue in some business sectors, publication of a Living Wage Statistic is not an effective way of addressing the associated social policy concerns.
- 1.4 The Report also highlights that the data necessary to assess the scale of working poverty in Guernsey, and how far it is due to low hourly wage rates, are not available. Furthermore, the methods of calculating a Living Wage in Guernsey require an agreed benchmark for measuring poverty and determining what is an adequate income for different types of household; but this measurement is not yet in place, which means that attempts to calculate a Living Wage Statistic would be both premature and impractical at this point.
- 1.5 The Policy Council, Social Security Department and Commerce and Employment Department agree that while the investigation work has contributed some useful insights to inform other broader associated policy reviews, the cost benefit of the calculation of a local Living Wage Statistic does not support further work at this time and thus the current investigations should be concluded.
- 1.6 All parties are, however, agreed that an amendment should be made to legislation administered by the Social Security Department which will assist relevant investigating officers of the Commerce and Employment Department with the enforcement of the Minimum Wage Law.

#### **2. BACKGROUND**

- 2.1 In August 2013, the States considered a report from the Commerce and Employment Department (Billet d'Etat XV of 2013) regarding a proposed increase to the level of the statutory Minimum Wage.



- 2.2 In its Report, the Commerce and Employment Department noted that the consideration of a Living Wage Statistic for Guernsey would be a complex and time consuming matter which would extend into broader issues of social policy that were beyond the Department's responsibilities for setting the Minimum Wage.
- 2.3 As well as agreeing to the increase in the Minimum Wage rates, the States approved an amendment placed by Deputy Langlois, which directed the "... *Policy Council, with the assistance of the Commerce & Employment and Social Security Departments, to investigate the implications for, and impact upon, Guernsey of the establishment of a 'living wage' measurement and to report back with the conclusions of its investigation by no later than 30<sup>th</sup> April 2015.*"
- 2.4 The investigation that the Policy Council was directed to undertake through the amendment was limited to evaluating the potential effects if the States of Guernsey was to calculate and publish a Living Wage statistic. The Policy Council was not directed to investigate the consequences of adopting either a compulsory or voluntary Living Wage standard.
- 2.5 The Policy Council established a group with cross-departmental membership to undertake the investigation. The group was chaired by Deputy Langlois, representing the Policy Council and Social Security Department, and included Deputy Le Clerc of the Social Security Department and Deputy Soulsby and Deputy Brouard of the Commerce and Employment Department.

### **The terms Living Wage and Minimum Wage**

#### **Living Wage**

- 2.6 According to the UK Living Wage Commission, a Living Wage is "*an hourly wage defined as the minimum amount of money needed to enjoy a basic, but socially acceptable standard of living.*" This is the definition that the Living Wage Project Group has used in its work.
- 2.7 This definition is clear and, while simple and aspirational, it appears to the Project Group to ignore a fundamental problem with the use of a Living Wage statistic in practice. The problem being that, while employees earn wages as individuals, they often live as members of different household types, with differing numbers of wage earners, sizes and therefore costs.
- 2.8 Translating the income requirements of households into a Living Wage standard is far from straightforward.
- 2.9 There is no law requiring UK employers to pay their workers a Living Wage. The UK approach is, therefore, is one based largely on encouragement to behave in a certain way rather than a statutory requirement. That said, employers who pay all of their employees at or above the Living Wage rates may seek accreditation for doing so from the Living Wage Foundation and are then

entitled to describe themselves as “Living Wage Employers”. At the time of writing, the Living Wage Foundation quoted a total of 1,021 accredited employers of which over 400 are based in London.

- 2.10 Separate Living Wage rates are calculated for London and for the rest of the UK. From November 2014, the UK Living Wage is £7.85 and the London rate is £9.15.
- 2.11 The UK (“out of London”) rate is calculated by the Centre for Research in Social Policy (CRSP) at Loughborough University. The complex calculation is based on the Minimum Income Standard (MIS) for the UK, which is also the product of research by CRSP, funded by the Joseph Rowntree Foundation. This research looks in detail at what nine different types of households need in order to have a minimum acceptable standard of living<sup>1</sup>. Decisions about what to include in this standard are made by groups comprising members of the public. The UK Living Wage is, therefore, rooted in social consensus about what people need for an acceptable standard of living.
- 2.12 CRSP calculate the out of London Living Wage statistic by taking a weighted (by the number of households in each type) average of the nine MIS figures. This figure is rounded to the nearest 5 pence.
- 2.13 There is also an “earnings cap” that limits the out of London Living Wage increase in any one year to no greater than 2% above the increase in average earnings. Based on the calculation of actual minimum living costs the out of London Living Wage from November 2014 should be £9.20, but the capped increase reduced this to £7.85.
- 2.14 The Living Wage rate in London is equally complex and is calculated by GLA Economics from the mean of a Basic Living Costs hourly wage rate derived from cost of living estimates from a range of households in London (as with the out of London calculation)<sup>2</sup> and 60% of the median income (weighted for 11 household types) of those working in London<sup>3</sup>. The resultant rate is termed the Poverty Threshold Wage, to which is added 15% to protect against “unforeseen events”. This is then rounded to the nearest 5 pence to give the London Living Wage statistic.
- 2.15 For 2014, the Basic Living Costs approach gave an hourly wage of £7.65 and the Income Distribution method one of £8.25. The average Poverty Threshold Wage was thus £7.95 per hour, which when uplifted by 15% and rounded gives the London Living Wage of £9.15 per hour.

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<sup>1</sup> For full details of the calculation methodology see:

<http://www.lboro.ac.uk/media/wwwlboroacuk/content/crsp/downloads/reports/Uprating%20the%20out%20of%20London%20Living%20Wage%20in%202014.pdf>

<sup>2</sup> While similar to MIS, this is a different methodology first developed in 1997/98 by the Family Budget unit, then based in the Department of Nutrition and Dietetics at King’s College London.

<sup>3</sup> For full details of the calculation methodology see: <http://www.london.gov.uk/sites/default/files/living-wage-2014.pdf>

- 2.16 Both the UK and London rates take into account the various welfare benefits that are available to those on low pay. Thus the public subsidy of wages is factored into the Living Wage and both rates would be substantially higher without this element.

### **The Statutory Minimum Wage**

- 2.17 Unlike the Living Wage, the Minimum Wage is *not* calculated with the aim to provide an adequate income for an individual or household to live on, and it is not the product of the range of numerical analysis and estimation used for the UK's Living Wage statistics. It is simply intended to prevent employers paying wages that are so low as to be considered exploitative.
- 2.18 As with the Living Wage calculation, it is presumed that the Minimum Wage earned by any individual may need to be topped up by a variety of welfare benefits depending on their individual household circumstances. How the term exploitation should be interpreted is not, however, defined in either Guernsey or the UK, although dictionary definitions such as “...to benefit unfairly from the work of (someone), typically by overworking or underpaying them” would probably serve as a generally useful interpretation.
- 2.19 The States of Guernsey approved the introduction of a statutory Minimum Wage in 2007 and enacted the legislation in 2009. To date, the Minimum Wage rates have been reviewed and adjusted annually, although this interval is not specified by law. A comparison between Living and Minimum Wage rates in Guernsey, Jersey and the UK is shown in Table 1.

Table 1 - Living and Minimum Wage Rates (Hourly)

<b>Jurisdiction</b>	<b>Living Wage</b>	<b>Adult Minimum Wage</b>	<b>Date effective from<sup>4</sup></b>
Guernsey	n/a	£6.65 (aged 18 & over)	1 <sup>st</sup> October 2014
UK	£7.85 out of London £9.15 in London	£6.50 per hour (aged 21 & over)	1 <sup>st</sup> October/ 1st November 2014
Jersey	n/a	£6.63 (aged 18 & over)	1 <sup>st</sup> April 2014

- 2.20 The main conceptual difference between a Living Wage and a Minimum Wage is that the Living Wage has a strong social policy emphasis focused on enabling workers to live “socially included” lives in their community without having to work very long hours to do so. In contrast, the Minimum Wage has a strong economic policy emphasis focused on establishing a wage floor that will not impact adversely on economic stability.

<sup>4</sup> In the UK, the Minimum Wage is effective from 1 October annually; the Living Wage changes on 1 November each year.

- 2.21 Another significant difference is that the Minimum Wage is a statutory requirement whereas the Living Wage is paid voluntarily.

### **Minimum Wage Enforcement**

- 2.22 In Guernsey, so that the legislation can be enforced, the Island's Minimum Wage Law requires that employers keep records of their employees' pay, hours worked, and deductions made. The legislation also provides powers for an investigation to be made (which includes access to all necessary documentation) if an officer of the Commerce and Employment Department is of the opinion that a worker has not be paid in accordance with the Law, or if the officer believes a breach may have taken place with regard to record keeping or producing relevant records. The Law does not provide for the Department to review this data routinely or to make investigation on a random sampling basis and, therefore, some credible grounds must exist for the investigation to be started. A formal complaint is not, however, needed.
- 2.23 Responding to comments from the consultation exercise (Section 5 below and Appendix 2), in conjunction with the Social Security Department, the Commerce and Employment Department has reviewed statutory Minimum Wage enforcement. Resulting from that review, it is recommended that an amendment is made to the Social Insurance (Guernsey) Law, 1978 ('the Social Insurance Law'), in order that the relevant investigating officers of the Commerce and Employment Department can be alerted to any suspected breaches of the Minimum Wage (Guernsey) Law, 2009 in respect of employees who might not be receiving the Minimum Wage. Such an amendment will enable the Social Security Department to have the necessary statutory gateway to permit disclosure of specific information to investigating officers of the Commerce and Employment Department where, in the course of an inspection, an officer of the Social Security Department suspects a breach of the Minimum Wage Law.
- 2.24 Regulation 22 of the Social Insurance (Contributions) Regulations, 2000 gives the Social Security Department the power to inspect employer's records, including wage sheets in connection with the calculation of earnings paid to an employee, as follows:

#### *"Production and inspection of employer's records*

*22. An employer shall, when required to do so by an inspector at any reasonable time, produce for inspection at the employer's premises any contribution schedules and records by way of wage sheets or otherwise kept by him in connection with the calculation or payment of earnings paid to an employed person employed by him in an employed contributor's employment, or in connection with the deduction or calculation of contributions paid in respect of such earnings."*

- 2.25 Section 111 of the Social Insurance Law prohibits disclosure of information obtained under the Law subject to certain limited exemptions. Therefore, it is recommended that the Social Insurance Law is amended in order to provide a

further suitable exemption to this prohibition. This will permit the disclosure of relevant information by the Social Security Department, to investigating officers of the Commerce and Employment Department, relating to employer's records to assist with the statutory enforcement of the Minimum Wage Law as outlined above. Section 112B of the Social Insurance Law provides the States with the power to amend section 111 of the Social Insurance Law by Ordinance.

### 3. THE WIDER POLICY CONTEXT

#### International concerns about Working Poverty

- 3.1 It is apparent that concern is being expressed in many developed countries, including the UK, about the numbers of people who are in work but unable to earn enough to enjoy a basic standard of living.
- 3.2 A broad definition of working (or in-work) poverty is that it describes the condition of working people whose low level of disposable income puts their households at risk of poverty.
- 3.3 More specific measures give defined parameters, although they are somewhat arbitrary judgements, albeit commonly applied (see reports from the Joseph Rowntree Foundation, Living Wage Commission, European Working Conditions Observatory and many other organisations). The description of being in working poverty is applied to people who work for more than 27 weeks and have an income below 60% of the national median (i.e. at risk of poverty).
- 3.4 In these definitions income is measured in relation to the household in which a person lives and includes the income of all household members. Furthermore, the risk of poverty may not arise simply because they have low wages. The risk arises if their wages are not sufficient to meet and maintain the income needs of the household, which means that for many people finding work is not necessarily a route to an adequate income. Equally, a person can receive a low wage but not be at risk of poverty because the income of another household member is sufficient to raise the overall household income above the poverty threshold.
- 3.6 The UK Living Wage Commission interim report 2014<sup>5</sup> commented that:

*“The nature of poverty in the UK is transforming. While overall poverty rates are falling, the 21% rate this year is the lowest since 2004/5 - the nature of poverty is changing dramatically. For the first time, there are now more people in working poverty than out of work poverty. 6.7 million of the 13 million people in poverty in the UK are in a family where someone works. That is 52% of the total.”*

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<sup>5</sup> [http://www.livingwagecommission.org.uk/wp-content/uploads/2014/02/Living-Wage-Commission-Report-v2\\_f-1.pdf](http://www.livingwagecommission.org.uk/wp-content/uploads/2014/02/Living-Wage-Commission-Report-v2_f-1.pdf)

3.7 The Commission's report highlighted:

- i. The large number of people continuing to earn low wages, especially in the service sector.
- ii. In discouraging the payment of very low wages, the UK Minimum Wage has not impacted adversely on the viability of companies and the economy generally as was feared by some when the measure was introduced in the late 1990s.
- iii. Economic growth through the 2000s was not translated into real average wage rises which indicates that economic growth is not in itself the solution to low pay and wage stagnation.
- iv. The growing realisation that the cost of providing welfare benefits to top-up the wages of a large number of workers has, in the words of the Financial Times (7.03.2014): “...*transferred wealth from the general taxpayer to cost conscious companies ..*”

3.8 The UK Living Wage Commission interim report also made reference to the research carried out by the Markit consultancy group for KPMG. This research identified that:

*“Workers [in the UK] paid below the Living Wage tend to be concentrated in certain occupations and sectors:*

- i. Sales and retail assistants*
- ii. Cleaners and domestics*
- iii. Kitchen and catering assistants*
- iv. Care workers and home carers*
- v. Elementary storage occupations*
- vi. Bar staff*
- vii. Waiters and waitresses*
- viii. Other administrative occupations*
- ix. Customer service occupations*
- x. Van drivers”*

3.9 The causes and effects of working poverty are complex and they are the subject of concern across the political spectrum. Some commentators focus on the harmful social impacts of low pay on individuals and families; others point out the market distortion whereby the taxpayer is funding welfare benefits that subsidise low-wage employers with consequent pressures on public revenue.

3.10 All parties are agreed that finding successful solutions to reduce, if not eradicate, working poverty is extremely difficult because of the potential for damaging unintended consequences. Accrediting employers who pay a Living Wage or requiring them to do so through legislation appeals to some lobbyists, but others see the danger of increasing private sector costs to the detriment of the economy. (This debate is explored further in Section 6 of this report, which describes the latest work of the UK Living Wage Commission and its final report in June 2014.)



### **The inter-relationship of economic and social policy in Guernsey**

- 3.11 The likely implications and impact on Guernsey of calculating a Living Wage statistic has to be judged not only in terms of research and practice elsewhere, but also in terms of interrelated policy projects currently in progress.
- 3.12 In September 2014, the States debated and approved the recommendations in a Policy Council Report entitled “The Co-ordination of Related Economic and Social Policy Projects” (Billet d’Etat XX), which explained the relationship between the Personal Tax, Pensions and Benefits Review (PTR), the Social Welfare Benefits Investigation Committee (SWBIC), the Supported Living and Ageing Well Strategy (SLAWS), the measurement of poverty and income inequality, and the investigation of a Living Wage Statistic project.
- 3.13 The Report made the point that there are clear and strong inter-relationships between the various policy projects, which all considered to some extent the issue of securing the adequacy of individual and household incomes; incentivising financial independence; and ensuring that social welfare and long-term care benefits are affordable and sustainable over the long-term.
- 3.14 The Report concluded that in an ideal world these various projects would be taken forward in a co-ordinated and prioritised critical path approach. However that is not possible and instead efforts will be made to co-ordinate the work as much as feasible, but on the understanding that “...*the States is likely to be asked to make decisions on certain aspects of each project without necessarily having full data and information available on all the related matters pending the completion of research in those other areas.*”
- 3.15 In the Policy Council’s view, some of the issues that have been identified in relation to research into a Living Wage Statistic are much wider in scope than the narrow mandate of this project, but are relevant to the associated, more extensive, projects. This point is considered further in Section 7 of this report.
- 3.16 The Policy Council’s comments in Billet d’Etat XV, 2014 about the Commerce and Employment Department’s proposed setting of the Minimum Wage rate are also relevant to this Report. These referred to the Living Wage Statistic investigation, and the other projects listed above, and included the following remarks:

*“The Policy Council notes that the Commerce & Employment has complied with the Minimum Wage (Guernsey) Law, 2009 in making its recommendations about the appropriate increase in the Minimum Wage rate to be recommended to the States. Having taken a range of factors into account, the department has had to reach what is inevitably a subjective judgment about the level of pay necessary to prevent the exploitation of workers...”*

*The Policy Council supports the current proposals, but highlights that it is likely that in due course a more fundamental review of the Minimum Wage should be undertaken informed by at least the initial findings of these other initiatives.”*

#### 4. PAY LEVELS IN GUERNSEY

##### Incomes and income distribution

- 4.1 Guernsey is fortunate to have enjoyed a strong economy and very high levels of employment over recent decades. Despite continuing concerns about the local effects of global economic problems since the international banking crisis in 2008, and small rises in the numbers unemployed since that time, local rates of unemployment remain very low when compared with, for example, the UK and other EU member states.
- 4.2 This being said, concerns about working poverty focus on the distribution of wealth through pay rather than on employment levels and the overall affluence of a community in themselves. Internationally, the distribution of incomes is measured using a mathematical formula called the Gini Coefficient. The more evenly incomes are distributed amongst a population, the smaller the difference between the richest and poorest, and the lower the Gini Coefficient.
- 4.3 The table below was prepared in 2009 to compare Guernsey's Gini Coefficient with some other jurisdictions at that time and indicated that in Guernsey there was a greater divergence between high and low incomes than, for example, in the UK or Jersey. (Further background data considered by the Project Group can be found at Appendix 1.)

Table 2 – Comparison of Gini Coefficients in 2009

Country	Coefficient
Mexico	0.47
Guernsey	0.39
USA	0.38
Israel	0.37
Jersey	0.35
UK	0.35
OECD average	0.31

- 4.4 The Policy Council publishes quarterly information bulletins about the local labour market and about annual earnings<sup>6</sup> which, in turn, are reported in the annual States Strategic Monitoring Report and Facts and Figures booklet.
- 4.5 The information in the Annual Earnings Bulletin clearly indicates the sectors where earnings are lowest:
- Agriculture, horticulture, fishing and quarrying
  - Wholesale, retail and repairs
  - Hostelry (e.g. hotels and restaurants)
  - Other services

<sup>6</sup> <http://www.gov.gg/article/112947/Quarterly-Labour-Market-Bulletins-2014>



This is in line with the list of occupations given in paragraph 3.8 of this Report, but, as the Bulletin explains, the data are a “...*measure of earnings from primary employment unadjusted for the hours worked.*” They cannot be used to derive hourly pay rates or say how many employees in these sectors (or others) may earn the Minimum Wage or not much more. So, for example, someone may work for 15 hours as a care worker and also work as a shop assistant part time. This will not be apparent from the data.

- 4.6 The latest Housing Needs Survey (HNS) <sup>7</sup>, collated information about employment and economic activity in Guernsey in 2011 from a number of States’ sources and by independent sample survey. Under the heading “Incomes, Savings and Debts”, the HNS included pie diagrams and charts which showed the distribution of household incomes (not individual earnings), and related them to the ages of householders and to property tenure.
- 4.7 This information indicates that in 2011 27% of households reported a total household income of less than £20,000 per annum. This income (which, in any particular household, might represent the earnings of one, two or more working people), can be contrasted with the median earnings of £28,000 for a single individual across all employment sectors in 2011. Again, the data indicate the existence of relatively poor households, but they are not necessarily a result of the hourly wage rates paid to individual earners.

## 5. CONSULTATIONS

- 5.1 Between May and August 2014, the Living Wage Project Group carried out a targeted consultation based on face to face meetings with groups and individuals (see list of consultees at Appendix 2). In addition, information about the consultation was placed on the States’ website.
- 5.2 The consultation had two purposes:
  - i. To obtain, where possible, additional factual information from consultees about the incidence of working poverty; its perceived causes and effects.
  - ii. To ask consultees whether, in their view, it would helpful or otherwise for the States to attempt to calculate and publish a local Living Wage Statistic.

Given the limited availability of hard data about individual pay rates (as opposed to household incomes), it was considered that the exercise would provide more insight into the extent of low pay and those who may be most affected by it.

- 5.3 The information gathered from the meetings was summarised according to the various themes that emerged from discussion (see Appendix 3). It had been agreed that comments would not be attributed to individuals so that everyone would feel able to speak freely from their personal experience. A draft of the

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<sup>7</sup> <http://www.gov.gg/CHttpHandler.ashx?id=79858&p=0>

summary was sent to all consultees to confirm that they considered it was a fair and accurate reflection of their views. (Please note that the summary reflects the views of a wide range of people with different perspectives on the issue of pay and not the opinions of the investigatory group or the Policy Council.)

- 5.4 Although some consultees had concerns about working poverty in Guernsey, none, including the Third Sector, considered that the publication of a Living Wage Statistic would be likely to improve the situation. Overall, it was seen as of limited benefit with the potential to be harmful to some vulnerable business sectors.

### **Views received from Alderney**

- 5.5 Consultations with Alderney (based on the same background information as was provided to Guernsey consultees) resulted in a number of responses, but none of which favoured the calculation and publication of a Living Wage Statistic. The consensus view was that this would not assist the low paid; might harm the viability of an already fragile economy; and, in doing so, could contribute to job losses and outward migration.

## **6. THE SITUATION IN THE UK AND JERSEY**

### **The UK Living Wage Commission**

- 6.1 In 2013 the UK government established the UK Living Wage Commission under the leadership of the Archbishop of York to “... *assess the case for a Living Wage in the UK, assessing whether the timing and conditions are right for a significant extension of coverage, and recommending how this might be achieved.*” The Commission is independent from any political party or organisation.
- 6.2 The Commission’s Interim Report “Working for Poverty”, which was published in February 2014, included a lot of research material about the impact of low pay and, the often, precarious terms of employment on people’s daily lives. There are some direct quotations from the report in Section 3 above. Extracts from the Executive Summary described the UK situation in the following terms:
- *“Low paid workers are being squeezed from both sides as sharp rises in living costs are compounded by stagnating wages;*
  - *One in five workers are paid less than they need to maintain a basic but socially acceptable standard of living;*
  - *Economic growth alone will not necessarily solve Britain’s low pay crisis;*
  - *Low paid employment costs the taxpayer between £3.6 billion and £6 billion a year;*
  - *Through local community campaigns Citizens UK and the Living Wage Foundation have won a Living Wage in over 500 workplaces across the country.”*

6.3 Given the strength of concern expressed at the interim stage of the project, the conclusions and recommendations in the Commission's Final Report "Work that Pays" published in June 2014<sup>8</sup>, proved to be quite circumspect. The report set out the social case, business case and public policy case that support the payment of a Living Wage, but also tempered these by explaining the potential for negative effects.

6.4 The Commission's Report contained the following comments:

*"In submissions to the Commission, some have called for the introduction of a statutory Living Wage. However, the unintended consequences of taking this route now would be likely to outweigh the potential benefits. (Project Group's emphasis) The key barrier is affordability for some businesses. A study of the relative change in labour demand from the National Institute of Economic and Social Research showed there could be a net reduction of around 160,000 jobs in the labour market from a statutory Living Wage.*

*The evidence suggests that there are some industries in which employers may struggle to pay the Living Wage at the current time. For example the Resolution Commission and Institute for Public Policy Research analysis shows that implementing a Living Wage policy would raise the average wage bill for a bar or restaurant by 6.2% and by around 4.8% for retailers.*

*Any net increase in unemployment resulting from the compulsion of businesses to pay a Living Wage when they are not currently able to do so would lead to an increase in the out of work benefits bill, a reduction in productivity for businesses, and, crucially, a further drop in the standard of living for some of the most vulnerable people in the labour market."*

6.5 In the light of these concerns, **the UK Living Wage Commission has not recommended legislation to enact a statutory Living Wage.** Instead the Commission proposes that:

- *"The UK government should make it an explicit goal to increase the take-up of the voluntary Living Wage to benefit at least 1 million more employees by 2020.*
- *The UK and devolved governments should ensure that all directly employed public sector employees are paid the Living Wage.*
- *The UK and devolved governments should ensure that the public sector always procures on value, rather than spreadsheet cost, which would enable stronger consideration of contractors paying a Living Wage.*

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<sup>8</sup> [http://livingwagecommission.org.uk/wp-content/uploads/2014/07/Work-that-pays\\_The-Final-Report-of-The-Living-Wage-Commission\\_w-4.pdf](http://livingwagecommission.org.uk/wp-content/uploads/2014/07/Work-that-pays_The-Final-Report-of-The-Living-Wage-Commission_w-4.pdf)

- *Central and local government should support the Living Wage by championing it to employers across the UK.*
- *The Living Wage Foundation should oversee the production of a toolkit for businesses to measure both the costs and benefits of increasing wages for the lowest paid workers.*
- *Accredited employers should proudly display the Living Wage kitemark in order to build consumer awareness of the Living Wage.”*

It will be for the UK and devolved governments to decide whether to implement these recommendations, but it seems unlikely that they would exceed them by adopting a statutory approach.

### **The situation in Jersey**

- 6.6 Arising from a proposition lodged by Deputy GP Southern on 18 March 2013 (P37/2013), and supported by his own report on the issues involved<sup>9</sup>, the States of Jersey has embarked on an investigation into the feasibility and desirability of introducing the Living Wage concept in Jersey.
- 6.7 The 2014 business plans for both the Chief Minister’s Department and Social Security Department included commitments to research a Living Wage for Jersey and provide a report in response to P37/2013, by the end of 2014. However, the Chief Minister formally advised the States that the completion of a Household Income Distribution Survey (2014/2015) would include questions about household spending and would provide: *“Vital information to the States before any decision is taken on the introduction of a Living Wage.”*
- 6.8 At the time of writing, it is understood that the report in response to P37/2013 is planned for publication in December 2014, and therefore will be in the public domain by the time this States Report is debated.

## **7. CONSIDERING THE ISSUES**

### **The practicalities of calculating a Guernsey Living Wage statistic**

- 7.1 There is no universal method for calculating a Living Wage statistic and, if they wished, the States could decide to develop a unique formula tailored to the situation in Guernsey.
- 7.2 However, taking the separate London and wider UK systems as examples, both require a detailed analysis of data to establish what different households need to spend to meet their basic needs assuming that they continue to receive the means tested welfare benefits to which they are individually entitled. (The calculations used in the UK are described above in paragraphs 2.10 to 2.16.)

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<sup>9</sup> <http://www.statesassembly.gov.je/AssemblyPropositions/2013/P.037-2013.pdf>

- 7.3 The amount of work that would be required to calculate a Living Wage Statistic for Guernsey would be substantial and, once established, a figure would involve further work each year to update the measurement. In London and the UK the work is outsourced to independent third parties. Without more detailed investigation, it is difficult to estimate the costs of undertaking the research and reporting requirements to calculate reliably and accurately a Living Wage Statistic for Guernsey. However, it is not unreasonable to assume that these could be circa £100,000 annually, on the basis that a full-time employee plus other staff support were required, plus the cost of undertaking whatever survey methodology was to be adopted.
- 7.4 Even more important than the amount of work involved and who should do it, however, is the fact that a calculation can be made only if there is agreement about what constitutes an adequate income.
- 7.5 To date, the States have shown some concern about using the MIS methodology, particularly in relation to the March 2012 debate of the Social Security Department's report on the Modernisation of the Supplementary Benefit Scheme (Billet d'Etat XX of 2012). The work being undertaken by SWBIC will, in due course, lead to a political debate about the measurement of poverty in Guernsey and the allied reform of welfare benefits.
- 7.6 This highlights the point made in the recent Policy Council States Report about the co-ordination of those inter-related economic and social policy projects which are presently underway (see paragraphs 3.11 to 3.15 above).

### **The likely implications and impact of calculating a Living Wage Statistic**

- 7.7 Once the States make a decision about the appropriate measurement of poverty for Guernsey via the benefits reform debate, the practicalities of producing a Living Wage Statistic may be more straightforward, but the question remains as to whether the impact on Guernsey of publishing such a statistic would be positive or not.
- 7.8 Discussion of the concept of the Living Wage often focusses on the social, business and public policy cases for doing so, and these are summarised below.

### **The Social Case**

- 7.9 The social case for a Living Wage Statistic is that, if it is adopted by employers, it helps the lowest paid who face the pressures of stagnating pay and the rising costs of living. If pay improves it increases the opportunity for the poorest working families to pay their bills on time, access goods and services that most people would regard as essential, and to participate in family life and society generally.
- 7.10 Neither the available data, nor views collected in the consultations that have taken place, present a sufficiently clear picture of the nature of working poverty

in Guernsey to enable the Project Group to know the number of people in the Island who earn below (for example) the London Living Wage of £9.15 per hour. Anecdotally it seems that the lowest paid jobs within hostelry and the other low pay sectors do so, but no reliable estimate can be made of the numbers falling into this category.

- 7.11 Previous research in respect of the new Population Management regime, as well as findings from this Living Wage Statistic project, strongly suggest that many of those on low pay are guest workers living here temporarily in multi-occupied Open Market housing or staff accommodation. The characteristics of this group (youth; no children on the Island or families elsewhere; readiness to work long hours in more than one job; short-term residents), makes working poverty less apparent than if these low paid jobs were done by local residents.
- 7.12 The Third Sector groups who commented on the likely impact of a Living Wage Statistic in the consultation showed no enthusiasm for such a calculation (see Appendix 3 - Theme 6). They felt its main value would be to highlight the “inadequacy” of Minimum Wage rates to ensure an adequate income.
- 7.13 There was a view that the costs of living in Guernsey are so high, especially bearing in mind the cost of accommodation, that many employers would find it impossible to pay a Living Wage.

### **The Business Case**

- 7.14 The business case for companies to pay their employees a Living Wage is based on the argument that firms will be better able to recruit and retain staff in this way.
- 7.15 In its final report, the UK Living Wage Commission said that: *“The evidence points to improved levels of morale, motivation and commitment from staff across the pay distribution in Living Wage workplaces.”* The report particularly highlighted the following areas based on Living Wage research in London where firms could gain advantages:
- *“Productivity increases associated with higher effort and openness to change of job role*
  - *Lower staff turnover*
  - *Reduced absenteeism*
  - *Increased stability of the workforce*
  - *Improved morale, motivation and commitment*
  - *Reputational benefits*
  - *For many employers, a relatively small increase in wage budgets.”*
- 7.16 Importantly for the situation in Guernsey, however, the Commission recognises that although some sectors and businesses *could* pay a Living Wage without harming their viability, others, including hostelry businesses, would genuinely struggle to do so as stated above.

- 7.17 This point is picked up in Appendix 3 Theme 4, where representatives of Guernsey hotels and restaurants are noted as saying that their industry would be unable to meet higher labour costs and that the publication of a Living Wage Statistic would, in effect, cause them reputational damage.

### **The Public Policy Case**

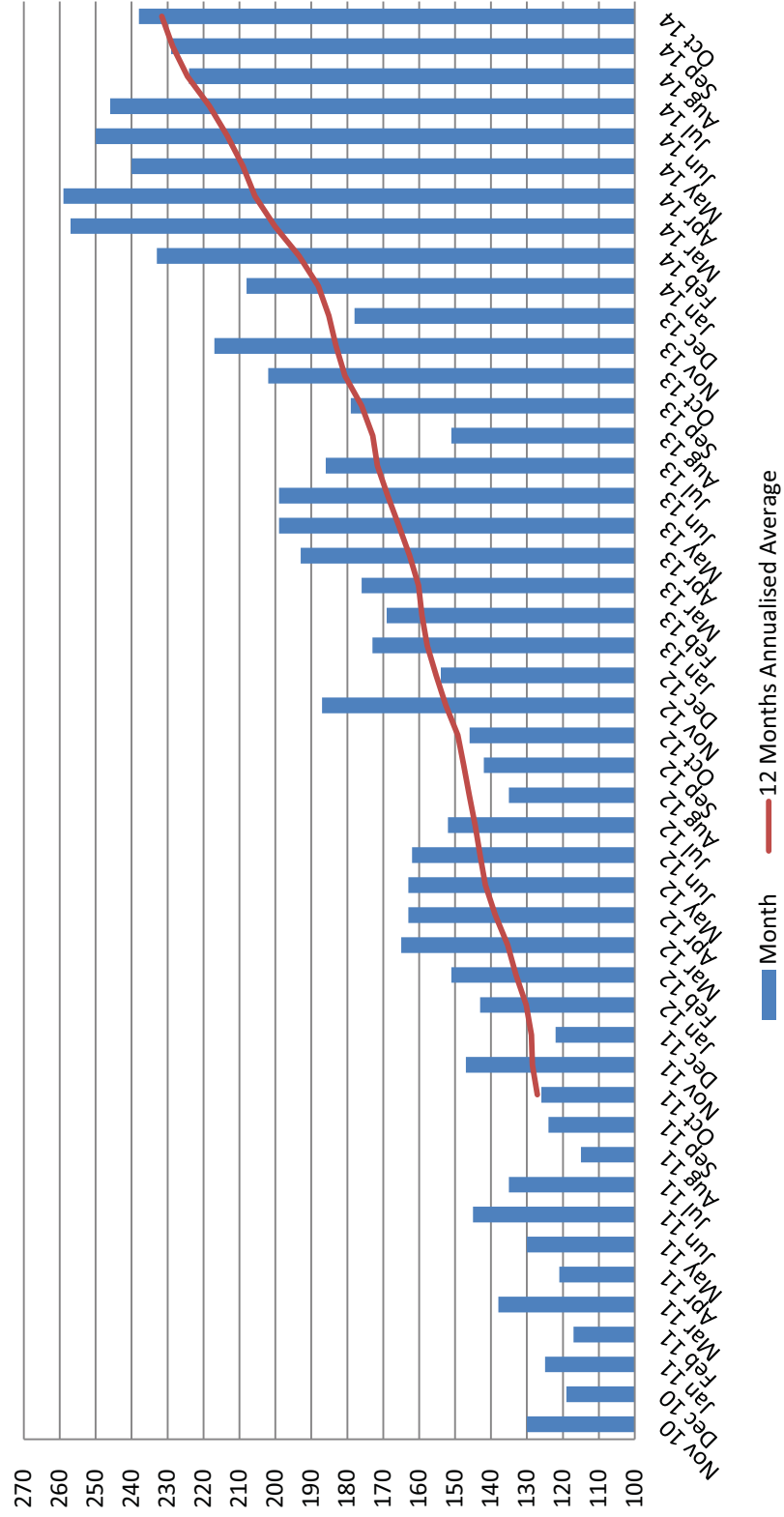
- 7.18 The public policy case for seeking to increase low pay in response to a published Living Wage Statistic reflects increasing political concern in developed economies about the social impact of working poverty. There is also the significant concern that very low earners contribute little to tax and national insurance revenues, while requiring social welfare benefits at a cost to the state to top up their household incomes to adequate levels.
- 7.19 This is a relevant issue for Guernsey, which bases its economic strategy on attracting high wage employment to offset the impact of low corporate taxation on public revenues, but the absence of hard data about hourly wage rates and working hours makes it impossible to calculate the impact of very low wages on government income and expenditure.
- 7.20 Chart 1 provides snapshot evidence showing that top-up (Supplementary) benefits are increasingly being paid to households where at least one member works and suggests that working poverty in Guernsey may be increasing<sup>10</sup>. However, the degree to which the taxpayer may be subsidising low wages cannot be readily quantified and would require research beyond the remit of the Living Wage Statistic project.

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<sup>10</sup> The majority of claimants represented on the chart are in receipt of Supplementary Benefit only, but there are also some claimants solely in receipt of Unemployment Benefit and others receiving a combination of both. By means of illustration, during the month of October 2014 there were a total of 238 claimants who declared work during the last week of the month, of which 204 were Supplementary Benefit claimants, 6 in receipt of Unemployment Benefit, and 8 receiving a combination of both.



**Chart 1 -  
Number of benefit claimants who have worked during the last  
week of the month 2010-2014**





## 8. CONCLUSIONS

- 8.1 The Living Wage Statistic investigation project is only one of several inter-related economic and social policy projects that are currently underway. Of these it is the narrowest in scope and although it is relevant in particular to tax and benefits reform; the measurement of poverty; and any future review of the purpose of the Minimum Wage; it is not a primary factor for making decisions in these areas.
- 8.2 The hard data necessary to assess the scale of working poverty in Guernsey, and how far it is due to low hourly wage rates, are not available.
- 8.3 Current data and recent consultations with interested parties suggest that low pay may be an issue in some business sectors, but publication of a Living Wage Statistic is not regarded by any of the consultees as an effective way of addressing social policy concerns.
- 8.4 In any case, methods of calculating a Living Wage in Guernsey require an agreed benchmark for measuring poverty and determining what is an adequate income for different types of household. This measurement is not yet in place, which means that attempts to calculate a Living Wage Statistic would be both premature and impractical at this point.
- 8.5 The shared view of the Policy Council, Social Security Department and Commerce and Employment Department is that this investigation work has contributed some useful insights which will inform the broader related policy reviews. However, it should now be concluded pending the outcome of those projects and any recommendations that may emerge in relation to the value of a Living Wage Statistic.
- 8.6 The Project Group believes that the cost benefit of the calculation of a local Living Wage Statistic does not support further work at this time, but notes that anyone looking for a Living Wage comparator for the Island could consider that calculated for London as being a useful reference point in view of the similar costs of living to Guernsey<sup>11</sup>.

## 9. CONSULTATIONS

- 9.1 In addition to the consultations referred to in Section 5, in preparing this Report the Policy Council has consulted with the Social Security and Commerce and Employment Departments, who support its recommendations. The Law Officers of the Crown have also been consulted in connection with the issues raised in relation to Minimum Wage enforcement.

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<sup>11</sup> No permanent States' employee is paid an hourly rate below the London Living Wage of £9.15 per hour.

## **10. PRINCIPLES OF GOOD GOVERNANCE**

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

## **11. RECOMMENDATIONS**

- 11.1 The Policy Council recommends the States:

- a) to agree that the States of Guernsey should not at this time research, calculate or publish its own Living Wage Statistic;
- b) to direct the Policy Council to keep under review the value of a Living Wage Statistic in the context of its investigations into the measurement of poverty and income inequality, together with the proposals emanating from the Personal Tax, Benefits and Pensions Review and from the deliberations of the Social Welfare Benefits Investigation Committee;
- c) to direct the preparation of an Ordinance to amend the Social Insurance (Guernsey) Law, 1978 in order to permit the Administrator of the Social Security Department, or any person authorised by him, to disclose to any officer appointed under the Minimum Wage (Guernsey) Law, 2009, specified information obtained under the Social Insurance (Guernsey) Law, 1978, where, in the course of an inspection of an employer by the Social Security Department, a breach of the Minimum Wage (Guernsey) Law, 2009 is suspected (as set out in paragraphs 2.22-2.25 of this Report).

J P Le Tocq  
Chief Minister

8<sup>th</sup> December 2014

A H Langlois  
Deputy Chief Minister

Y Burford  
P L Gillson  
S J Ogier

R W Sillars  
M G O'Hara  
K A Stewart

P A Luxon  
D B Jones  
G A St Pier

### **Appendix 1 - Background Information to Inform Discussions Regarding a Living Wage**

All data presented below are nominal (i.e. not adjusted for inflation) and sourced from the Policy and Research Unit unless otherwise stated.

**Table 1: Guernsey Median Earnings (Employees Only)**

	<b>Median (£s per annum)</b>	<b>Annual % Change</b>
<b>2005</b>	22,620	-
<b>2006</b>	23,660	4.6
<b>2007</b>	24,960	5.5
<b>2008</b>	26,130	4.7
<b>2009</b>	27,040	3.5
<b>2010</b>	27,430	1.4
<b>2011</b>	28,340	3.3
<b>2012</b>	29,250	3.2
<b>2013</b>	29,640	1.3

Median earnings figures are presented as annual figures, since data is not available on the number of hours worked by each employee. Assuming a 40 hour week and 4 weeks of paid leave per year, the median for 2013 equates to an hourly rate of £15 per hour.

In 2013, 6,880 employees (24% of total employees) earned less than two thirds of the median. The proportions of men and women earning below this threshold were very similar.

**Table 2: Household Incomes**

	<b>1992/3 Income (£s per annum)</b>	<b>1998/9 Income (£s per annum)</b>	<b>2005/6 Income (£s per annum)</b>
<b>Mean Income</b>	28,000*	35,064	51,673
<b>Median Income</b>	*	30,210	43,000

\*Estimated, since full dataset from 1992/3 is unavailable at present.

*Data is taken from Household Expenditure Survey results. (NB The 2005/6 results are presented as published, using unweighted data. The Survey was repeated in 2012/13; the results are currently being finalised and are due to be published later this year.)*

The mean household income increased by 25% over the 6 years between 1992/3 and 1998/9 (4% per year on average) and by 47% over the 7 years between 1998/9 and 2005/6 (7% per year on average).

**Table 3: Gini Comparison of Coefficients in 2009**

	<b>2009</b>
<b>Mexico</b>	0.47
<b>Guernsey</b>	<b>0.39</b>
<b>US</b>	0.38
<b>Israel</b>	0.37
<b>Jersey</b>	0.35
<b>UK</b>	0.35
<b>OECD Average</b>	0.31

*Data from Living Wage Commission Interim Report and Jersey Income Distribution Survey Report.*

The Gini Coefficient is used to measure how well distributed incomes are. The more evenly distributed (e.g. if the bottom 10% of households earned 10% of the total earnings), the lower the number (maximum 1, minimum 0).

The figure for Guernsey is an estimate based on data from Income Tax and Social Security, which could be subject to revision when further data becomes available. However, it is probable that the figure will remain at the higher end of the scale, flagging that the income distribution is skewed strongly towards the higher earners.

**Table 4: Household Spending Patterns**

	<b>1992/3 Expenditure (£s per annum)</b>	<b>1998/9 Expenditure (£s per annum)</b>	<b>2005/6 Expenditure (£s per annum)</b>
<b>Food</b>	3,004	3,379	3,784
<b>Alcoholic Drink</b>	700	1,387	1,164
<b>Tobacco</b>	258	505	569
<b>Housing</b>	3,797	5,775	13,155
<b>Fuel, Light &amp; Power</b>	1,051	1,108	1,309
<b>Household Goods</b>	1,290	2,099	1,992
<b>Household Services</b>	442	884	2,456
<b>Clothing &amp; Footwear</b>	1,198	1,493	1,441
<b>Personal Goods</b>	1,069	1,302	1,966
<b>Motoring Goods</b>	1,843	2,272	3,007
<b>Fares &amp; Other Travel</b>	479	886	783
<b>Leisure Goods</b>	1,051	1,695	2,324
<b>Leisure Services</b>	1,364	2,470	3,098
<b>Food Away From Home</b>	885	1,464	1,880
<b>All weekly expenditure</b>	18,430	26,720	38,926

*Data taken from Household Expenditure Survey results (also shown below as percentages of income).*

The mean household expenditure increased by 45% over the 6 years between 1992/3 and 1998/9 and by 46% over the 7 years between 1998/9 and 2005/6 (7% per year on average).

**Table 5: Household Spending as a Percentage of Income**

	<b>1992/3 Expenditure (%) of mean income)</b>	<b>1998/9 Expenditure (%) of mean income)</b>	<b>2005/6 Expenditure (%) of mean income)</b>
<b>Food</b>	11	10	7
<b>Alcoholic Drink</b>	3	4	2
<b>Tobacco</b>	1	1	1
<b>Housing</b>	14	16	25
<b>Fuel, Light &amp; Power</b>	4	3	3
<b>Household Goods</b>	5	6	4
<b>Household Services</b>	2	3	5
<b>Clothing &amp; Footwear</b>	4	4	3
<b>Personal Goods</b>	4	4	4
<b>Motoring Goods</b>	7	6	6
<b>Fares &amp; Other Travel</b>	2	3	2
<b>Leisure Goods</b>	4	5	4
<b>Leisure Services</b>	5	7	6
<b>Food Away From Home</b>	3	4	4
<b>All weekly expenditure</b>	66	76	75

It can be seen that housing costs form the largest and an increasing component of expenditure.

**Table 6: Average Local Market Property Prices**

	<b>Mix adjusted Average Local Market Property Price (£s)</b>	<b>Annual % Change</b>
<b>2005*</b>	318,506	7.0
<b>2006*</b>	348,364	0.6
<b>2007*</b>	358,443	9.4
<b>2008*</b>	397,186	2.9
<b>2009</b>	381,787	10.8
<b>2010</b>	404,430	-3.9
<b>2011</b>	429,349	5.9
<b>2012</b>	441,883	6.2
<b>2013</b>	453,928	2.9

*\* Estimated based on annual percentage change in median house prices.*

It can be seen that house price inflation has tended to be higher than earnings inflation.

**Table 7: Guernsey Minimum Wage**

	<b>Adults 19 and older (£s per hour)</b>	<b>Young Persons (i.e. under 19) (£s per hour)</b>	<b>Food and Accommodation Offset (£s)</b>	<b>Accommodation Offset (£s)</b>	<b>Annual % Change in Adult hourly rate</b>
<b>1.10.10 – 30.9.11</b>	6.00	4.25	85.00	60.00	-
<b>1.10.11 – 30.9.12</b>	6.15	4.36	87.13	61.50	2.5
	<b>Adults 18 and over (£s per hour)</b>	<b>Young Persons (i.e. under 18) (£s per hour)</b>			
<b>1.10.12 – 30.9.13</b>	6.30	4.50	87.13	61.50	2.4
<b>1.10.13 -</b>	6.50	5.25	90.00	63.00	3.2

*Information provided by the Commerce and Employment Department.*

**Table 8: Guernsey Minimum Wage – Annualised Estimates**

	<b>Adults 19 and older (£s per hour)</b>	<b>Young Persons (i.e. under 19) (£s per hour)</b>
<b>1.10.10 – 30.9.11</b>	11,520	8,160
<b>1.10.11 – 30.9.12</b>	11,808	8,371
	<b>Adults 18 and over (£s per hour)</b>	<b>Young Persons (i.e. under 18) (£s per hour)</b>
<b>1.10.12 – 30.9.13</b>	12,096	8,640
<b>1.10.13 -</b>	12,480	10,080

## **Appendix 2 - Living Wage Consultees in Guernsey**

### **Companies and Business Associations**

- Care Managers Association (Care Homes)
- Chamber of Commerce (as a whole)
- Chamber of Commerce's Tourism and Hospitality Group (Hotels & Restaurants)
- Chartered Institute of Personnel
- Confederation of Guernsey Industry
- Dairy Farming Association
- Domestic & Commercial Cleaning firms (5)
- Guernsey Building Trades Employers Association
- Guernsey Growers Association
- Guernsey International Business Association
- Horticultural businesses (7)
- Institute of Directors
- Laundry Companies (4)
- Motor Trades Association
- Stan Brouard Ltd
- Start Up – formerly the Enterprise Agency
- Taxi Drivers Federation

### **Other Associations**

- Citizens Advice Bureau
- Latvian Association
- Parish Douzaines & Island Douzaine Council (11)
- Portuguese Association
- Unite – Guernsey

### **Charities**

- Action for Children
- Association of Guernsey Charities
- Food Bank (Rev John Honor)
- Guernsey Parenting Partnership
- Guernsey Voluntary Service
- Help a Guernsey Child
- Homestart
- The Community Foundation
- Young People Guernsey



### **Appendix 3 - Themes Identified by Consultees**

This paper extracts a number of themes that emerged from the consultations about the likely impacts of calculating and then publishing a Living Wage statistic for Guernsey.

#### **Theme 1**

##### **Does Guernsey have a low pay problem or a high cost of living problem?**

Some consultees said that people often accepted low wages as a “given” but they complained about the high cost of living in Guernsey and felt that government should be able to intervene in some way to reduce this.

The housing cost of renting accommodation in the private rental market is a very big factor for anyone on a low income. A 40 hour working week on the Minimum Wage would only be sufficient to pay the rent on a flat without taking into account any other living costs.

A two person household where both are working full-time on the Minimum Wage *may* manage to get by without benefits but they will be vulnerable financially to life events like pregnancy, ill health and redundancy because they have few reserves. They will find it hard to save or plan for retirement.

#### **Theme 2**

##### **Guernsey has various types of workers who may be in low paid employment. They face different circumstances and have different motivations for working:**

- Lower-skilled local workers
- Guest workers
- Students working part-time
- Vulnerable groups
- Those working for extra spending money

Low pay and the absence of a Living Wage may be a major problem for some but much less so for others. There is evidence of working poverty in Guernsey but the picture is not a simple one.

Those who are struggling on low incomes may rely on continual borrowing to meet their costs and some of these get into chronic debt problems.

Some of those who are “working poor” avoid claiming benefits as far as possible despite their difficulties.

### Theme 3

#### **The Minimum Wage has had both good and bad effects.**

It may have prevented, or at least constrained, the payment of exploitive wages but is often seen as the going rate rather than the lowest legal rate for low or semi-skilled jobs, especially in some service industries. Consultees said that any objective evaluation of the impact of the Minimum Wage is difficult because there are no specific data available to show how many workers are paid the Minimum Wage.

Payment of the Minimum Wage rate is not currently the subject of random government checks and nor is good employment practice in terms of ensuring that all workers are given employment contracts. Some employers who were consulted said that they observe the Minimum Wage and that others should be required to do so. They said that regulation should be stronger. A similar view was expressed by the Third Sector agency which advises people about their employment rights. The agency mentioned problems experienced by some guest workers who may have trouble understanding their entitlements. Consultees said that some people seem to believe, wrongly, that the Minimum Wage is sufficient to live on (i.e. that it is already set as basic Living Wage), when this is not how it is calculated. The government's purpose and the objective to be met, by setting a statutory Minimum Wage is unclear to many.

### Theme 4

#### **In some sectors guest workers living in multi-occupied property in the Open Market and those on seasonal or short-term contracts may be paid the Minimum Wage.**

Guest workers are seen as absolutely vital to businesses in areas like Care Homes; Hospitality; and Domestic and Commercial Cleaning; whose representatives say that local workers are generally unwilling to work the long and unsocial hours required of them. Hours rather than pay were cited as the strongest barrier to the employment of local staff. Representatives of the Care Homes sector, in particular, have pointed out that their particular businesses have a pay structure that pays substantially above the Minimum Wage even at the lower end.

Some employers, particularly in the Hospitality sector, said that their businesses, which are very labour intensive, would fail if they paid all workers, including guest workers, higher wages. This would have a knock-on effect across the Island economy leading to unemployment and greater pressure on public revenues.

These consultees said that publishing a Living Wage Statistic which they could not afford to pay would unfairly label them as bad employers and Hospitality a bad industry in which to work. They pointed out that many of their employees receive substantial

benefits in terms of housing accommodation and food but that this is given insufficient credit when considering wage levels.

### **Theme 5**

**The publication of a Living Wage Statistic would make the Minimum Wage redundant in practical terms and drive up pay to the detriment of the local economy.**

Many employers saw the Living Wage concept as inflationary and an undesirable intervention that would “price Guernsey out of the market”. Critics of the Living Wage approach acknowledged that low wages require the taxpayer to make up the shortfall via benefit payments but they were unable to suggest a way around this conundrum.

### **Theme 6**

**Third Sector representatives did not regard the publication of a Living Wage statistic as of significant potential benefit to the low paid.**

Some representatives of the Third Sector (e.g. charities), said that there is a low pay issue in the Island and that the working poor exist but, overall, their response to introducing a Living Wage statistic was unenthusiastic. They generally commented at the various meetings on the difficulty of relating the adequacy of individual wages to household income.

There were comments, however, that the main value of a Living Wage statistic would be to highlight the inadequacy of the Minimum Wage, and that it would be helpful in understanding the adequacy of wages and overall living standards

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

The States are asked to decide:-

III.- Whether, after consideration of the Report dated 8<sup>th</sup> December, 2014, of the Policy Council, they are of the opinion:-

1. To agree that the States of Guernsey should not at this time research, calculate or publish its own Living Wage Statistic.
2. To direct the Policy Council to keep under review the value of a Living Wage Statistic in the context of its investigations into the measurement of poverty and income inequality, together with the proposals emanating from the Personal Tax, Benefits and Pensions Review and from the deliberations of the Social Welfare Benefits Investigation Committee.
3. To direct the preparation of an Ordinance to amend The Social Insurance (Guernsey) Law, 1978, in order to permit the Administrator of the Social Security Department, or any person authorised by him, to disclose to any officer appointed under The Minimum Wage (Guernsey) Law, 2009, specified information obtained under The Social Insurance (Guernsey) Law, 1978, where, in the course of an inspection of an employer by the Social Security Department, a breach of The Minimum Wage (Guernsey) Law, 2009, is suspected (as set out in paragraphs 2.22-2.25 of that Report).

## TREASURY AND RESOURCES DEPARTMENT

### INTRODUCTION OF PAID PARKING: TAXING/CHARGING IN RESPECT OF EMPLOYER PROVIDED PARKING SPACES

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

17<sup>th</sup> December 2014

Dear Sir

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

- 1.1 This report examines the merits and disadvantages of introducing a system for taxing, as a benefit in kind, the provision of employer-provided parking to employees or, as an alternative, the introduction of a workplace parking levy.
- 1.2 On balance, and taking into account the relative rarity and potential complexities of such regimes, and the likely administrative costs, for both the States and employers, and the lack of certainty concerning the potential revenue to be derived, the Treasury and Resources Department (“the Department”) is unanimous that it cannot reasonably recommend the States to introduce either system.

#### **2. Background**

- 2.1 In April 2014, the States considered a report, by the Environment Department, entitled “Guernsey integrated on-island transport strategy” and resolved, inter alia:

“To direct the Treasury & Resources Department in conjunction with the Environment Department to investigate the best method for accounting for and taxing the benefit to employees of employer-provided parking, by implementing a benefit-in-kind charge to tax or a workplace parking levy as described in paragraphs 64-67 of the minority report, and to report back to the States with proposals by January 2015.”

## 2.2 Paragraphs 64-67 of the minority report were:

- “64. From a perceived fairness point of view, many people feel that if long-stay parking becomes chargeable then they would wish to see private parking spaces provided by employers within the wider Town area designated as a taxable benefit-in-kind.
- 65. In 2006 the Income Tax Office prepared a report into the feasibility of benefit-in-kind taxation for workplace parking. The Working Group, having reviewed this paper in response to many calls in the consultation for such a levy, considers this to be worthy of progression.
- 66. The Income Tax (Exemption of Benefits) Ordinance 1995 presently provides exemption under section 2(g) for employer-provided car parking facilities, thus from the legislative angle it would be a relatively simple matter to repeal or amend section 2(g) under the powers conferred by the Income Tax (Guernsey) Law 1975, as amended ("the Income Tax Law"). One particular merit of such a system would be the likelihood of a better use of spaces in employer-provided car parks which would take further pressure off public parking. Anecdotally it is understood that people sometimes hold onto spaces that they rarely use; if there was a cost to doing so they may give up the space to someone else, in turn freeing up a space in the public car parks. Alternatively, it may be preferable to introduce a workplace parking levy which overcomes some of the possible issues of a benefit-in-kind system. However, there are some specific issues to resolve first, in particular defining the boundary or zoning of the charging area(s). There would be exemptions for disabled people with a valid permit and possibly for certain groups who cannot access public transport due to shift and on-call working times. A 2013 study by Parsons Brinckerhoff for the States of Jersey outlines the advantages of workplace parking levies.
- 67. It is proposed that the States direct Treasury and Resources in conjunction with the Environment Department to investigate the best method of accounting for and taxing the benefit that arises to employees with an employer-provided parking space if long-stay paid parking in public Town car parks is introduced, either by means of benefit in kind or a workplace parking levy, and to report back to the States with a recommended system.”

## 2.3 No substantive guidance is given to the Department, by the States Resolution or the States' Report on what principles any Workplace Levy regime would operate under. For example, such a scheme could impose a levy on the employer; or it could impose a levy on the employer, but permit the employer to recover the cost from the employee; or it could impose the levy on the employee and put the employer in the position of collector only (in a similar way to that under which the employer acts as (unpaid) collector of income tax, under the Employees Tax Instalment (“ETI”) Scheme).

### 3. Current tax system relating to benefits

- 3.1 Until the mid-1990s, any benefit provided to an employee by his employer, other than in the form of cash, could only be taxed on the general tax principle that employees were taxable on "... the full emoluments of the office or employment arising or accruing". That principle did not assist in the quantification of many benefits (i.e. establishing the worth of the benefits in money terms). In addition, and depending on the precise arrangements made between the employer and the employee, and the nature of the benefits being provided, an employee could escape taxation altogether; pay tax on only a part of the value of the benefit; or pay tax on the full amount.

For the above reasons, the then Income Tax Authority sought agreement of the States to introduce specific legislation making all benefits in kind chargeable to tax, whether or not they were convertible into cash, and whether they were provided by the employer or a third party, subject to certain exceptions.

- 3.2 Four main principles relating to the taxation of benefits were subsequently introduced:

- if something is transferred to the employee, other than the employer's trading stock, the cost of what is transferred is deemed to be the value for benefit in kind purposes;
- where the benefit relates to the use of something but without a transfer of ownership (a company car probably being the most common example) the amount of the taxable benefit is set by Regulations of the Department;
- where the benefit consists of the provision of services or advice, which the employer provides to customers in the course of his business, the measure of the benefit in the employee's hands is the average cost to the employer of providing the same service or advice to the customer (not what a customer would be charged for the service – which, clearly, would include the employer's profit element); and
- finally, for any other benefit, the taxable amount would be the direct or indirect cost to the employer of providing the benefit.

- 3.3 In the original report to the States in 1994, the Income Tax Authority proposed a "blanket" exemption from a benefit in kind charge in relation to the provision of car parking facilities by an employer to his employees.

In 1995, however, and following further consideration, the Authority took a further Report to the States, in which, inter alia, the Authority sought, and received, States approval for the provision by an employer of car parking facilities to an employee to give rise to a taxable benefit if the car parking facility was near to the employee's place of residence, provided for his sole use and used mainly for private purposes.

There is therefore already a taxable benefit in kind in existence in relation to car parking facilities provided by an employer, albeit in these restricted circumstances. Parking facilities provided at or near to the employee's workplace (which is the most common occurrence) would not currently be charged to tax as a benefit in kind, however.

- 3.4 One of the reasons that the decision was made, in the 1990s, not to seek to charge tax in relation to the provision of parking spaces by employers, was that there was at that time no charge for parking in public spaces. There was therefore no fiscal advantage to the employee of having the space provided to him by the employer (because, in the absence of such a facility, he could park in a public car park at no cost). In addition, there are many potential administrative difficulties for employers, employees and the Income Tax Office in seeking to tax the provision of car parking facilities.
- 3.5 Whilst paid parking is a common feature in most countries in the world, there are very few tax systems which seek to impose an income tax charge on parking spaces provided by employers at or near to the place of work. A principle exception is Canada. Australia also imposes a tax charge, but only if there is paid parking within a specified distance of the workplace. However, the United Kingdom and the United States, for example, do not impose such a charge. In New Zealand, taxing of workplace parking was proposed recently, but the proposals were withdrawn after they came under criticism. In addition, Ireland introduced the mechanism for taxing workplace parking several years ago, but has never brought the taxing regime into effect. When Jersey introduced paid parking, no action was taken to charge tax on the provision of car parking near the workplace by the employer.
- 3.6 Under a paid parking regime, it is clear that an employee who is provided with a parking space by his employer receives a fiscal benefit as a consequence. It can only be assumed, therefore, that the reason why most countries seek not to charge tax on the provision of such a facility is because of the potential administrative difficulties (for employers, employees and the tax administration) of doing so compared with the potential amounts of revenue that such a regime would raise (and in a Guernsey context, there is no reliable data held by the Department to use to establish the potential revenue that could be raised from such an initiative).

#### **4. Principles of charging tax on employer-provided car parking, suggested by the Environment Department, and observations thereon**

- 4.1 The Environment Department has provided the Department with some suggestions of principles on which it considers that taxation rules could be based, and these are summarised and analysed below. References to a Workplace Levy are also included below where appropriate, as the States Resolution requires consideration of both potential systems.



- 4.2 **There should be a benefit in kind chargeable to income tax rather than a workplace levy. This is on the basis of fairness to employees being treated equally because it is assumed that the levy would be paid by the employer whereas employees not having the advantage of employer provided car parking spaces would (personally) have to pay to park in a public car park.**
- 4.3 There would appear to be no legal impediment to appropriately worded Workplace Levy legislation requiring an employer to pay a levy in respect of his employees, or alternatively to withhold the amount of a levy from the salary/wages payable to an employee, and to account for that levy to the States (in the same way as employers do so for tax and social insurance contributions). Whilst that does raise the question of how an employer could withhold the levy in relation to an employee whose pay is less than the amount of the levy, that is a similar issue that currently exists for employees who receive taxable benefits at present (although it affects only a very small number, essentially those who work solely or mainly for benefits rather than cash reward – normally this involves the provision of free accommodation). In these, relatively rare, cases the Director of Income Tax would collect the relevant tax, if any, directly from the employee concerned (rather than relying on the employer collecting the tax through the ETI Scheme). Such an option could be included in any Workplace Levy legislation, but would naturally increase the administrative burden on the States' body charged with collecting the Workplace Levy. It also adds complication and increases costs of collection accordingly.
- 4.4 Even if the Workplace Levy legislation permitted an employer to recover the levy from the employee (and as indicated above, a Workplace Levy regime could be introduced which made the employer liable for the levy, or alternatively it could simply put the employer in the position of collector of the levy, the liability for the levy remaining on the employee) it is not unreasonable to assume that an employer who was prepared to bear an employee's cost in this way would similarly be prepared to pay his employee additional wages in order to cover the cost of any income tax benefit on paid parking. Under existing tax principles, whilst the amount of the benefit would remain taxable on the employee, the additional income (the amount paid on his behalf by the employer) would only be taxable at 20%. The employee would then retain the other 80% (so reducing the effective rate, suffered by the employee, to 20% of the Workplace Levy). It would also be reasonable to assume that more senior employees, who may form a substantial part of the body of employees provided with parking spaces, may be in a position to be able to negotiate such an arrangement with their employer and so the lower paid employees would still be bearing the whole cost of paid parking, whereas their, higher paid, co-workers would not.

For the avoidance of doubt, it should be possible for any Workplace Levy legislation to provide that an employer, who is required to pay a levy on behalf of employees, may recover that amount from the employee, if that were considered desirable. A potentially comparable provision exists in the tax

legislation (section 81A(7) of the Income Tax Law) which could be used as the basis for such a provision viz:

*“Where an employer fails to deduct from the emoluments of any employee the tax which he is required to deduct under the provisions of this section the amount of such tax shall be payable by the employer as if it had been so deducted and where the amount of any such tax is paid by the employer –*

*(a) .....*

*(b) that amount shall be recoverable by the employer from the employee as a civil debt due to the employer,*

*(c) .....”*

- 4.5 There is, however, a wider issue in relation to using the tax system in an attempt to create fairness. The purpose of the tax system is to tax people's income. It has always been the case that if there are two employees, both paid a similar salary, but the employer of one of the employees provides benefits which the other employee has to meet out of his disposable income, their net overall financial position will be different, as shown in the following examples (in which it is assumed that personal allowances for tax purposes are £10,000);

#### Example 1

Employee's salary	£50,000
Less personal allowances	<u>£10,000</u>
Taxable income	£40,000 @ 20% = £8,000

This employee has to buy his own motor vehicle and pay the running and maintenance costs, say £5,000 per annum (taking into account fuel, maintenance and depreciation etc).

Therefore, for the purposes of this example, salary	£50,000
Less tax	£ 8,000
Less cost of running motor vehicle	<u>£ 5,000</u>
Balance of disposable income	£37,000

Example 2

Same situation as above, but the employer provides the employee with a motor vehicle, with, for the purposes of these examples, an annual benefit of £5,000 (ie equivalent to what it costs employee 1 to buy and run his own car).

This employee's financial situation will be as follows:

Employee's salary	£50,000
Plus taxable car benefit	£ 5,000
Less personal allowances	<u>£10,000</u>
Taxable	£45,000 @ 20% = £9,000

Balance of disposable income, therefore, £41,000.

Difference in net disposable income between Employee 1 and Employee 2 = £4,000.

Whilst the above may appear to suggest that one employee is being treated more harshly than the other, the fact is that they are each being taxed on the total of their income for tax purposes and in that respect the tax system is treating them fairly.

- 4.6 The only way of balancing this situation between them, with regards to availability of disposable income, would be to charge Employee 2 on a benefit of £25,000, on which the resulting tax would be £5,000, thus reducing his balance of disposable income to £37,000, the same as Employee 1. A benefit of £25,000 bears no relation to the cost of acquiring and running the vehicle, however, and so the tax system is not then treating the two employees fairly in that respect. The tax system is being distorted, in effect, to replicate what the situation would be if there were a Workplace Levy which, whilst collected and paid over by the employer, were ultimately borne by the employee. In other words, the tax system is being used to achieve a fiscal result not based on pure tax principles. Whilst it is not uncommon for tax systems to be utilised to achieve politically, socially or environmentally desirable outcomes, arguably the more open and transparent way of achieving this, in respect of parking facilities, would be the introduction of a Workplace Levy accounted for separately to income tax liabilities (whilst accepting that such a levy would require establishing legislation and an administrative machinery to operate it).
- 4.7 Such a levy would also resolve another, practical, impediment in that, for several years, employers have not been required to submit benefit in kind returns for employees who receive taxable benefits, if those benefits can be included in, and taxed under, the ETI scheme. The Director of Income Tax therefore currently has no data on, or statistical method of identifying, how much tax is paid on benefits. Unless a unique regime of reporting for benefits relating just to employer provided parking facilities was to be introduced, it would not be

possible to identify the amount of tax arising from this benefit. The additional revenue arising from introduction of what, in some other countries, has been identified as a burdensome and unpopular measure would be difficult to quantify. It is the case, however, that the total collected from a stand-alone levy would be possible to quantify, as it would be accounted for separately to income tax, however, it would still involve administration at the level of the employer (who would have to calculate and collect the levy), the employee (who may be required to report usage of a parking facility to his employer to enable him to calculate the levy), and whichever States body was required to administer the levy.

- 4.8 **Any charge on employees would be limited to parking spaces provided within defined boundaries. The rationale is to match any tax charge to the same part of the island in which paid parking applies.**

- 4.9 This may not treat employees fairly, insofar as employees of a business with a branch in St Sampson's, who are provided with a parking space, will pay no benefit in kind charge, whereas their colleagues, in the same position but working in the St Peter Port branch, falling within the defined area, would be. This principle, however, is justifiable to the extent that, if the St Peter Port employees were not provided with parking spaces by their employer, they would then have to pay to park in a public space, whereas that would not apply to the St Sampson's employees. This has the potential to create anomalies, such as where a business is within, but close to the edge of, the boundary but provides parking spaces just outside the boundary (and vice versa) but such anomalies are likely to be encountered infrequently in practice and are inevitable under any geographical delineation.

The same would apply to a Workplace Levy that was geographically based.

- 4.10 **The presumption is that any benefit would only apply to motor vehicles, excluding commercial vehicles, large vans, lorries, two wheeled vehicles, cycles, etc.**

**The rationale for this is that paid parking will be restricted to areas not currently available for large vehicle or commercial vehicle parking, and because the strategy is aimed at encouraging people to use private motor vehicles less.**

- 4.11 Currently, benefits are only chargeable on employees provided with a vehicle, which can be used for private purposes, where the vehicle is a car and so this proposal is broadly in line with the rationale on which employer-provided vehicles are already taxed. Clearly, in any event, the burden for establishing what type of vehicle was being used by an employee, who was parking in facilities provided by the employer, would fall on the employer and the employee (because the onus for determining the circumstances in which a benefit – or indeed a levy – was payable, and the amount on which the tax/levy was to be based, would fall on the employer, albeit that the employee may be required to maintain records of his usage of the parking facility).

4.12 **There is a presumption that where the benefit accrues to the employer, rather than the employee ("employer's benefit") no benefit in kind charge would apply. This is based on the Environment Department's research into the Canadian tax regime.**

4.13 The Canadian concept of "employer's benefit" does not currently exist in Guernsey's income tax legislation. An employee is taxable on benefits (subject to certain exemptions) and for this purpose "benefit":

"... means so much of any emoluments as consist of a benefit (other than salary, stipend, fees, wages, earnings, perquisites and profits) derived from their office or employment, on the termination thereof, or in consequence of a change in the terms thereof (whether or not the benefit is converted into cash) by an office holder or employee or by a member of his family or household."

The test, therefore, is simply what the benefit may be to the employee, and there does not appear to be any compelling reason why this principle should be different if a benefit were to be introduced in respect of employer-provided car parking facilities.

Under a Workplace Levy regime, where the charge fell on the employee, similar principles could apply, although, equally, the relevant legislation could provide for a concept of "employer's benefit" if that were considered desirable, as the legacy of the principles underlying the tax system would not apply to a Workplace Levy.

4.14 The Environment Department raised the issue of whether the frequency of use of a parking space should be relevant in order to determine the extent to which a benefit in kind charge should arise. For example, if one-third of the use of a parking space is for the employer's benefit, no tax charge would be made on the employee (even though the employee would, in such circumstances, still be using the space for two-thirds of the time for private purposes).

4.15 As Guernsey's tax legislation currently contains no concept of "employer's benefit", there is equally no concept of a regular benefit to an employer cancelling out a de facto benefit derived by the employee. Under the existing benefits' legislation, if an employee is provided with a vehicle by his employer and the employee uses the vehicle for private usage, which is 25% or less of the total usage of the vehicle, a benefit in kind charge still arises, albeit that it is the "limited vehicle benefit charge", which is at a lower rate than if private use of the vehicle had been more than 25%.

4.16 As indicated above, under present general tax principles, if a benefit in kind charge were introduced for employer-paid parking facilities, a benefit would, theoretically, arise to an employee who used that space for personal, rather than business, purposes, irrespective of the amount of time involved. There is certainly no reason why the Benefit in Kind Regulations could not lay down

different rates of charge dependent on how long the space was used by the employee (such as by defining an annual charge and then dividing that into, say, monthly periods so that any private usage by the employee which fell within a particular band of time would give rise to the fixed benefit charge applicable to that band). This does, inevitably, create anomalies for those who fall just within the beginning or end of a particular time band, but it has the attraction of greater simplicity than the alternative, which would be to keep detailed records of times for which the space was used for private purposes and then time apportioning the determined annual benefit charge (although the latter system is arguably more fair). Under a time banding system, it would also be perfectly feasible for the first band (say 0-30 days usage) to be banded as a £0 benefit charge, if that is what is desired.

Similarly, any Workplace Levy regime could be constructed in a manner that facilitated a charge based on time bands of use of the parking space, if considered desirable.

- 4.17 **The presumption is that where a benefit is not real and absolute, the employee should not be taxed on it.**

**The rationale attributed to this principle is that if employees take “pot luck” as to whether a parking space is available in an employer-provided facility, but they have no guarantee of a space, they are not receiving a personal benefit and there should be no tax charge.**

- 4.18 This highlights some of the practical issues involved in taxing the use by employees of employer-provided parking facilities.
- 4.19 It is accepted that there has to be a real benefit to an employee before a benefit is chargeable under current legislation. Arguably, however, someone using a car park with paid parking also takes “pot luck” as to whether a parking space is available and certainly has no guarantee of a space, but he still has to pay. On the basis of equal treatment, the question arises of why should that be different in relation to an employee? Should the measure simply be that if an employee, de facto, uses an employer-provided space a potential benefit is chargeable (subject to any “frequency of use” exempt activities etc., rules) whether one is allocated or not (and what that would mean would have to be defined, in any event)?
- 4.20 Simply because spaces are equally available to employees and the general public does not necessarily mean that employees do not derive a benefit. For example, in practical terms, a business may open a car park at 6:00 am, and open its doors for business at 9:00 am. Nominally, the car park may be available to employees and its customers (the “general public”) alike from 6:00 am, but customers are unlikely to want to actually park in the car park – and here it is assumed that the car park would only be available for employees and customers of the business – until business opening hours. As most of the members of staff are likely to be at



their work stations prior to the commencement of business hours, in reality it is likely that the spaces would be available for employees unhindered in the majority of cases, even though no employees have been “allocated” a personal parking space. This scenario highlights the fact that the more rules and regulations there are that apply to how, when and by whom a parking space is used, the more likely it is that the legislation will increase the opportunities for avoidance or manipulation tactics to reduce any tax charge. Paragraph 66 of the minority report foresees further possible exceptions (such as disabled persons and employees on shift work/“on-call”) which would add further complications and opportunities for abuse. It should be recognised that detecting the use of, and countering, such tactics is likely to be very difficult in practice. Conversely, a simple rule of “if an employee uses a space, a potential benefit arises” limits the opportunities for avoidance significantly.

Similar issues would apply to a Workplace Levy regime.

- 4.21 **The presumption is that the valuation of benefits in kind would be the market rate of the parking space (rather than what it costs the employer to provide the space). However, as the result of taxing the market rate would be to create a charge payable equivalent to only 20% of that amount (because that is it the tax rate in Guernsey for individuals) the taxable benefit should be five times the market value and this maintains the fairness principle.**
- 4.22 The issue of the fairness of adding a multiplying factor to the market value, in order to remove from the employee’s pocket the equivalent, in fiscal terms, of the market value itself (rather than simply taxing that value) has already been covered above (see paragraphs 4.5 - 4.7).
- 4.23 In addition, as also outlined in paragraph 3.2, the general principle in current tax legislation is that where an asset is used without transfer of ownership (such as would be the case where an employer owned parking spaces) the measure of the benefit is the cost to the employer. It may be, however, that some employers provide their employees with facilities on land which they own, but also on some land which they rent. In such a situation, the existing principles of the legislation could give rise to differing amounts chargeable for different employees, depending on which parking space they have been allocated/allowed to use. It is in order to deal with such anomalous situations that the Income Tax Law currently provides for the Department to make Regulations to value certain benefits. This is currently used, for example, for vehicles provided to employees for private usage and where employees are provided with living accommodation. It would be feasible for the value of a parking space, for benefit in kind purposes, to be dealt with within such Regulations. It is still the case, however, that a general principle of taxing benefits in kind, as set out in the Report of the then Income Tax Authority, in 1994, on which the current legislation is based, is that the taxable benefit is to be based on cost to the employer. If a five times’ multiple was to be applied to the market rate, that may put the value attributable

to parking facilities at a fiscal level way beyond that which could be considered as a reasonable exercise of the Department's powers to value benefits by Regulation, unless supported by a specific Resolution of the States.

- 4.24 Having a predetermined value attributable to a parking space has significant administrative attractions because determining the cost to the employer of every employer-provided parking space would be a complex and costly exercise.
  
- 4.25 The question then arises as to what should be used as the measure of the market value of a parking space. What an employee who uses an employer provided parking space is gaining, as a personal benefit, is avoiding the alternative of the cost of parking in a public car park, for which he would be charged. To value the benefit on what it would cost the employee to rent his own space on the open market would be both to assume that a benefit should be based on the most expensive option available to the employee and also to ignore the fact that he need not do so, as the States will be providing an alternative which he can use, an alternative available to others who choose to drive their vehicles into the delineated area and wish to park there (i.e. to use paid parking).
  
- 4.26 An additional question arises, if a value based on something other than the charge for paid parking is preferred: What is the extent to which the market rate should have regard to the use to which the employee has of the space provided? On the one hand, the fair market rate could be what it would cost to rent a parking space, within the delineated area, but that parking space could have unlimited use (such as 24 hours a day) which is way beyond what most employees would use an employer-provided parking space for. In addition, using the market value of a privately owned parking space would only be justifiable if there was an adequate supply of parking spaces for all potentially affected employees to rent, which is unlikely to be the case, otherwise the laws of supply and demand would distort the market value.
  
- 4.27 If, however, it was the cost of paid parking on a public facility that was used as the guide to market value, it would still be necessary to provide a system of reducing the market value where usage was restricted (such as, for example, for part-time workers, shift workers, seasonal workers, etc). This could, of course, be combined with any "time banding" system of determining apportionment of any annual charge.
  
- 4.28 When specific benefits in kind legislation was first being discussed in the 1990s, it was initially extremely unpopular with employers because they perceived the system to be potentially complicated and costly for them to administer (this was because employers were required to determine when benefits were chargeable and how much of those benefits were chargeable, and to report that to the Director of Income Tax – although as indicated above, this has now been replaced with determining when benefits are chargeable, the amounts chargeable and deducting the appropriate amount of tax from their employees by including the benefit with salary/wages through the ETI Scheme). As a consequence,



between agreement by the States of the initial proposals relating to taxation of benefits in kind, and the appearance of the relevant Regulations, the then Income Tax Authority took the decision that the rules relating to valuation of benefits in kind should be as straightforward as possible in order to reduce the level of administration, and therefore costs, that would otherwise arise to employers. It can be anticipated that complications in the determination and valuation of any benefit in kind for employer-providing parking facilities, or a levy regime, would similarly be met with resistance by employers.

- 4.29 **The Environment Department has made the presumption that in order to give rise to a charge, the parking space provided must be within the delineated area and that the distance from the place of work is to be irrelevant.**
- 4.30 Subject to the need to address potentially anomalous situations, as outlined above, which are probably unavoidable in such a scenario, this principle appears sound, both for a benefit tax charge and for a Workplace Levy.
- 4.31 **The presumption is that if an employee is provided with a space but chooses not to use it then a charge does not arise.**
- 4.32 This presumption would accord with existing legislation which provides that, unless an employee receives and takes advantage of a benefit, no charge arises, and this could be applied equally to a Workplace Levy.
- 4.33 **The Environment Department's presumption is that the benefits charge would not apply to self-employed persons.**
- 4.34 As self-employed persons do not hold offices or employments, they are not subject to a benefit in kind charge under current legislation. No positive action would need to be taken, therefore, in order to ensure that self-employed persons are not charged. The same application to a Workplace Levy seems logical.
- 4.35 **The Environment Department proposes that taxation of the provision of parking spaces would apply to owners/directors of companies if they are salaried.**
- 4.36 Under present legislation, a director is an office holder and so is caught by the benefits' legislation, irrespective of whether he/she receives a salary. A director whose remuneration package consisted solely of the provision of the benefits is, therefore, still chargeable on those benefits.
- 4.37 By contrast, if benefits were provided by a company to someone connected with the company who is not an employee or office holder\* then no charge would arise in relation to that individual, but then the company would probably not be entitled to claim a deduction in respect of the costs of providing the benefit, in calculating its own taxable profits. Arguably, however, where the company is

chargeable to tax at 0% on its profits (which is the case with the majority of companies in Guernsey), then whether or not the company is entitled to such a deduction may be of less importance to it, particularly if the ultimate shareholders are, or include, non-residents (because even when the profits are distributed, no tax would arise if those distributions are to non-residents).

(\*An exception, however, would be if, say, a benefit were provided to a relative of an employee and only provided because of the employee's relationship with the employer as an employee. In those circumstances, the employee would be chargeable on the benefit provided to the connected person).

The same principle could apply to a Workplace Levy, although, equally, specific Workplace Levy legislation could be formulated to exclude non-salaried directors, if it were considered appropriate to do so.

**4.38 The Environment Department assumes that parking spaces located within the curtilage of a domestic dwelling would not give rise to a benefit unless the owner or occupant of the dwelling receives a rent for that space.**

4.39 This concept would create a tension with existing principles of the income tax legislation for two main reasons. First, as previously referred to, car parking facilities provided to employees are currently exempt except where they are "near to an employee's place of residence provided for his sole use and used principally for private purposes". This could include a parking space within the curtilage of a domestic dwelling. Second, where an employer provides an employee with a house, such as one with a garage attached, that is already covered by another provision of the Benefit in Kind Regulations, dealing with charges for the provision of accommodation. The concept of the employer acting not as an employer but rather as a generous landowner is not a concept that sits easily with existing tax law. The existing benefit charge, applicable where an employer provides parking facilities at or close to an employee's place of residence is "island wide". Should a benefit charge be introduced for employer-provided facilities within a delineated area of St Peter Port, a differentiation could be made as between the, already existing, provision and any "new" paid parking related benefit.

By contrast, specific Workplace Levy legislation would not be encumbered by this tension, if it were considered appropriate to exclude a parking space within the curtilage of a domestic dwelling from being leviable.

## **5. General observations**

### **5.1 Under the Income Tax Benefits in Kind Regulations:**

"... the amount of any benefit consisting of the use of land, the provision of accommodation or a dwelling whether situate in Guernsey or elsewhere [not otherwise valued under the regulations] shall be equal to 15% of the assessable emoluments of the employee in respect of land ...."

(However, in the case of an employee who is a proprietary director or a proprietary employee of the company providing the benefit, the amount of the benefit is the open market rental value of the land, accommodation or dwelling.)

There is a proviso to that Regulation that any employee, not being a proprietary director nor a proprietary employee, can elect that the amount of the benefit is not to exceed the amount of the open market rental value of the land. The onus to demonstrate that is on the employee.

Arguably, therefore, if the current exemption of the provision of parking spaces (other than when at or near the employees residence) were simply to be repealed, the Regulations would currently provide the valuation of a parking space (which would consist of "... the use of land ...") as 15% of the employee's emoluments, or the open market value if they made the appropriate election. That would, however, be a very onerous situation for employees (who, in practical terms, would be in a very difficult position in establishing the open market value of a parking space owned by their employer).

- 5.2 If the value of the parking space were to be established by reference to the open market value, rather than a specified monetary value laid down in Regulations then, as the current legislation stands, the affected employee would be entitled to offset the general exemption of the first £450 of any benefits provided to him, during the course of each year, against the benefit (assuming that the employee does not have other relevant benefits against which he has already used this exemption).
- 5.3 The above factors further support the argument, therefore, that any monetary value relating to the provision of a parking space, which was to be dealt with as a taxable benefit, should be laid down in Regulations, which in turn should then specify the circumstances in which that benefit could be reduced (such as if usage of the space was restricted by time etc). Whether or not the specific monetary value should be based on a "true" open market value, or the equivalent cost of parking in the paid parking area, or a multiple of such a value, is explored above.
- 5.4 Finally, if an employer charges an employee, or the employee voluntarily makes a payment, towards provision of a benefit, then the taxable benefit will be reduced accordingly. That is in accordance with current income tax principles and there seems no reason why that should not apply equally to any benefit arising from "paid parking", or indeed a Workplace Levy.

## **6. Conclusions**

- 6.1 The Treasury and Resources Department has considered all of the elements and issues set out in this States Report. In particular, the Department took account of the relative rarity of regimes for the taxation, as a benefit in kind, of workplace parking facilities for employees, in the tax regimes of other countries. In

addition, it has considered the potential extensive complexities and administrative costs, for both the States and employers, of introducing such a regime, or a workplace levy as an alternative. Finally, the Department is concerned given the lack of certainty of the potential revenue to be derived.

Therefore, having discussed these matters with the Environment Department, the Department is unanimous that it cannot reasonably recommend the States to introduce either a benefit in kind or workplace levy system in relation to employer provided parking at this time. A copy of the Environment Department's letter of comment on the Department's conclusions is appended to this Report.

## **7. Recommendations**

### **7.1 The Treasury and Resources Department recommends the States of Deliberation to resolve:**

To not introduce a system for taxing, as a benefit in kind, the provision of employer-provided parking to employees or the introduction of a workplace levy.

Yours faithfully

G A St Pier  
Minister

J Kuttelwascher (Deputy Minister)  
H A Adam  
R A Perrot  
A Spruce

Mr J Hollis (Non-States Member)

ED/TRA/RTS

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

18 December 2014

Dear Deputy St Pier

# **INTRODUCTION OF PAID PARKING: TAXING/CHARGING IN RESPECT OF EMPLOYER PROVIDED PARKING SPACES**

The Environment Department has, as indicated in the Treasury and Resources report, fed into this process and carried out the early research into the adoption of workplace provided parking charging methods by other jurisdictions. The Department fully recognises the complexity that will surround any scheme that may be introduced and recognises that the complexities and costs may either outweigh any financial benefits accrued or simply be too cumbersome or bureaucratic even if the potential exists to raise appreciable revenue.

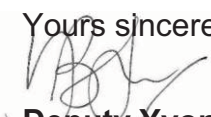
The Transport Strategy as set out in the minority report was not dependent on the introduction of Benefit in Kind or a Workplace levy in respect of employer provided parking spaces. The Department is pleased to note in the Treasury and Resources' report the extract from the Minority report

*"64. From a perceived fairness point of view, many people feel that if long-stay parking becomes chargeable then they would wish to see private parking spaces provided by employers within the wider Town area designated as a taxable benefit-in-kind."*

This is the crux of the issue. It is for the States to decide whether or not the fairness argument is of sufficient validity to lead to the introduction of a Work Place Levy or Benefit in Kind legislation regardless of the complexity and cost of the mechanisms required to achieve that outcome.

The Environment Department is of the view that the benefits do not outweigh the problems and as such supports the recommendations of the Treasury and Resources Department.

Yours sincerely



**Deputy Yvonne Burford**  
 Minister, Environment Department

**(N.B. The Policy Council unanimously agrees with the Treasury and Resources Department's recommendation that neither a system for taxing as a benefit in kind, the provision of employer-provided car parking to employees, nor the introduction of a workplace parking levy, should be introduced.**

**The Policy Council is aware that the Integrated Transport Strategy notes that the introduction of system for taxing the provision of employer-provided parking or the introduction of a workplace parking levy could work hand in hand with paid parking to ensure equality for all those who choose to park in Town. However, the Policy Council considers that not introducing such a system will not render the Integrated Transport Strategy ineffective or inoperable and, owing to the potential complexities and administrative costs for both the States and employers resulting from the introducing such a charge, the Policy Council is fully supportive of the Treasury and Resources Department's recommendation.)**

The States are asked to decide:-

- IV.- Whether, after consideration of the Report dated 17<sup>th</sup> December, 2014, of the Treasury and Resources Department, they are of the opinion to not introduce a system for taxing, as a benefit in kind, the provision of employer-provided parking to employees, or the introduction of a workplace levy.

## COMMERCE AND EMPLOYMENT DEPARTMENT

### RE-APPOINTMENT OF EMPLOYMENT AND DISCRIMINATION TRIBUNAL PANEL MEMBERS

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

18<sup>th</sup> November 2014

Dear Sir

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

- 1.1 The Department recommends the re-appointment, until February 2018, of 13 members of the Employment and Discrimination Tribunal Panel whose terms of office end on 28<sup>th</sup> February, 2015, and the re-appointment of Convenor and Deputy Convenor of the Panel. Details of the proposed Panel Members are appended.

#### **2. Panel Membership and Re-appointment**

- 2.1 Section 1 of The Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005 requires the States, on the recommendation of the Commerce and Employment Department, to draw up and maintain The Employment and Discrimination Panel. Panel members are appointed for a three year period or such shorter period as the States may specify.
- 2.2 The Ordinance requires that the Panel must consist of such number of persons as in the opinion of the States, is necessary for the purpose of hearing and determining complaints under the provisions of the relevant enactments (covering Unfair Dismissal and Sex Discrimination in employment and Minimum Wage complaints).
- 2.3 The existing Panel is, currently, made up of 16 members, the term of office for 13 of those members expires in February 2015; the Department is recommending that those 13 members are re-appointed, including Mr P Woodward as Convenor and Mrs T Le Poidevin as Deputy Convenor.
- 2.4 To ensure the States maintains a credible and appropriately skilled Panel, the Department conducts a local advertising and recruitment campaign whenever recruitment is required. Applicants are shortlisted against objective criteria and

the shortlisted candidates are required to take part in an assessment process run by trained staff from the UK Advisory, Conciliation and Arbitration Service (ACAS). Following this independent assessment, recommendations for appointment are made to the Department to consider.

- 2.5 The members were assessed by this process and have served the Employment Tribunal Service well, gaining valuable experience which would be difficult to replace.
- 2.6 The Department recommends that the members named in Appendix 1 of this report are re-appointed for a term of three years, expiring at the end of February 2018.
- 2.7 The States is required to “designate” one panel member as Convenor and another as Deputy Convenor in order to convene the panel members and appoint one as Chairman for each Tribunal.
- 2.8 The Department recommends that Mr Peter Woodward and Mrs Tina Le Poidevin be re-appointed to the roles of Convenor and Deputy Convenor respectively.
- 2.9 The Department believes that it has complied fully with the six principles of corporate governance in the preparation of this States Report.

### **3. Recommendation**

- 3.1 In accordance with the requirements of Section 1 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005, the Department recommends that the States re-appoint:

Mrs Joanne Antonia de Garis  
 Mrs Christine Diane Le Lievre  
 Mrs Paula Mary Brierley  
 Mr Roger John Brookfield  
 Ms Alison Jayne Thompson Girollet (formerly Anderson)  
 Mr George Charles Sidney Jennings  
 Mrs Caroline Denise Latham  
 Mrs Tina Jane Le Poidevin  
 Ms Helen Sheena Hubbard (formerly Martin)  
 Ms Georgette Scott  
 Ms Kathy Erin Tracey  
 Mr Andrew Douglas Vernon  
 Mr Peter Robert Woodward

referenced in Appendix 1 of this report, as members of the Employment and Discrimination Tribunal Panel, this appointment to take immediate effect until 28<sup>th</sup> February 2018.



3.2 Re-appoint Mr P Woodward as Convenor.

3.3 Re-appoint Mrs T Le Poidevin as Deputy Convenor.

Yours faithfully

K A Stewart  
Minister

A H Brouard  
Deputy Minister

D de G De Lisle  
H J R Soulsby  
G M Collins

Advocate T Carey  
Non-States Member

## **APPENDIX 1**

### **EMPLOYMENT AND DISCRIMINATION TRIBUNAL PANEL**

#### **Candidates proposed for re-appointment**

Mrs Joanne Antonia de Garis  
 Mrs Christine Diane Le Lievre  
 Mrs Paula Mary Brierley  
 Mr Roger John Brookfield  
 Ms Alison Jayne Thompson Girollet (formerly Anderson)  
 Mr George Charles Sidney Jennings  
 Mrs Caroline Denise Latham  
 Mrs Tina Jane Le Poidevin  
 Ms Helen Sheena Hubbard (formerly Martin)  
 Ms Georgette Scott  
 Ms Kathy Erin Tracey  
 Mr Andrew Douglas Vernon  
 Mr Peter Robert Woodward

#### **Summary of the Career History of Candidates Proposed for Re-appointment**

##### **Mrs Joanne Antonia de Garis**

Mrs de Garis has over twenty years' management experience in a number of settings gaining considerable experience in employment relations, change management and quality of service. A science graduate from Cardiff, University of Wales, Mrs de Garis also holds the Institute of Directors Diploma in Company Direction. She was appointed to the Guernsey Employment and Discrimination Tribunal Panel in 2011.

##### **Ms Christine Diane Le Lievre**

Ms Le Lievre has twenty four years' experience working for Northern Trust (previously Barings). Since 1997 she has been a Manager in Human Resources and was appointed Head of Human Resources in 2005, shortly after the acquisition of the Barings Guernsey Group of Companies by Northern Trust. In this role, she was responsible for the management of the HR function including recruitment, employment relations, change management, payroll, pensions and terminations (the latter including redundancies). Since 2012, she has worked part-time and has been primarily responsible for employee relations, pensions and various employee related HR projects. Ms Le Lievre has wide experience in dealing with employment relations issues including interpersonal conflict, stress related issues, absenteeism, performance and capability issues. In 2000 she achieved the post graduate Diploma in Personnel Management through Portsmouth University and the GTA and is a Chartered Member of the Chartered Institute of Personnel and Development (CIPD).

**Mrs Paula Mary Brierley**

Mrs Brierley is currently Head of Human Resources for Northern Trust (Guernsey) Limited, until relatively recently, she was employed, for 16 years, as Head of HR for HSBC Securities Services (Guernsey) Limited (formerly the Bank of Bermuda), where she was responsible for all areas of HR. Her roles have involved supporting the various business lines to ensure fair and effective employee integration and overcoming resistance to change and dealing with acquisition and integrations from the Human Resources perspective. During her career, she has also gained wide experience in dealing with employee relations issues from informal discussions to full formal disciplinary and grievance procedures. Mrs Brierley has an MA in Strategic and HR Management with the University of East London and has the Certificate in Company Direction from the IoD. She has been a member of the Guernsey Employment and Discrimination Panel since 2009.

**Mr Roger John Brookfield**

Prior to his retirement, Mr Brookfield was Fire Safety Manager with the Guernsey Fire & Rescue Service. Throughout his 31 year career, Mr Brookfield has had first-hand experience of managing staff and working closely in a team environment. His training and subsequent Fire Service examinations require a good working knowledge of sex and race discrimination and the Fire Service disciplinary regulations. In recent years his experience extended to dealing with routine staffing matters and in the application of Guernsey's Fire Laws as a qualified Fire Safety inspector. He is an experienced Fire Service Instructor with responsibility for overseeing both practical and theory examinations. He is a graduate of the Institution of Fire Engineers and currently works as a part-time Fire Safety Consultant. He has been a member of the Employment and Discrimination Panel since 2006.

**Ms Alison Jayne Thompson Girollet (formerly Anderson)**

Ms Girollet has been employed by Specsavers Optical Group, (SOG), as a Manager within the Legal Department since 1997. She is part of a small team which is responsible for all aspects of employment law covering the Group's interests in the UK, Republic of Ireland and Guernsey. In addition to advising on and formulating policy and procedures, the role also includes advising on Group in-house employment situations and issues, advice and co-ordination of store partner issues (such as investigations, grievances, disciplinary action etc.) coordination and guidance of 'store' formal board meetings and employment litigation. Prior to working for Specsavers, Ms Girollet served eight years in the Royal Air Force. Tours of duty included Officer Commanding HR, Accounts, Facilities Management and Project Management respectively. She is also an Associate member of the Chartered Institute of Personnel and Development and has been a member of the Employment and Discrimination Panel since 2009.

**Mr George Charles Sidney Jennings**

Mr Jennings is Operations Director at Guernsey Post. Prior to this he held the position of Union Secretary of the Communications Union for over 20 years, where he represented over 200 postmen and women and, as a result of both positions, has been involved in a wide range of negotiations and discussions with both management and

Union. Mr Jennings was a member of the Employees' Panel set up under the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993 for two years and in June 2008 sat as a panel member to hear the dispute in respect of The Generation Engineers and the Control Room Operators, (represented by Prospect Union and Unite the Union) v Guernsey Electricity. He gained a BSc (Hons) in Labour Studies in 2006 through Southampton University. He has also been a member of the Guernsey Employment and Discrimination Panel since 2009.

#### **Mrs Caroline Denise Latham**

Mrs Latham is a Fellow of the Royal Institution of Chartered Surveyors. Her career has covered all aspects of commercial and residential property in both the public and private sector as well as advising on human resources, training and education within the real estate and construction industry. She is a Director of a local firm of Chartered Surveyors providing real estate, property management and consultancy services. Prior to this she was European Director of human resources with a major international firm of real estate consultants, with responsibility for strategy and implementation of policy for European staff as well as advising major private and local government clients regarding the structure and employment practices within property services teams. The earlier part of her career was in the Civil Service with her last position being at the Civil Service Commission (Cabinet Office), where she was responsible for advice to government departments on the recruitment, selection and employment of land and property professionals and she also sat as Chair on Civil Service Recruitment Boards. In addition to her role as a property advisor, Mrs Latham has experience in working with all aspects of employment law ranging from contracts of employment, discipline, redundancy, transfer of undertakings and equal opportunities. Her experience also extends to introducing competency-based assessment for admission to membership of the Royal Institution of Chartered Surveyors and continues to assess candidates for admission to the profession in many parts of the world. She has been a member of the Employment and Discrimination Panel since 2006. She is also Vice Chairman of the TRP Appeals Panel.

#### **Mrs Tina Jane Le Poidevin**

Mrs Le Poidevin is currently managing a recruitment agency, prior to that she was employed as Head of Human Resources with law firm, Mourant Ozannes. She has an extensive career history spanning over 20 years in personnel, office management and training. Her experience has been gained with law firms, the finance industry and retail. She is a Chartered Fellow of the Chartered Institute of Personnel and Development. As a senior HR practitioner, Mrs Le Poidevin has a wide range of experience in dealing with all aspects of personnel and human resources, including discipline & grievances, recruitment and selection and career development. She has been a member of the Employment and Discrimination Panel since 2006 and prior to that served as an Adjudicator since 2004.

#### **Ms Helen Sheena Hubbard (formerly Martin)**

Ms Hubbard graduated in 1984 with a Bachelor of Education and initially worked in Oxfordshire as a Teacher before taking up the role of Associate Lecturer in Communication Skills, Health Education and Psychology at the Guernsey College of

Further Education. In 1994, Ms Martin moved into the Finance Sector and, from 1996-2012, worked at Credit Suisse in Guernsey where she was the Senior Country Head of Human Resources, a Director and Member of the local Executive Board. For Credit Suisse, she had responsibility for Human Resources in Guernsey and offshore UK in multiple jurisdictions and she was joint chair of the Credit Suisse Guernsey Diversity and Advisory Council.

Ms Hubbard has studied employment related legislation to a high level, holds a Masters Degree in Professional Studies from Exeter University and is a Chartered Fellow of the Institute of Personnel and Development (FCIPD) and a Member of the Institute of Directors (MIOD).

Since 2012, Ms Hubbard has been employed as the Group Head of Human Resources for Generali Worldwide with global responsibility for Guernsey, Ireland, Hong Kong, Singapore, Cyprus, Dubai and the Bahamas. Ms Hubbard is a member of the Executive Committee of the Generali Guernsey group of companies and has responsibility for the implementation and maintenance of Human Resource standards and control, which involves advising senior management on all aspects of employment law and best practice in employment. Ms Hubbard is an accredited mediator and maintains a strong interest in diversity and inclusion. She has been a member of the Employment and Discrimination Panel since 2006.

#### **Ms Georgette Scott**

Ms Scott is HR Manager and Company Secretary for Sovereign Trust (Channel Islands) Limited, who she joined in April 2012 after working as an HR Consultant for them for 12 months. Before setting up her own consultancy business in 2009, she was Director of Human Resources, Channel Islands and Isle of Man for the local telecom operator, and, prior to that she worked in senior HR roles for a local law firm, the GFSC and a major trust company, which was preceded by a 12 year period in senior HR roles in the Public Sector.

A graduate, she is also a member of the Chartered Institute of Personnel and Development and holds other professional memberships. She has been a member of the Employment and Discrimination Tribunal Panel since 2006 and prior to that served as an Adjudicator from 2000.

#### **Ms Kathy Erin Tracey**

Ms Tracey is a qualified Social Worker and holds a Masters Degree in Education; In 1999 she founded The Learning Company, and is responsible for daily operations and strategy as the Managing Director. She has an extensive working knowledge of equal opportunities, diversity, staff management, business strategy, marketing and finance, and employment issues in the both the public, private and third sector. As an employer, she has responsibility for recruiting, selecting and employing contract and permanent staff. She is a Chartered Fellow of the CIPD (Chartered Institute of Personnel and Development) and was a member of the Guernsey Women's Atlantic Rowing Team. She has been a member of the Employment and Discrimination Panel since 2006.

**Mr Andrew Douglas Vernon**

Mr Vernon was a bus company executive during a career in public transport of over 30 years. He moved to Guernsey on his early retirement following the sale of his Company. As Commercial Director he was responsible for all aspects of route planning, fares, trade union pay and conditions negotiations, pension schemes and budgeting. He was an Associate of the Institute of Logistics and Transport with a wide range of experience in employment issues, ranging from recruitment of staff to dealing with disciplinary matters from the initial investigations through to the appeals process. He has also represented the employer in Employment Tribunals and in dispute resolution processes, often with ACAS involvement. In addition he negotiated terms and conditions of employment with both local and paid Trade Union Officials. He is a member of the local Parole Review Committee and has been a member of the Employment and Discrimination Panel since 2006.

**Mr Peter Robert Woodward**

Mr Woodward qualified in Business Studies at Nene College of Further Education and commenced his professional career as a graduate trainee with Texas Instruments UK Ltd in 1970. By 1978 he was responsible for a high volume electronic parts manufacturing department numbering some 200 employees, including supervisory and management staff. In 1979, after post-graduate studies at Nuffield College Oxford, sponsored by his employer, he was appointed UK Labour Relations Manager. Mr Woodward has experience in representing his former employer at Employment Tribunals. His career in Human Resources continued to progress and by 1986 he had been appointed by the Intel Corporation as Director for European Human Resources; with HR responsibility for staff in 15 international jurisdictions. His final role at Intel was as Director of Training and Development for Europe, Africa and Middle East.

He moved to Guernsey in 1997 undertaking the role of independent management consultant, providing training and coaching for a wide variety of organisations in the Channel Islands, France, Eire, Germany and Spain. He is currently a member of the Jersey Employment Tribunal Panel and is a Fellow of the Chartered Institute of Personnel and Development. He has been a member and Convenor of the Guernsey Employment and Discrimination Panel since 2006, he was originally appointed as an Adjudicator in 2003.

**(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 States Report and confirms that the Report complies with the Principles of Good Governance as defined in Billet d'État IV of 2011.)**

The States are asked to decide:-

V.- Whether, after consideration of the Report dated 18<sup>th</sup> November, 2014, of the Commerce and Employment Department, they are of the opinion:-

1. To reappoint, in accordance with the requirements of Section 1 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005,:

Mrs Joanne Antonia de Garis  
 Mrs Christine Diane Le Lievre  
 Mrs Paula Mary Brierley  
 Mr Roger John Brookfield  
 Ms Alison Jayne Thompson Girollet (formerly Anderson)  
 Mr George Charles Sidney Jennings  
 Mrs Caroline Denise Latham  
 Mrs Tina Jane Le Poidevin  
 Ms Helen Sheena Hubbard (formerly Martin)  
 Ms Georgette Scott  
 Ms Kathy Erin Tracey  
 Mr Andrew Douglas Vernon  
 Mr Peter Robert Woodward

as members of the Employment and Discrimination Tribunal Panel, this appointment to take immediate effect until 28<sup>th</sup> February 2018.

2. To appoint Mr Peter Robert Woodward as Convenor.
3. To re-appoint Mrs Tina Jane Le Poidevin as Deputy Convenor.

## HOME DEPARTMENT

### PAROLE REVIEW COMMITTEE – CHAIRMAN

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

10<sup>th</sup> December 2014

Dear Sir

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

- 1.1 The purpose of this report is to propose the renewal of Mrs Judith Haslam's term of office as the Chairman of the Parole Review Committee.

#### **2. Report**

- 2.1 The Parole Review Committee (Guernsey) Law, 1989 came into force on 1<sup>st</sup> December 1989. The constitution of the Parole Review Committee is determined by States' resolution. On 14<sup>th</sup> December, 1989, the States resolved that the chairman of the Parole Review Committee shall be appointed by the States and should be an independent person, i.e. not a sitting member of the States nor a person holding judicial office, chosen because of their experience and standing in the community. The ordinary members of the Committee are appointed by the Royal Court and are also independent persons.
- 2.2 On the 30<sup>th</sup> July, 2003, the States resolved to set a maximum term of office for members of the Parole Review Committee of 12 years, except where a person is appointed as Chairman from amongst the ordinary members, in which case their appointment should be limited to 16 years. In considering the maximum term it was acknowledged that the term should be sufficiently long to ensure continuity of experience and membership.
- 2.3 Mrs Judith Haslam was first appointed Chairman of the Parole Review Committee on 1<sup>st</sup> March 2006 after having served as an ordinary member since June 2003. Her present term of office expires on 28<sup>th</sup> February 2015, Mrs Haslam's curriculum vitae is appended.



**3. Recommendation**

- 3.1 In the circumstances of this report, the Home Department recommends the States to approve the appointment of Mrs Judith Haslam as Chairman of the Parole Review Committee for a further three years, with effect from 1<sup>st</sup> March 2015.

Yours faithfully

P L Gillson  
Minister

F W Quin (Deputy Minister)  
M K Le Clerc  
M M Lowe  
A M Wilkie

Mr A L Ozanne (Non-Voting Member)

## **CURRICULUM VITAE**

### **JUDITH HELEN HASLAM**

**Name:** Judith Helen Haslam

**Qualifications:** First part of M. A. Psychology with Open University (2004)

B.A. (Hons) Psychology (2001) Open University

F.I.A. Fellow of the Institute of Actuaries (1982)

B.Sc. (Hons) Mathematics (1974) London University

**Voluntary work:**

**Jan 1996 to date:** **Samaritan Volunteer** in Kingston Branch  
transferring to Guernsey in 1997, committing an  
average 20 hours of telephone listening per month.

I am also currently involved with the Friends of  
Samaritans fund raising.

During my time in Guernsey Samaritans I have  
been Director, running the Branch for 3 years and  
Chair responsible for the management of the  
finances and the premises for a period of two  
years.

**Nov 2004 to 2011:** **Samaritans Branch Visitor.**  
This involves visiting Samaritans Branches  
throughout the UK and Ireland to check on the  
consistency of service being given to callers and to  
ensure that all policies and procedures are  
followed. During this period I visited over 20  
different branches.

**May 2014 to date:** **Director of Jersey Samaritans**  
I am currently looking after Jersey Samaritans as a  
caretaker director. This has involved dealing with  
some problems in the Branch and delegating to  
deputies in order to run the Branch from a  
distance.

## **CURRICULUM VITAE**

### **JUDITH HELEN HASLAM**

#### **Employment:**

**Nov. 1994 to 1999:**

**Avington Ltd and Avington (Guernsey) Ltd.**

Position:

**Director and Manager**

Avington was an independent consultancy providing advice on actuarial and other insurance activities to corporate clients.

**Nov. 1987 to 1994**

**Consolidated Insurance Group Ltd**

Position:

**Director and Managing Actuary**

Responsibilities:

- Corporate actuarial activities for the three insurance companies in the Group.
- Product development.
- Sales and marketing of life assurance products.
- Non life insurance reserving.
- Investment management.
- Administration of specialist life products.
- Financial Services Act compliance.
- Development of overseas branches.

Involving:

- Management of a separate profit centre
- Supervision of 12 staff, including recruitment, training and motivation
- Preparation of budgets and business plans

#### **Previous employment and training:**

My actuarial training was undertaken firstly at the Prudential Corporation and then at Equity & Law Life Assurance Society. On qualification as an actuary I joined Consolidated Insurance Group in Richmond, Surrey where I was a Director and Actuary until 1994.

**(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 States Report and confirms that the Report complies with the Principles of Good Governance as defined in Billet d'État IV of 2011.)**

The States are asked to decide:-

VI.- Whether, after consideration of the Report dated 10<sup>th</sup> December, 2014, of the Home Department, they are of the opinion to approve the appointment of Mrs Judith Helen Haslam as Chairman of the Parole Review Committee for a further three years, with effect from 1<sup>st</sup> March 2015.

## REQUÊTE

### INTEGRATED TRANSPORT STRATEGY AND ACTION PLAN FOR GUERNSEY - PAID PARKING AND BUS SERVICES

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

1. On 14<sup>th</sup> May 2014, after consideration of a Report of the Environment Department dated 9<sup>th</sup> February 2014 entitled GUERNSEY INTEGRATED ON ISLAND TRANSPORT STRATEGY (Article 6 of Billet IX/2014), and of a Minority Report of Deputy Y Burford and Deputy B L Brehaut entitled “INTEGRATED TRANSPORT STRATEGY AND ACTION PLAN FOR GUERNSEY” published in an annexe to that States Report in accordance with Rule 2(4) of the Rules of Procedure of the States of Deliberation, the States approved an amendment proposed by Deputy Y Burford and seconded by Deputy B L Brehaut, and in subsequently approving the substituted Propositions in effect adopted the “INTEGRATED TRANSPORT STRATEGY AND ACTION PLAN FOR GUERNSEY” set out in that Minority Report.
2. Paragraph 94 of that Strategy reads as follows: “If the States approves the changes to the bus service detailed in this report it is proposed that the Department investigates purchasing additional services and routes where needed as soon as possible to begin the enhancement of the service. Infrastructure improvements and real-time information can also be commenced. The introduction of free travel may be possible by negotiation; otherwise it is envisaged that it will commence in April 2015 at the start of any new contract. In any event paid parking will not be introduced ahead of free travel.”
3. Further, paragraph 67 states: “It is proposed that the States directs Treasury and Resources in conjunction with the Environment Department to investigate the best method of accounting for and taxing the benefit that arises to employees with an employer-provided parking space if long-stay paid parking in public Town car parks is introduced, either by means of benefit in kind or a workplace parking levy, and to report back to the States with a recommended system.”
4. And in the course of the debate Deputy Burford indicated “Paid parking implementation is not proposed for a year. April 2015 is the earliest date that we would look at it and certainly not until a decent bus service is in place.” (“Hansard”, 1<sup>st</sup> May 1014 [1535]).

5. In the opinion of your Petitioners it is essential that the States of Deliberation are satisfied that the actions referred to in paragraphs 2, 3 and 4 of this Requête, and most particularly the intended improved and free bus service, have been implemented and tested over a period of time before finally approving the introduction of paid parking.

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

That paid parking shall not be introduced until a further report or reports of the Environment Department concerning the implementation of the INTEGRATED TRANSPORT STRATEGY AND ACTION PLAN FOR GUERNSEY has/have been laid before the States and the States have:

- a) approved detailed arrangements for a benefit in kind or workplace parking levy in respect of the benefit that arises to employees with an employer-provided parking space, and
- b) expressly resolved to acknowledge that a free, robust, sustainable, viable, extended, decent and enhanced bus service has been in operation for at least 6 months.

AND YOUR PETITIONERS WILL EVER PRAY

GUERNSEY

This 28<sup>th</sup> day of October 2014

Deputy A. H. Brouard  
 Deputy G. M. Collins  
 Deputy R. Domaille  
 Deputy D. B. Jones  
 Deputy L. B. Queripel  
 Deputy A. Spruce  
 Deputy K. A. Stewart

**(N.B. In accordance with Rule 17 (2) of the States Rules of Procedure of the States of Deliberation, the views received from Departments and Committees consulted by the Policy Council, as appearing to have a particular interest in the subject matter of the Requête, are set out below.**

**The Environment Department has responded as follows:**

### **ENVIRONMENT DEPARTMENT**

“ Thank you for consulting the Environment Department on the above Requête.

On a cursory reading this Requête appears to do little more than ask for that which has already been assured, namely that Paid Parking would be introduced hand in hand with improved alternative transport measures and specifically that paid parking would not be introduced before an effective and free bus service is in place. Such an improved bus service will clearly not be fully in place before April 2015 and hence by that date the States should have debated the Treasury and Resources report and proposals on Benefit in kind as it relates to parking provision. Thus, it would appear, that all key objectives of the Requête are already a given. In that respect the Requête may be seen as either rather pointless or, if a positive slant is taken, simply clarifying matters.

However, in reality what the Requête seeks to do is place a number of additional new hurdles in the way of the introduction of paid parking and hence seeks simply to frustrate the policies and strategies already approved by the States.

The Requête requires that the States have “*approved detailed arrangements for a benefit in kind or workplace levy...*” before the introduction of paid parking.

The Integrated Transport Strategy approved by the States only 6 months ago did not make paid parking conditional on benefit in kind or a workplace levy placed on private parking spaces. It simply called for a report to investigate the options. This Requête, therefore seeks to go further than the original proposals approved by the States and seeks to make paid parking conditional on benefit in kind or a workplace levy being introduced.

The Requête also calls for “*further reports*” but gives no indication as to what those reports should contain or what the purpose of the reports would be. If, as would appear to be the case, the reports are intended to set out how the implementation of the Strategy is progressing and demonstrate that the ground has been laid for the introduction of paid parking then the Requête mischievously introduces a self defeating circular argument as follows.

The Strategy has not been sufficiently implemented and hence paid parking cannot be introduced. But the Strategy can not be implemented because a key element of the funding resources are not available and that is because they come from paid parking. Nevertheless, the resources will not be made available until the Strategy has been implemented and proven to work.

If supported by the States this would be an example of the worse form of Government. The Requête, in effect misleads by purporting to support the Strategy whilst in practice undermining and frustrating it.

This becomes more patently apparent when examining part (b) of the Requête. Here the Requête calls for “*a free, robust, sustainable, viable, extended, decent and enhanced bus service*”. These adjectives are presented without any attempt to define the criteria that would need to be met before the Bus Service could be deemed to have passed the test. They are not defined, cannot be monitored and hence remain totally subjective. The Department is then required to deliver a bus service that meets these totally subjective ill-defined requirements for 6 months and only after that time can it start to draft the States report which needs to prove that these subjective, ill-defined requirements have been met. One can add to those 6 months the typical 3 months lead in time to a States debate and one can readily see that what the Requête is actually trying to do is delay the introduction of paid parking until after a debate which could not take place until 9 months or so after the introduction of the new bus contract, i.e. not before January 2016. At that point the inevitable argument would be “*As this is such a major issue and so close to the election this should be left for the next States to decide*”.

Notwithstanding the obvious flaws of the Requête, it is fair for States Members to want to know the details of the proposed bus service. On that front I am delighted to provide the following facts:

- In May 2014 a much improved hourly Route 91/92 (Around Island) service was re-introduced along with the continuation of the recently introduced Route 12 service and additional services at school/commuter times on the Route 61;
- May 2014 also saw the continuation of the previously introduced late night Friday/Saturday services to the Airport and the adjusted timings for all services heading into St Peter Port from the west to allow for delays in Queen’s Road at Commuter times;
- The £2 fare was scrapped in June;
- A new Parish circular route (P1) using a smaller sixteen seat vehicle has now been introduced linking St Peter’s, St Saviour and the Castel parishes and providing valuable links to community services such as supermarkets, banks, post offices and a doctors surgery;
- Increased frequency and more direct routing has been provided on the route 31 by adding a new counter clockwise route 32 service;



- The former route 51 has been expanded to incorporate Rectory Hill, Castel Hospital and Rohais de Haut, returning to Town via Rohais and a new clockwise route 52 added in the opposite direction;
- The route 71 has been retimed to improve reliability and extended to serve Ville au Roi in both directions between Town and the Princess Elizabeth Hospital;
- Routes 91/92/93 have been uplifted to incorporate Sunday working and Sunday working on Route 51 has been retained for the Winter timetable.

Service times have been monitored and 95% of all routes operate within 5 minutes of the scheduled terminus arrival times.

Furthermore, the new contract has been tendered on the basis of free bus fares for a trial period of eighteen months and further enhanced service timings (especially in the early mornings, at ‘peak’ commuter times and in the early evenings) with a much stronger focus on quality of service. Multiple tenders were received and the Department is now working with two potential suppliers towards eventual contract signing.”)

**(N.B. The Treasury and Resources Department has commented as follows:**

**This response does not take into account the effect of any changes to the level of income deriving from First Registration Duty and, therefore, any reduction compared to the level assumed in the approved Transport Strategy will inevitably impact on the overall funding arrangements.**

**The Treasury and Resources Department is of the view that this Requête does not comply with the provisions of Rule 15(2) of the States Rules of Procedure as it includes a proposition which may have the effect of increasing revenue expenditure but does not incorporate (i) an estimate of that increase in expenditure; (ii) an indication of how such increase could be funded; and (iii) an explanation of any effect on the States Fiscal and Economic Policy Plan.**

**The 2015 Cash Limit for the Environment Department was set on the basis of the estimates included in the Minority Report (subsequently updated to reflect amendments). In respect of Paid Parking, the Cash Limit included for £850,000 of net income (nine months). Therefore, if the full amount of income is not received in 2015, unless there are compensatory reductions in expenditure within the Environment Department (for example, by delaying improvements to cycle and pedestrian infrastructure, public realm improvements and disability transport measures), the Environment Department will overspend.**

The 2015 appropriation to the Capital Reserve included an additional £1million to specifically fund the bus depot (being the ‘surplus’ on the revenue income/expenditure on the Transport Strategy). In order to preserve the overall States financial position, it is the Treasury and Resources Department’s intention, if this Requête is successful, to propose at the earliest opportunity that the 2015 appropriation to the Capital Reserve is reduced by the same amount of net income that is foregone resulting from the delay in introduction of paid parking and that is not compensated for by reductions in other expenditure by the Environment Department.)

(N.B. The Policy Council has discharged its functions in accordance with Rule 17 (2) of the States of Deliberation by consulting with the parties particularly interested in the prayer of this Requête and notes its consultees’ comments.

The Policy Council notes that the States of Guernsey has recently and thoroughly considered the merits of introducing paid parking as part of an Integrated Transport Strategy and has supported this through the adoption of the Minority Report put forward by Deputies Burford and Brehaut. Therefore, the Policy Council, by a majority, does not consider it to be good governance to now seek to place additional requirements before the implementation of a policy adopted by the States. In addition, it notes that the Requête seeks to delay the introduction of paid parking until the States has approved detailed arrangements for a benefit in kind or workplace parking levy in respect of the benefit arising from employer-provided parking. However, the Policy Council is aware that the Treasury and Resources Department is of the view that such a charge system would be difficult to implement and that it would not support its introduction. Therefore, supporting the Requête could postpone the introduction of paid parking indefinitely, but not introducing such a tax or levy on private parking will not catastrophically affect the implementation of the States-adopted Integrated Transport Strategy. In considering all of these matters, by a majority, the Policy Council is not able to support this Requête.

Ministers have indicated that they may wish to express their personal views on the prayer of the Requête during debate.)

The States are asked to decide:-

- VII:- Whether, after consideration of the Requête dated 28<sup>th</sup> October 2014 and signed by Deputy A.H. Brouard and six other Members of the States, they are of the opinion that paid parking shall not be introduced until a further report or reports of the Environment Department concerning the implementation of the Integrated Transport Strategy and Action Plan for Guernsey has/have been laid before the States and the States have:

- (a) approved detailed arrangements for a benefit in kind or workplace parking levy in respect of the benefit that arises to employees with an employer-provided parking space; and
- (b) expressly resolved to acknowledge that a free, robust, sustainable, viable, extended, decent and enhanced bus service has been in operation for at least six months.

## APPENDIX

## POLICY COUNCIL

STATES OF GUERNSEY PUBLIC SERVANTS' PENSION SCHEME:  
2015 PENSIONS INCREASE

In accordance with the States of Guernsey (Public Servants) (Pensions and Other Benefits) (Amendment No 2) Rules, 1997, approved by the States on 29 October 1997 (Article X of Billet d'État No XIX of 1997), the Policy Council, after consultation within the Pensions Consultative Committee, has resolved that pensions in payment and preserved pensions and other benefits not yet in payment be increased with effect from 1 January 2015 as follows:

- |     |  |   |
|-----|--|---|
| (a) | awarded prior to 1 January 2014                                  | by <b>2.6%</b>  |
| (b) | awarded in the period from 1 January 2014<br>to 31 December 2014 | by $\frac{1}{365}^{\text{th}}$ of <b>2.6% for each<br/>day of entitlement</b> |

(i.e. in line with the change in the Retail Price Index for the twelve months ending on 30<sup>th</sup> June 2014).

J P Le Tocq  
Chief Minister

8<sup>th</sup> December 2014

A H Langlois  
Deputy Chief Minister

Y Burford  
P L Gillson  
D B Jones  
P A Luxon  
M G O'Hara  
S J Ogier  
R W Sillars  
G A St Pier  
K A Stewart