



# BILLET D'ÉTAT

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## Volume III

15. Social Security Department – Proposed Development of a Secondary Pensions System for Guernsey and Alderney, p. 806
16. Health and Social Services Department – Proposals regarding Guernsey's Future Ambulance Service, p. 868
17. Commerce and Employment Department – Legislative Changes Relating to the Future Oversight of Guernsey Electricity Limited and Guernsey Post Limited, p. 935
18. Social Security Department – Introduction of Parental Benefits, p. 952
19. Commerce and Employment Department – Trading Standards Legislation, p. 983
20. Environment Department – Coastal Defence Flood Prevention Measures, p. 1023
21. Commerce and Employment Department – Proposal for a New Arbitration Law, p. 1031
22. Requête – Island Wide Voting Referendum, p. 1044
23. Requête – Holocaust Memorial, p. 1120



## SOCIAL SECURITY DEPARTMENT

### PROPOSED DEVELOPMENT OF A SECONDARY PENSIONS SYSTEM FOR GUERNSEY AND ALDERNEY

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

30<sup>th</sup> November 2015

Dear Sir

#### **Executive Summary**

1. One of the outcomes of the recent States Debate on the Personal Tax, Pensions and Benefits Review (Billet d'État IV, 2015) was that the Social Security Department ("the Department"), in consultation with the Treasury and Resources Department, should report back to the States with policies aimed at ensuring adequate personal or workplace pension provision in Guernsey and Alderney.
2. Income Tax data shows that 10,859 individuals in both the public and private sectors made pension contributions into existing occupational and personal pension schemes in Guernsey and Alderney in 2012. Survey evidence suggests that, in addition, there could be an estimated 4,500 members of non-contributory occupational pension schemes in Guernsey and Alderney. Non-contributory occupational pension schemes are an employee benefit that is often provided in the finance sector. In total this would imply that around 15,000 Guernsey and Alderney residents currently have access to an existing occupational or personal pension scheme in both the public and private sectors.
3. In March 2013 there were 42,698 residents of working age (age 16-64) in Guernsey and Alderney. The data suggests that currently an estimated 40% of residents of working-age in Guernsey and Alderney in both the public and private sectors are members of an existing private pension scheme, which includes both occupational and personal pension schemes. This implies that over 25,000 residents of working-age in Guernsey and Alderney are not currently making any private pension provision for themselves to add to any state pension benefits that they will receive under the contributory States pension arrangements (the "old age pension").
4. The implication is that over 25,000 residents of Guernsey and Alderney of working-age intend to rely solely on the state pension funded by social security contributors and taxpayers to finance their retirements. Given the demographic challenges facing Guernsey and Alderney the current situation will pose significant risks to public

finances unless more residents of working-age start to take greater responsibility for saving for their own retirement.

5. The Department has developed an outline proposal for a Secondary Pension system which will encourage residents of Guernsey and Alderney to make greater workplace or private pension provision. To assist the development of that proposal, the Department undertook a consultation exercise in August and September 2015, the results of which are included in this Policy Letter. All references to “the Department” in this Policy Letter refer to the Social Security Department and to its successor bodies under the proposed reorganisation of the States of Guernsey.

### **Key Recommendations**

6. The Department is proposing a new system of automatic enrolment into private pension saving and a new Secondary Pension scheme for residents of Guernsey and Alderney based on the following principles:
  - i. Employers would have a legal duty to enrol automatically their eligible employees into either (i) a qualifying pension scheme or (ii) the new Secondary Pension scheme;
  - ii. The States would set out the requirements for employers to use a qualifying pension scheme for automatic enrolment: conditions would include minimum levels of contributions or benefits and evidence of good scheme governance;
  - iii. The States would establish a new low cost pension saving vehicle called a Secondary Pension scheme that would have a universal service obligation to provide a pension scheme to any employer that wished to use it to fulfil their automatic enrolment duties, including small employers and irrespective of the profitability of the new business;
  - iv. Both individuals and their employers would be required by law to contribute at least minimum levels into either a qualifying pension scheme or into the new Secondary Pension following automatic enrolment, however individuals would have an unconditional right to opt out of private pension saving and therefore to cease making their contributions;
  - v. Employers would not be liable to contribute on behalf of employees who have opted out of the scheme;
  - vi. In the long-term, around one-third of the total contribution would be payable by the employer and around two-thirds of the total contribution would be payable by the individual;
  - vii. Employers would not be permitted to offer inducements for employees to opt out of their pension scheme and would be required periodically to re-

enrol employees who have opted out; re-enrolment every 2 years is envisaged;

- viii. Individuals would build up a pension fund in their own individual account in their own name in either a qualifying pension scheme or in the new Secondary Pension. This pension fund would be the individual's own money and would become part of their estate in the event of their death, either before or after reaching pensionable age;
- ix. The States would continue to provide an incentive for private pension saving subject to limits on the maximum amount of tax incentives that an individual can receive;
- x. The States, through the Department, would facilitate the establishment of the new Secondary Pension scheme but the delivery of the administration and investment activities for the new Secondary Pension would be undertaken by the private sector through a contract awarded under a competitive tendering process.
- xi. Self-employed individuals who are under pensionable age and earn more than the lower earnings limit would be automatically enrolled into the new Secondary Pension scheme and would be required to contribute to the scheme unless they opt out.
- xii. Non-employed individuals under pensionable age who currently make social security contributions would be automatically enrolled into the Secondary Pension scheme with a right to opt out. Non-employed individuals who do not receive an income and do not make social security contributions would be able to open a Secondary Pension account on a voluntary opt in basis but would not be automatically enrolled.
- xiii. Individuals would be able to add additional contributions or lump-sum investments into the Secondary Pension scheme by dealing directly with the organisation contracted to administer the scheme. Employers would have no liability for such additional voluntary contributions.
- xiv. The organisation contracted to administer the Secondary Pension scheme would be required to offer a range of investment choices, including an option to invest in a fund mirroring the investment strategy of some of the capital funds currently administered by the States.

## **SECTION 1: INTRODUCTION AND THE NEED FOR A SECONDARY PENSION SCHEME**

### **Introduction**

7. Many people do not realise that a full rate Guernsey old age pension (£201.03 per week in 2015) requires payment of social insurance contributions over a 45 year period. Three out of four people do not qualify for a full Guernsey old age pension, making it all the more important that they have other retirement savings.
8. The population demographic is changing. Over the next 20 to 30 years more people will be living longer, there will be a larger proportion of elderly people and fewer people employed and paying tax and insurance by comparison. Those who do not make adequate provision for themselves with a personal pension may be reliant on the taxpayer through the benefit system. This will add further to the strain on tomorrow's taxpayer. It will be important to ensure that the island has sufficient funds to help support those who need it most.
9. One of the outcomes of the recent States Debate on the Personal Tax, Pensions and Benefits Review (Billet d'État IV of 2015) was that the Department, in consultation with the Treasury and Resources Department, should report back to the States with policies aimed at ensuring adequate personal or workplace pension provision in Guernsey and Alderney, as set out below:

“7. To direct the Social Security Department, in consultation with the Treasury and Resources Department, to present to the States of Deliberation for approval a report or reports outlining policies to ensure adequate personal or workplace pension provision in Guernsey and Alderney covering the following parameters:

- the enhanced take up of private pension schemes;
  - the creation of a pension scheme designed to capture those not currently making personal provision (outside the existing statutory old age pension scheme);
  - the enhancement of incentives for contribution to a private pension scheme through the tax system;
  - the feasibility of devising a scheme whereby pensioners may, if they so wish, invest their pensions in a fund tracking the performance of the capital funds managed on behalf of the States of Guernsey.”
10. The Department established a Project Board for the research and development of these policies. The Project Board included political and officer representation from the Department and the Treasury and Resources Department, although the political Member of the Treasury and Resources Department stood down towards the end of the development of the proposals. The Project Board also benefited from the advice of external experts in pensions and insurance.

11. The Department launched a public consultation document in August 2015 and asked twelve questions regarding how the Department might implement policies aimed at ensuring adequate personal or workplace pension provision and the establishment of a Secondary Pension scheme in Guernsey and Alderney.
12. This Policy Letter sets out an outline proposal for the introduction of automatic enrolment into private pension saving and a new Secondary Pension scheme which will encourage residents of Guernsey and Alderney to make greater workplace or private pension provision. Further references in this Policy Letter to 'Guernsey' should be taken to include Guernsey, Alderney, Herm and Jethou.

### **Rationale for encouraging greater levels of Private Pension Saving**

13. The good news is that as a community more people are living longer. The number of people over 85 is expected to more than triple by 2050.
14. As a result of that, the proportion of people on the Island accessing care and support services is expected to increase while the number of people working is expected to decrease. This means that the cost of services will increase while the funds available to pay for them are likely to decrease.
15. In Guernsey, every working person pays a Social Insurance contribution. Non-working people who have income above certain thresholds also pay contributions. These contributions support a wide range of benefits. For people under pensionable age, currently set at 65, a large part of their contributions go towards paying the pensions for those already in retirement.
16. In the future, with the number of working people decreasing and the number of people claiming a state pension increasing, there is an increased risk that the State will not be able to meet the needs of the number of people claiming a pension, and that this will leave the community at increased risk of poverty.
17. The Department is planning to introduce policies to encourage individuals to take greater responsibility for financing their retirement because:
  - The demographic challenge means that the old age pension is likely to be able to provide only a basic platform for retirement income in the future. If residents want to have a more comfortable retirement they will need to take more responsibility for themselves and will need to save in a private pension during their working life.
  - The current purely voluntary system of private pension saving has not worked well and has led to low levels of private pension saving by Guernsey residents. If the States do nothing and continue to rely on the voluntary system, it is unlikely that any increase will be seen in the current low levels of private pension saving. This would be likely to lead to future generations of retirees relying on the States by claiming benefits at a cost to future taxpayers, of which there are likely to be proportionately fewer.

- The relatively small size of the population in Guernsey has made it difficult for pension providers to offer private pensions at a low cost due to a lack of the economies of scale that exist in larger jurisdictions. If the States arrange a solution on behalf of the residents of Guernsey, it would be able to benefit from greater economies of scale, lower costs, and better value for money in a private pension scheme than an employer or an individual acting on their own behalf would be likely to be able to access.

18. The solution to the foregoing is one which:

- enhances the sustainability of the old age pension scheme;
- encourages people to invest in their own private pension;
- does not put undue pressure on employers; and
- does not undermine existing good pension schemes where these already exist.

### **The current Guernsey Old Age Pension**

19. The Guernsey old age pension is a contributory pension payable to both men and women when they reach their pensionable age. Pensionable age is currently 65 but will increase gradually from 2020 to reach 70 years of age in 2049.
20. In order to qualify for an old age pension, individuals must satisfy certain contribution conditions.
21. The first condition is that individuals must have paid at least 156 contributions to Social Security over their working life. The second condition is that, in order to qualify for a full rate pension, individuals must have paid, or had credited, at least 50 contributions per year over a 45-year period. Credited contributions are those which are applied to a Social Insurance record when an individual is sick, unemployed, receiving Carer's Allowance, or receiving Family Allowance for a child under 16. The full rate of old age pension is £201.03 per week in 2015.
22. If an individual's yearly contributions average is less than 50, a reduced rate of pension may be paid. For example, if the yearly average is 25 contributions, a pension of 50% of the full rate would be paid. If an individual's yearly average is less than 10 contributions (which would give 20% of the full rate of pension), no pension is payable, unless contributions paid to another country can be taken into account.
23. The Guernsey old age pension, like many other basic state pensions, is neither defined contribution nor defined benefit, although the States do set both the contribution rates and the benefit rates. It is a pay-as-you-go pension scheme. Under this type of scheme, today's contributors pay for today's pensioners. This is on the understanding that tomorrow's contributors will pay for tomorrow's pensioners. This is described as the 'intergenerational contract'. That contract works well when



the relationship between the number of workers and the number of pensioners is fairly stable. But we are entering a period where our community will have many more pensioners, but the same number, or fewer, people of working age. In that situation, the pay-as-you-go arrangement places a heavy strain on contributors. Unless steps are taken to encourage more people to save for their older years, there is likely to be an increased demand for means-tested assistance such as supplementary benefit, which is financed by taxation.

24. The current contribution rates, and how they are allocated between the Guernsey Insurance Fund, the Guernsey Health Service Fund and the Long-term Care Insurance Fund are shown in Annex A.

### **Existing Private Pension Schemes**

25. Some employers have their own pension schemes which both the employer and sometimes also the employee pay into. Most pension schemes can be described as a 'defined benefit' or 'defined contribution' pension scheme.
26. In a defined benefit scheme the final pension amount received is linked to the employee's length of service and the employee's final or average salary. The employer bears the risk that investments under-perform or that the life expectancy of scheme members is longer than anticipated.
27. In a defined contribution scheme the company or employee contributes a fixed percentage of the employee's salary into a pension fund. The final pension paid out will depend on the level of contributions made into the pension fund, the investment performance of the fund, and how the fund is converted into a pension income. In a defined contribution scheme, the risk that investments under-perform or improvements in life expectancy are better than anticipated is passed on to the scheme member.
28. The clear trend, nationally and in Guernsey, has been for companies in the private sector to close their defined benefit pension schemes and to replace them with defined contribution pensions for new employees. The main sector where defined benefit schemes still exist to a significant extent is in the public sector.

### **Existing Public Sector Pension Schemes**

29. There are currently approximately 5,000 employees working in the public sector in Guernsey and Alderney who are existing active members of the Public Sector Pension schemes.<sup>1</sup> The 5,000 active members of the public sector pension schemes include current nurses, teachers, public service employees, civil servants and members of the emergency services. Employees of Guernsey Post and Guernsey Electricity are also eligible for membership of the public sector schemes. Public

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1. Policy Council Review of Public Sector Pension Schemes, 2015.

sector employees automatically become members of the public sector pension schemes as a condition of their employment contracts.

30. The public sector pension schemes are occupational pension schemes and are moving from defined benefit pension schemes, that provide a pension linked to the scheme member's final salary, to defined benefit schemes, with a pension that is linked to the member's average salary over the course of their career.<sup>2</sup> One of the specific aims of the public sector pension reforms was to ensure that an employee with a full career in the public sector would receive an adequate retirement income when combined with their Guernsey old age pension entitlements. Members of the public sector pension schemes also have the opportunity to make voluntary contributions to add to the benefits they earn through their service.

### **Existing Members of Private Sector Pension Schemes**

31. In 2012 the Policy Council commissioned a survey of 1,000 residents in the private sector to gather information on the amount of private sector pensions in operation in Guernsey.<sup>3</sup> Public sector employees, whose pension position is known, were excluded from the survey.
32. The survey found that 45% of the respondents to the survey in the private sector were actively saving in a private sector pension scheme, while 55% were not currently saving in a private pension scheme, although 16% of the non-contributors had previously been contributing to a scheme. Younger people were found to be least likely to be contributing to a private pension. The survey also revealed that people earning less than £20,000 per annum were least likely to be contributing to a private pension, whereas those earning over £30,000 were more likely to contribute.
33. The local firm BWCI carries out regular surveys into the different aspects of occupational pensions provided by employers in Guernsey and Jersey. The surveys are not intended to be representative of all employers in the two islands, and it is noted that two-thirds of the employers that responded to the latest survey, undertaken in 2010, were from the Finance sector.
34. The BWCI survey found that:
  - 68% of the employers who responded provide a defined contribution pension scheme for new staff;
  - 18% of employers who responded do not provide any form of pension benefit, or alternative benefit in lieu of a pension;
  - 8% of employers who responded provide additional salary in lieu of pension benefits;

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2. Except for salaries in excess of £87,500 which will have benefits provided in a defined contribution pension for earnings above that level

3. States of Guernsey Policy Council, Pensions Survey, 2012

- 4% of employers who responded still have an open defined benefit (final salary) pension;
  - 2% of employers who responded contribute to a private pension arrangement or Retirement Annuity Trust scheme (RATs).
35. The data collected by the Policy Council and the BWCI survey suggests that there is a problem of under-saving among Guernsey residents of working age. This adds weight to the need for the States to consider policy options to encourage or compel higher levels of private retirement saving among working-age residents of Guernsey and Alderney.

### **Income Tax Data on the number of Contributors into Existing Occupational and Personal Pension Schemes**

36. Income Tax data from an analysis of tax returns suggests that the number of Guernsey and Alderney tax residents who contributed into either an existing occupational or personal pension or both types of scheme was 10,859 individuals in 2012. This will include members of both private sector and public sector schemes and includes the estimated 5,000 active members of the public sector pension schemes. However, this data only includes individuals who actually make contributions into their pension schemes themselves. The Income Tax data does not include individuals who have access to non-contributory occupational pension schemes.
37. The Policy Council Pensions Survey found that 20% of occupational pension scheme members were in schemes which are non-contributory for the individual. If non-contributory pension schemes tend to be larger pension schemes, there could be significant numbers of existing pension scheme members that are not being captured in the Income Tax data. There is some evidence to suggest that non-contributory pension schemes are prevalent in Guernsey's Finance Sector. In March 2013, there were 6,756 employees working in Guernsey's Finance Sector.
38. The Pensions Survey found that 52% of the employees surveyed working in the private sector had a private sector pension, while 48% of employees working in the private sector surveyed did not have a private pension.<sup>4</sup>
39. Combining the Pensions Survey data on the percentage of employees with access to a private pension scheme with the Income Tax data on the number of employees contributing to a pension scheme suggests that there could be an estimated 4,500 members of non-contributory occupational pension schemes in Guernsey and Alderney. This would imply that roughly two-thirds of the employees working in Guernsey's finance sector might have access to a non-contributory private pension scheme. This estimate must be treated with caution as it is based on an extrapolation of survey data, but there are no alternative comprehensive sources of data on the

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4. States of Guernsey Policy Council, Pensions Survey, 2012, Figure 6

numbers of members of non-contributory pension schemes in the private sector in Guernsey and Alderney. (See Annex B).

40. In March 2013 there were 42,698 residents of working age (age 16-64) in Guernsey and Alderney. Combining the Income Tax data and the Pension Survey data implies that in total there are somewhere in the region of 15,000 members of existing occupational and personal pension schemes in both the public and private sectors in Guernsey and Alderney – equivalent to around 40% of the total working-age population having access to a private or public sector pension scheme. However, this also implies that over 25,000 residents of working-age in Guernsey and Alderney are not currently making any private pension provision.
41. The implication is that many thousands of residents of working-age are planning to rely solely on the state pension to fund their retirements. This low level of private pension saving, coupled with the underlying demographic challenge poses risks to the public finances of the future. This supports the need to encourage greater levels of workplace or private pension provision.

### **Public Consultation**

42. The Department published a consultation document in August 2015, which set out a number of policies that the Department could consider implementing to encourage or compel residents to make greater private pension provision for themselves. Annex C provides the full list of consultation questions that respondents were asked and provides a summary of the responses that the Department received.

### **Consultation Responses**

43. The Department received 222 responses through the Department's online questionnaire, or the equivalent paper feedback form. In addition, the Department received written responses from a number of organisations. Annex D gives a full list of the organisations that provided written responses to the Department's consultation.
44. The Minister of the Department also held meetings with a number of representative organisations to get their feedback on the consultation questions. The organisations included the Confederation of Guernsey Industry (CGI), the Guernsey Association of Pension Providers (GAPP), the Guernsey Building Trades Employers Association (GBTEA), the Guernsey Chamber of Commerce, the Guernsey International Business Association (GIBA), and the Institute of Directors (IoD).
45. The Department is grateful for all of the feedback and input that has been received to the consultation exercise. The Department has carefully considered the feedback that it has received. Section 2 of this Policy Letter describes the Department's proposals to ensure adequate personal or workplace pension provision in more detail.

## **SECTION 2: PROPOSAL TO ENCOURAGE GREATER LEVELS OF PRIVATE PENSION SAVING**

46. As part of the Personal Tax, Pensions and Benefits review (Billet d'État IV of 2015) the States directed the Department, in consultation with the Treasury and Resources Department, to report back to the States Assembly with policies aimed at ensuring adequate personal or workplace pension provision in Guernsey and Alderney.

### **Policy Objectives**

47. The Department's policy objectives are:
- to encourage residents to take greater responsibility for saving for their own retirement;
  - to increase both the number of residents saving in a private pension and the total amount of private pension saving by residents in order to reduce the likelihood of future generations of retirees falling back on taxpayer funded benefits;
  - to provide residents with the opportunity to save for their own retirement by establishing a well-governed, cost-effective private pension savings vehicle called a Secondary Pension.
48. The next section of this report sets out in more detail how the proposed new system of automatic enrolment into private pension saving and a new Secondary Pension scheme could work.

### **Automatic Enrolment and a Secondary Pension Scheme for Guernsey**

49. The Department is proposing a new system of private pension saving for residents of Guernsey based on the principle of automatic enrolment.
50. Automatic enrolment is a policy principle that has been developed from behavioural economics. Individuals are far more likely to participate in private pension saving if they are automatically enrolled into a pension scheme, rather than having to make an active decision to join the scheme by, for example, filling out a joining form. When an active decision is needed to join a pension scheme, many individuals never get around to filling out the relevant forms, even if their employer is willing to contribute to the pension scheme on their behalf.
51. Automatic enrolment changes the default position, so that the default is that individuals are automatically enrolled into the pension scheme, albeit with a right to opt out. Evidence from the USA, New Zealand and the UK has shown that simply by changing the default in this way can dramatically increase participation in private pension saving. Inertia means that many people simply do not get around to opting out. Annex E sets out how the UK's approach to automatic enrolment into private pension saving has been implemented.

52. The next section sets out how a similar approach to automatic enrolment might be adapted to work for residents of Guernsey.

### **Automatic Enrolment Duty**

53. The starting point is that the States would legislate to require employers to enrol automatically their eligible employees into a private pension scheme (either a qualifying pension scheme or the Secondary Pension), with a right for automatically enrolled employees to opt out.<sup>5</sup>
54. The employer should be the decision making entity because:-
- i. Employers will be responsible for paying any additional costs (e.g. any employer contributions) that will result from automatic enrolment and therefore need to have a say in how they will meet their automatic enrolment obligations;
  - ii. Pensions are a part of a remuneration package and may be used for recruitment and retention of employees. Employers have a legitimate business interest in deciding how generous their pension scheme should be.
  - iii. This will enable the reforms to be introduced gradually (e.g. by size of employer) if this is deemed necessary.

### **The Definition of Eligible Employees**

55. The Department currently envisages that all employees, of any age up until they reach pensionable age, who earn above the Lower Earnings Limit (currently £6,812 per annum in 2015) and pay Social Security contributions would be eligible employees for the purposes of automatic enrolment into a private pension scheme.
56. The Department is not proposing a lower age limit for eligible employees as the UK specifies. UK employees are only eligible for automatic enrolment from the age of 22 until their State Pension Age. The Department is not proposing a lower age limit in Guernsey because the Department wants to encourage private pension saving from a young age. If a 16-year-old starts employment straight from school the presumption is that they would be automatically enrolled into private pension saving by their employer once they start earning about the Lower Earning Limit and start to pay Social Security contributions.
57. The duty upon employers to enrol automatically their employees would cease upon an employee reaching pensionable age. Individuals who work beyond pension age would be able to continue to contribute to their pension scheme on a voluntary basis,

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5. Employers would be able to automatically enrol their eligible employees into either a qualifying pension scheme or into the new Secondary Pension scheme. See paragraphs 67 to 70 for the definition of a qualifying pension scheme and see paragraphs 120 to 144 for more explanation of the new Secondary Pension scheme.

but there would be no legal requirement for employers to continue to contribute into the pension.

58. This approach aims to strike a balance and recognises that some people may need to work beyond their pension age and may also want to continue to save beyond their pension age, but at the same time recognises that employers' obligations to contribute to their employees' pension schemes cannot be unlimited.

### **Self-employed**

59. Self-employed people who are under pensionable age and who earn above the Lower Earnings Limit (currently £6,812 per annum in 2015) and pay social security contributions would be automatically enrolled into the States facilitated Secondary Pension scheme (see paragraphs 120 to 144), with a right to opt out.

### **Non-employed**

60. Non-employed people are individuals who are neither employed nor self-employed but may instead be supported by a partner in work or living off savings or investment income. Non-employed people who are under pensionable age and have income that is more than the annual lower income limit (£17,030 in 2015) have to pay compulsory Class 3 social security contributions. Non-employed people who earn less than the annual lower income limit can also make voluntary social security contributions.
61. It is envisaged that all non-employed people who currently make social insurance contributions (whether compulsory or voluntary) would be automatically enrolled into the Secondary Pension scheme with a right to opt out.
62. Individuals who are non-employed and are not receiving any income and are therefore not making any social security contributions would not be automatically enrolled but would be able to opt in to the Secondary Pension scheme on a voluntary basis. Parents or other relatives would be able to open a Secondary Pension account for their dependents on an opt in basis provided that they were willing to contribute to the scheme.
63. The Department's proposals to introduce automatic enrolment into private pension saving and a new Secondary Pension will mean that three-quarters of the residents of Guernsey and Alderney who are of working age will be automatically enrolled into either a qualifying pension scheme or into the new Secondary Pension.
64. See Annex F for a table illustrating the treatment of individuals for the purposes of automatic enrolment by their employment status.

### **Types of Private Pension that Employers would be able to enrol their Eligible Employees into**

65. There are approximately 5,000 members of the public sector pension schemes and in addition an estimated 10,000 individuals who work in the private and third sectors are members of an existing private sector pension scheme, which includes occupational and personal pension schemes, including non-contributory occupational schemes. The fit of automatic enrolment and the new Secondary Pension scheme with existing private pension schemes is therefore important.
66. The Department is proposing that employers would be able to choose whether to enrol their eligible employees into either a qualifying pension scheme or into the new Secondary Pension scheme. Those employers that wished to use an existing or new pension scheme to fulfil their automatic enrolment duties would be able to do so, provided the pension scheme met a qualifying scheme test.

### **Definition of a Qualifying Pension Scheme**

67. A qualifying pension scheme would be likely to include:-
  - all Defined Benefit schemes in the public sector, provided they are still open to new members and provide a minimum level of benefits;
  - all Defined Benefit schemes in the private sector, provided they are still open to new members and provide a minimum level of benefits;
  - all Defined Contribution schemes (including multi-member Retirement Annuity Trusts) which offer minimum employer contribution levels and minimum total contribution levels at least as good as the statutory minimum contribution levels required for automatic enrolment.
68. Multi-member Retirement Annuity Trusts (RATs) which have been set-up by employers as employer sponsored schemes to provide pension benefits for multiple employees would be qualifying schemes for the purposes of automatic enrolment, provided that they offer minimum employer contribution levels and minimum total contribution levels at least as good as the statutory minimum contribution levels required for automatic enrolment and good scheme governance.
69. However, it is not envisaged that Retirement Annuity Trust schemes (RATs) that are set up for a single member, or for a single member and that person's family beneficiaries, would be a qualifying scheme for the purposes of automatic enrolment. These schemes are typically not employer-sponsored schemes but are usually set-up by the scheme member themselves as a personal pension. The current fee structure of these schemes and their regulatory regime ensures that anybody participating in these schemes will, by definition, have sufficiently high levels of income or wealth that they are unlikely to fall back on States benefit support.



70. There are an estimated 2,500 single member Retirement Annuity Trust schemes already established. However, if an individual who is a member of a single member Retirement Annuity Trust scheme is automatically enrolled into either a qualifying pension scheme or into the Secondary Pension scheme that individual would be able to opt out and would be able to continue to contribute to the individual's own Retirement Annuity Trust scheme.

### **Automatic Enrolment into the new Secondary Pension Scheme**

71. Some employers, in particular smaller employers who have not so far offered any form of private pension scheme for their employees, may choose to use the States facilitated Secondary Pension scheme to fulfil their automatic enrolment duties rather than setting up their own pension scheme. (See paragraphs 120 to 144 for further details on the proposed new Secondary Pension scheme.)

### **A Semi-Compulsory approach to contributions into Private Pension Saving**

72. A semi-compulsory approach to pension contributions is one where individuals are automatically enrolled into private pension saving and are required by law to contribute at least minimum levels to the pension, but the individual retains the right to opt out of pension saving and would therefore cease making contributions to the scheme. The scheme is described as semi-compulsory because individuals do have the right to opt out of the scheme. The right to opt out of the scheme is unconditional but some individuals may have good reasons for wanting to opt out following automatic enrolment. For example, an individual might choose to opt out if they were self-employed but already had an existing personal pension, or if they are a low earner supporting family dependents and could not afford to contribute to a pension at the time.
73. The Department's view is that it would be difficult to implement a fully compulsory approach to private pension contributions in Guernsey without forcing certain groups to over-save. Forced over-saving could have very different forms, including public and private sector employees who already contribute into good occupational or personal pension schemes, but also lower earners with financial commitments leaving them unable to afford to make contributions.
74. The Department will want to monitor the impact of implementing an approach based on automatic enrolment and will want to monitor the opt out rate. The Department would be able to revisit the question of fully compulsory contributions in the future, if it were felt that the proposed approach based on automatic enrolment with an opt out was not meeting the Department's and the States' policy objectives.

### **Opting out following Automatic Enrolment**

75. Individuals who have been automatically enrolled would be able to opt out of private pension saving and would no longer be required to contribute to the scheme

once they had opted out. However, they would also forfeit their right to the employer's contribution.

76. It is envisaged that individuals would have six weeks to opt out of pension saving after being automatically enrolled. They would opt out by filling out a simple opt out form. Individuals would be eligible for a refund of any pension contributions that they had made to the scheme. Once an individual has opted out they forfeit their right to an employer contribution and the employer is no longer compelled to contribute on the employee's behalf. The employer would be refunded for contributions paid in during the six week period, matching the period of refund for the employee's contributions. If an individual wants to opt out after the end of the proposed six-week opt out period, the employer would take whatever action is required under the relevant pension scheme rules for ceasing active membership. In this situation the individual and the employer would only be eligible to receive refunds of contributions if the pension scheme rules permit it. This may depend on the length of time that the member has been in the pension scheme and the extent of contributions that have been made.
77. UK experience of automatic enrolment has been that the opt out rate has been relatively low. During the first three years of implementation of the automatic enrolment reforms around 10% of eligible employees who have been automatically enrolled have opted out of pension saving. This implies that the other 90% of eligible employees who were automatically enrolled have remained in the pension scheme and are therefore contributing to and building up rights to a private pension.
78. The UK reforms have been implemented in stages, with larger employers required to automatically enrol their eligible employees before smaller employers. There is an expectation that the opt out rate may rise to 15% once smaller employers are brought into the scheme.
79. The Department proposes that employers would have a duty to re-enrol employees who have opted out every 2 years. This is to reflect the fact that individual's financial circumstances can change within this timeframe and individuals should periodically review whether they are making sufficient private pension provision for their retirement.

### **Required Statutory Minimum Levels of Pension Contributions**

80. In the UK's private pension system, once the system is fully implemented the minimum statutory levels of pension contribution following automatic enrolment are:
  - at least 4% of qualifying earnings (£5,824 to £42,385 in 2015/16) from the individual,
  - at least 3% of qualifying earnings (£5,824 to £42,385 in 2015/16) from the employer; and

- a further 1% through basic rate tax relief on pension contributions from the UK Government.

81. Taken together this represents a combined total contribution of 8% of qualifying earnings (£5,824 to £42,385 in 2015/16). This contribution rate is in addition to National Insurance contributions. The UK Pensions Commission designed the UK's statutory minimum contribution rates to enable a median earner to achieve a replacement rate of 45% of their pre-retirement earnings if the individual and their employer were to contribute at the minimum statutory levels for a full career. This is lower than the 66% target replacement rate that would be needed for a median earner to have an adequate retirement income. It was recognised by the UK's Pensions Commission that individuals would need to make additional voluntary contributions on top of the required minimum statutory levels of contributions to be able to reach an adequate pension income.

### **What should be the Minimum Level of required Statutory Pension Contributions for Automatic Enrolment in Pension Saving in Guernsey and Alderney?**

82. On 30<sup>th</sup> October 2015, the States approved the Department's proposal to set a guideline for the Department's uprating policy to index the old age pension at one third of the real increase in median earnings, with the intention to reduce this to RPIX (Retail Price Index Inflation excluding the mortgage interest payment item) from 2025 subject to suitable policies to enhance personal pension provision being in place (Billet d'État XVIII of 2015).
83. As a result of this uprating policy, and assuming a long-term growth in earnings in excess of RPIX, the old age pension will decline in value relative to earnings. Under a policy of uprating the old age pension by RPIX from 2025, the old age pension would equate to 18% of median earnings by 2060 compared to 34% of median earnings at the starting point in 2014. As a result to maintain their standard of living relative to median earnings future generations of retirees will have to save in a private pension to enable them to supplement the income that they will receive from their old age pension. Ideally, therefore, the private pension reforms should be in place no later than 2025.

### **Gross Replacement Rates**

84. A replacement rate is calculated as the percentage of an individual's pre-retirement earnings that would be replaced by the total pension income that the individual would receive immediately after retirement. Typically income from any state pension and any private pension income is included in the calculation of a replacement rate. Replacement rates can be calculated on a gross income basis or on a net income basis, the latter taking into account the impact of tax and other deductions.
85. The UK's Pensions Commission determined target Gross Replacement Rates for different earnings levels. The target Gross Replacement Rate for a median earner is two-thirds (or 66%) of the individual's pre-retirement income. If a median earner

reaches their target replacement rate this would imply that in retirement that person would be living off two-thirds of pre-retirement income.

86. The following analysis models the expected Gross Replacement Rate that a median earner could expect to achieve under alternative assumptions about the total level of contributions being paid into the private pension by the employee and their employer.

**Gross Replacement Rates for a Median Earner who, together with their Employer, contributes 10% of Gross Salary into a Private Pension for a 45-year career**

87. Table 1 below illustrates the Gross Replacement Rate calculation for a median earner who, together with the employer, contributes consistently into a private pension at a total contribution rate of 10% of Gross Salary for a 45-year career from when the individual starts employment at age 25 in 2014 until the individual retires at age 70 in 2059.
88. This individual is assumed to have a full Social Insurance contribution record, which gives entitlement to a full rate of old age pension. The individual is assumed to earn at median age-specific earnings throughout the course of a 45-year career, does not take any career breaks or other periods of non-contribution and takes a 10% lump sum from the individual's private pension fund on retirement.
89. The income that the individual would be expected to receive from their private pension is added to the income that would be received from their old age pension to give a total pension income. This total pension income is then expressed as a percentage of the individual's gross pre-retirement income to give the final gross replacement rate.

**Table 1: Illustrative Gross Replacement Rate calculation for a median earner with a total contribution rate of 10% of Gross Salary for a 45-year career from age 25**

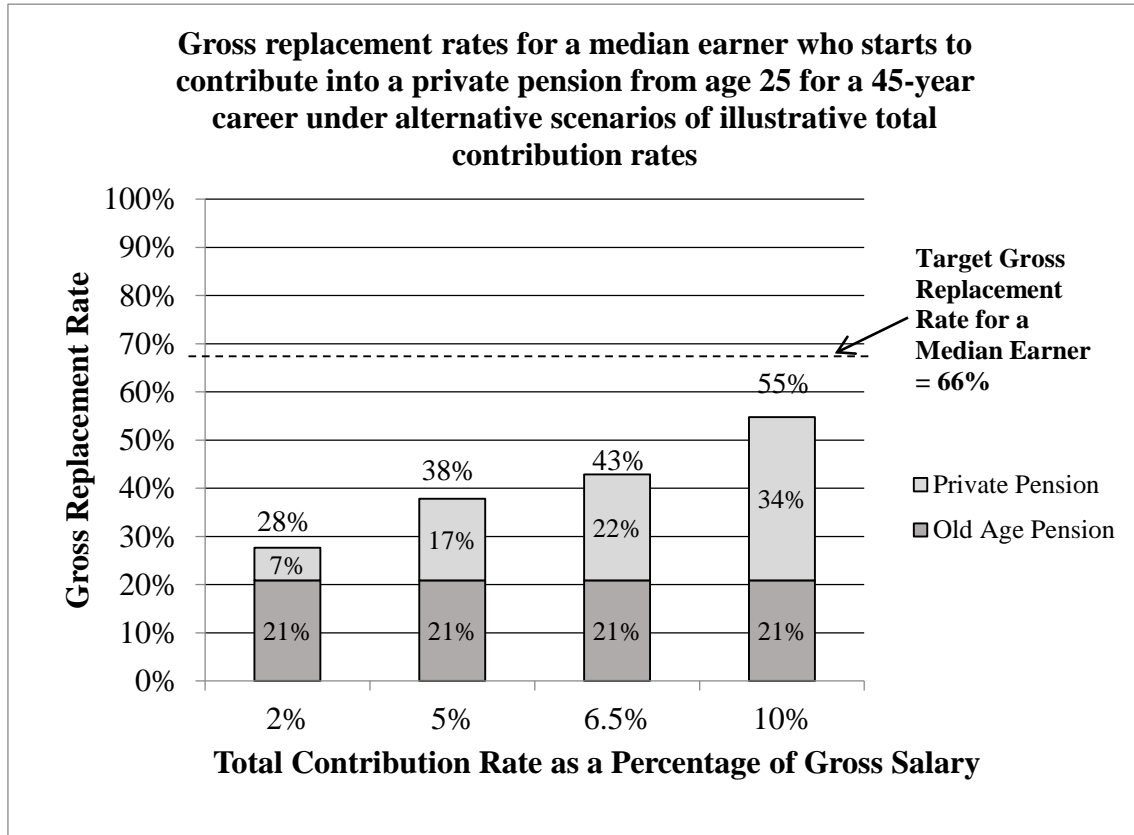
	<b>Income (per annum at 2014 prices)</b>	<b>Gross Replacement Rate</b>
Pre-retirement Gross employment income in 2058	<b>£52,561</b>	-
Income from Old Age Pension (per annum)	£10,988	21%
Income from Private Pension (per annum)	£17,801	34%
<b>Total Pension Income (per annum)</b>	<b>£28,789</b>	<b>55%</b>
Gross Replacement Rate calculation		£28,789/ £52,561 = 55%
Plus 10% of final pension fund taken as a tax-free lump sum at 2014 prices		£35,962

90. This median earning individual is assumed to have a full Social Insurance contribution history and is therefore entitled to a full old age pension. Under the Department's current uprating policy this individual would receive £10,988 per annum (in 2014 prices) from the old age pension, which would enable them to replace 21% of their pre-retirement income with the income that they receive from their old age pension when they retire at age 70 in 2059.
91. If the individual and their employer together contribute 10% of Gross Salary into a private pension consistently throughout the individual's 45-year career the individual is expected to receive a further £17,801 per annum (in 2014 prices) from the individual's private pension on retirement in 2059 at age 70. This calculation assumes that the individual takes 10% of their final pension fund as a tax-free lump sum and annuitises the balance of the fund. This private pension income would enable the individual to replace a further 34% of their pre-retirement income with the private pension income.
92. The total combined old age pension and private pension income would give this median earner a total retirement income of £28,789 per annum in 2059 (in 2014 prices.) This would enable the median earner to replace 55% of the pre-retirement income of £52,561. In this example, the combined income from the old age pension and the private pension would enable the median earner to make significant progress towards reaching their target Gross Replacement Rate of 66%. This median earner would have to make additional voluntary contributions to fully reach their target Gross Replacement Rate of 66%.
93. In addition, this median earner is assumed to take 10% of the final pension fund as a tax-free lump sum worth £35,960 in 2014 prices. Annex G gives the equivalent analysis for an individual with total contributions of 10% of Gross Salary contributed into a private pension who earns at age-specific lower quartile earnings and for an individual who earns at age-specific higher quartile earnings throughout the course of their 45-year career.

### **Gross Replacement Rates under Alternative Scenarios about the Level of Total Contributions**

94. The chart below shows the Gross Replacement Rates that a median earner could reach under alternative assumptions about the total level of combined contributions made by the individual and the employer into a private pension. In each case the individual is assumed to be eligible to claim the full amount of old age pension and is assumed to take a 10% lump sum from the private pension on retirement. Total contribution levels into a private pension of 2%, 5%, 6.5% and 10% have been illustrated.

Chart 1



95. Chart 1 shows that for the median earner to get a combined retirement income from their old age pension and private pension income that enables them to make significant progress towards reaching their target Gross Replacement Rate of 66% of pre-retirement income, the individual and the employer would need to be making a combined total contribution of at least 10% of Gross Salary consistently throughout the individual's 45-year career. At total contributions of 10% of Gross Salary the median earner would have a retirement income that is 55% of their pre-retirement income.
96. If the median earner wants to fully meet their target Gross Replacement Rate of 66% the individual and the employer would together need to contribute 13.5% of Gross Salary consistently throughout the individual's 45-year career under the modelling assumptions used in this analysis.
97. It can be seen from Chart 1 that at total contribution rates of 5% or below a median earner would fall substantially short of reaching their target Gross Replacement Rate of 66%, even if contributions were paid consistently for a 45-year career and there was a full Social Insurance contribution history.

## **Modelling Assumptions**

98. A wide range of assumptions needs to be made to undertake the replacement rate modelling analysis. See Annex G for a full list of the assumptions that have been made in this analysis. The figures above should be taken as indicative of the broad replacement rates that different levels of total contribution into a private pension might produce. There is a significant degree of uncertainty attached to any long-term projections and these figures should be interpreted as giving a broad indication of the level of Gross Replacement Rates that might be reached rather than as precise projections.

## **Long-term level of Statutory Minimum Contributions**

99. The Department's long-term aim is to reach a minimum combined total contribution rate of around 8-10% of Gross Salary, which would enable most individuals to make significant progress towards securing an adequate retirement income. Feedback from the Department's consultation suggested that total contributions of 8-10% of Gross Salary are more likely to be achievable if there is some level of contribution from both the employee and the employer.

## **The split of the Total Contribution Rate between the Employer and Employee Contribution**

100. The feedback from the Department's consultation suggested that the majority of respondents felt that an individual contribution of 3-6% of earnings was affordable. Less than 20% of respondents felt able to afford contributions above 7% of earnings. The Department notes that high levels of individual contributions may lead to higher rates of opt out and therefore to higher claims on supplementary benefit in the future. Equally if the individual contribution levels are too low, then individuals are unlikely to build up sufficient funds to make a material difference to their standard of living in retirement.
101. Since individuals receive tax relief on their pension contributions it seems reasonable to place slightly more of the total burden of contributions on individuals than on employers, as it is envisaged that individuals will continue to be able to claim tax relief on their pension contributions, which will reduce the net cost to them.
102. The broad principle that the Department is proposing is that, in the long-term, around one-third of the total contribution would be payable by the employer and around two-thirds of the total contribution would be payable by the individual.
103. Table 2 below sets out an indicative profile of statutory minimum employee and employer pension contributions, which aims to reach a combined contribution of 10% of Gross Salary by 2027. The indicative rates show that from 2027 onwards, the long-term employer contribution rate is 3.5% of Gross Salary and the long-term employee contribution rate is 6.5% of Gross Salary up to the Upper Earnings Limit (currently £135,252 in 2015).

104. It is recognised that it will take time to reach adequate levels of pension contributions and that any minimum levels of pension contributions will need to be phased in gradually over a period of a number of years.
105. The contributions could be phased-in over a longer period, although this would reduce the final size of the pension funds that individuals would build up in the early years of the scheme. Table 2 sets out an indicative phasing-in of employee and employer contribution rates.

**Table 2: Indicative Statutory Minimum Employee and Employer Pension Contribution rates following automatic enrolment payable on Gross Salary up to the Upper Earnings Limit (currently £135,252 in 2015)**

	2020	2021	2022	2023	2024	2025	2026	2027	2030
<b>Employee</b>	1%	1.5%	2%	3%	4%	5%	6%	6.5%	6.5%
<b>Employer</b>	1%	1%	2%	2%	3%	3%	3%	3.5%	3.5%
<b>Total</b>	<b>2%</b>	<b>2.5%</b>	<b>4%</b>	<b>5%</b>	<b>7%</b>	<b>8%</b>	<b>9%</b>	<b>10%</b>	<b>10%</b>

### **Contribution Rates for the Self-employed**

106. The Department proposes that the contribution rate for the self-employed should be set at the same level as the employee contribution rate, i.e. if the indicative contribution rates set out in Table 2 were adopted the long-term contribution rate for the self-employed would be 6.5% of Gross Earnings up to the Upper Earnings Limit (currently £135,252 in 2015) from 2027 onwards.

### **Contribution Rates for the non-employed**

107. The Department proposes that the contribution rate for the non-employed should also be set at the same level as the employee contribution rate, i.e. if the indicative contribution rates set out in Table 2 were adopted the long-term contribution rate for the non-employed would be 6.5% of Gross Earnings up to the Upper Earnings Limit (currently £135,252 in 2015) from 2027 onwards.

### **Additional Voluntary Contributions**

108. It should be noted that all individuals, whether employed, self-employed or non-employed would be able to make additional voluntary contributions and would be



able to pay in lump sums into their pension funds subject to Income Tax limits for the purposes of claiming tax deferral.

### **The impact of the Employer Contribution on Employers and the wider Economy**

109. The introduction of the Department's reforms would introduce, for the first time, a legal requirement for employers to enrol automatically their eligible employees into a private pension scheme. It would also require employers to contribute into the scheme at minimum statutory levels on behalf of their employees or to provide a minimum level of benefits. If the employee were to opt out of the scheme, the employer would no longer be liable to contribute on behalf of the employee.
110. The Department considers that the introduction of a compulsory employer contribution is needed in order to provide an incentive for employees to start saving in a private pension, and also to enable private pension saving to be affordable for households. Without an employer contribution median earners would need to contribute 10% of their Gross Salary consistently for 45 years into a private pension in order to make significant progress towards reaching an adequate retirement income. For employees to contribute 10% of Gross Salary into a private pension in addition to the 6% that employees are already required to contribute in social security contributions would stretch most household budgets considerably.
111. The Department has set out indicative statutory minimum contribution levels (see Table 2) that propose that in the long-term, from 2027 onwards, the employer would contribute 3.5% of Gross Salary and the employee would contribute 6.5% of Gross Salary – giving a total combined contribution of 10% of Gross Salary. The underlying principle is that employers should pay one-third of the required total contribution and the employee pays two-thirds.

### **Phasing-in of the Employer Contribution**

112. The Department proposes that the employer contribution should be phased in gradually over a period of almost a decade. Under the indicative proposal (Table 2) the employer contribution would be introduced at 1% of Gross Salary in 2020, would increase to 2% from 2022, to 3% from 2024 and would reach 3.5% in 2027. Employers would therefore have plenty of time to plan for any increased costs that may result from the introduction of automatic enrolment.
113. Employers that already offer existing private pension schemes that have levels of contributions or benefits greater than the statutory minimum levels and high member participation would be largely unaffected by the reforms. The public sector pension schemes already have high levels of participation and a large number of employers in Guernsey's finance sector already offer private pension schemes that are more generous than the proposed statutory minimum levels. These employers would be relatively unaffected by the proposed reforms. The employers that would be most affected are those who, to date, have not offered private pensions to their employees and would see a resulting increase in their labour costs.

### **Employer responses to Automatic Enrolment**

114. Employers that would face increased costs from the introduction of automatic enrolment into private pension saving may respond to any increased labour costs in a number of ways:-
- Some employers would simply defer or reduce future pay awards to offset the increased pension costs, as pensions are effectively deferred remuneration;
  - Some employers may pass on their increased labour costs to consumers through higher prices;
  - Some employers may reduce their profits or dividends (where applicable);
  - Some employers that already offer existing private pension schemes that are more generous than the required statutory minimum may reduce the generosity of their existing pension schemes or may not offer these schemes to new employees in order to contain the costs;
  - Some employers may try to reduce the number of employees that they employ in order to minimise the impact on their costs.
115. In reality, employers may combine a number of the strategies listed above and it is very difficult to predict in advance exactly how employers would respond to the changes. However, the Department is confident that the gradual introduction of the reforms, and ample advance notice, is likely to minimise any wider impacts on the economy as a whole.
116. Since the introduction of the reforms would be a statutory requirement there would be a level playing field as all employers that employ eligible employees would have to comply. In this sense there would be no competitive disadvantage when employers were competing with one another locally.
117. In the last decade a number of major economies including the UK and New Zealand have introduced private pension reforms, which place similar requirements on their domestic employers. Given the demographic challenge in many western democracies the number of countries introducing similar private pension reforms is likely to continue to increase.

### **Economic Impact Assessment**

118. If the States approve the recommendations in this report to develop detailed proposals for the implementation of automatic enrolment into private pension saving and a new Secondary Pension scheme, the detailed proposals will need to include a full economic impact assessment. In addition to an assessment of the potential impact on individuals, this will include an assessment of the impact on business costs and competitiveness.

## **The Impact on smaller Employers**

119. Smaller employers are less likely to already offer their employees private pension schemes and as a result are more likely to face increased costs as a result of the proposed reforms. However, the Department is proposing to establish a new States facilitated Secondary Pension scheme which would enable smaller employers to access a private pension scheme at lower costs and with better service and value for money than they would be likely to be able to achieve on their own. As a result smaller employers would not have to pay the costs of taking financial advice or running a tender exercise in order to set-up a new private pension scheme. The reforms have been designed to minimise any impacts on smaller employers.

## **Developing a Secondary Pension Scheme: Catering for the needs of smaller Employers**

120. One of the concerns about private pensions in Guernsey has been the lack of pension providers offering good value cost effective pensions to smaller employers. This issue has been particularly acute since the insurance company providers of private pensions pulled out of the Island. The States of Guernsey conducted a review of private pension provision in the Island in 2007, following the announcement that a major insurer was to stop providing pensions in the Island later that year.
121. One of the difficulties with offering pensions to very small employers is a lack of scale that arises from having a relatively small number of employees participating in the scheme. This can make it difficult for providers to offer pensions at a low cost and hence it can be difficult for smaller employers to access private pensions.
122. There are many small employers in Guernsey and many of these smaller employers will not have engaged with or offered private pensions to their employees thus far. If all employers are to be required to enrol automatically their eligible employees into a private pension there needs to be a pension provider available that these smaller employers can use.
123. This is where the States can help by facilitating a Secondary Pension scheme that multiple small and large employers can use to meet their automatic enrolment obligations and thereby achieve greater economies of scale, better customer service and lower costs of delivery than a small employer would be able to achieve in its own right.
124. The Secondary Pension scheme would have a universal service obligation to provide a low cost pension scheme to any employer who wishes to use its service, irrespective of the size of the employer and the profitability of the new business. In other words, the administrator of the Secondary Pension scheme would have to accept contributions from any employer that wished to use the Secondary Pension scheme to fulfil its automatic enrolment duties. The administrator would not be permitted to cherry pick the most profitable new business which is likely to be pension schemes with large numbers of members or pension schemes with a large proportion of high earners. This universal approach would ensure that the needs of

smaller employers in Guernsey and Alderney were catered for by the Secondary Pension scheme.

### **How would the Secondary Pension Scheme be delivered?**

125. It is envisaged that the States would establish the legislative framework for the new Secondary Pension scheme and that the delivery of the scheme would be likely to involve both the States and the private sector working together in partnership. The States would be involved in the collection of contributions from individuals and their employers, while the private sector is likely to be responsible for the administration and investment of the scheme.
126. The States would issue a competitive tender to award a contract for an administrator from the private sector to deliver the new Secondary Pension Scheme. The States would retain an ongoing oversight and monitoring function to ensure that the Secondary Pension scheme administrator is providing a cost-effective and well-governed pension scheme where the assets of the scheme are held in Trust on behalf of scheme members and are not accessible to future administrations as public funds.

### **Employer Engagement**

127. Employers would need to notify the Department whether they wished to enrol automatically their eligible employees into a qualifying pension scheme or into the Secondary Pension Scheme.

### **Contribution Collection**

128. The Department already has established systems for collecting Social Insurance contributions from both employers and individuals.
129. If the employer plans to use the Secondary Pension scheme as its pensions saving vehicle it is proposed that the Department would collect the required statutory minimum level of contributions that are to be made into the Secondary Pension scheme directly from both the employer and its employees.

### **Dealing with Opt Outs from the Secondary Pension Scheme**

130. The employer would need to notify the Department if employees wished to opt out of the Secondary Pension scheme. The Department would then need to cease collecting contributions for any individuals who wished to opt out of the scheme. Employers would no longer be liable to make any contributions on behalf of employees who had opted out of the Secondary Pension.

### **Investment**

131. The contributions made by individuals and by their employer into the Secondary Pension scheme would be invested into the individual's own Secondary Pension

account by the scheme administrator. Any investment return generated on these contributions would be credited explicitly to the individual's account. This means that, over time, individuals would build up a pension fund that was held directly in the individual's own name. This funded system is different from the pay-as-you-go system that operates for the old age pension.

### **Secondary Pension Scheme Administration**

132. The Secondary Pension scheme administrator, appointed by competitive tender, would:

- Be responsible for ensuring that the relevant contributions into the Secondary Pension scheme collected via the Department are allocated to each individual's own account;
- Provide a facility for individuals or their employers to make additional voluntary contributions into individuals' accounts directly to the scheme administrator;
- Provide information to the Income Tax Office needed to administer the States' system of tax incentives for private pension saving;
- Provide an opportunity for individuals who would not be enrolled automatically into the Secondary Pension scheme or residents earning below the Lower Earnings Limit to be able to open an account and contribute directly to the scheme administrator on a voluntary basis;
- Undertake all of the record keeping for each individual account and provide scheme members with annual statements of account and ideally the facility to access their account online;
- Invest the contributions and provide scheme members with well-designed low-risk default investment options tailored to the needs of the scheme members;
- Provide a wider choice of investments for those scheme members who wish to make an active investment choice, including an option to invest in a fund mirroring the investment strategy of some of the capital funds currently administered by the States;
- Provide options for scheme members to convert their final Secondary Pension fund into a retirement income either by the provision of an annuity or through flexible drawdown.

### **Access to the Secondary Pension Fund during Working Life**

133. The Department considers that access to the Secondary Pension fund during an individual's working life should not be permitted under normal circumstances. There may be exceptional circumstances in which individuals would be able to access their Secondary Pension fund prior to pensionable age. This might include an individual having to retire early on the grounds of ill-health.
134. In the event of a Secondary Pension scheme member's death prior to reaching pensionable age, the accumulated Secondary Pension fund would become part of the individual's estate and would pass to their nominated beneficiaries.

### **Access to the Secondary Pension Funds upon reaching Pensionable Age**

135. The 2016 Budget (Billet d'État XIX of 2015), stated that the Treasury and Resources Department will use the feedback from the Social Security Department's consultation on secondary pensions to consider how islanders can be encouraged to make greater private pension provision, through the introduction of greater flexibility in retirement. The Treasury and Resources Department and the Department will work together to determine the appropriate approach to this issue.
136. The Department envisages that individuals should have some flexibility in how they are able to access the Secondary Pension fund on retirement, for example, through flexible drawdown.
137. The Department's current thinking is that there should be some guidance or limits on the appropriate rate of withdrawal in flexible drawdown from the Secondary Pension scheme or a requirement for individuals to demonstrate that they have secured a minimum level of retirement income such that they are unlikely to need to fall back on taxpayer funded benefits.
138. The Department envisages that individuals would be able to buy an annuity with all or part of their Secondary Pension Fund. Individuals would be able to purchase an annuity from the provider of the Secondary Pension, but they would not be restricted to purchasing the annuity from the existing provider of the Secondary Pension. Individuals would be able to shop around to get the best deal and would be able to purchase an annuity from any third party provider that was willing to provide annuities to residents of Guernsey.
139. In the event of a Secondary Pension scheme member's death after pensionable age, any residual funds in the Secondary Pension scheme would become part of the deceased's estate.

### **Individuals who leave Guernsey before reaching Pension Age**

140. The questions arises as to whether people who leave Guernsey before reaching pension age should be able to cash in their secondary pension fund when they leave.

141. The Department recognises that this is a finely balanced issue. Very small pension funds can be costly to administer and it may be cost-effective to enable individuals who have only been contributing to the pension for a very short length of time to be able to cash-in their pension fund if they leave Guernsey before pensionable age. However, for larger pension funds, allowing individuals to cash-in the pension fund would run counter to the policy objective of encouraging individuals to save for their retirement.
142. The Department notes that many individuals leave Guernsey, but subsequently return to the Island. If these individuals have been able to take their pension fund as cash there is a risk that they could still fall back on state funded benefits if they do return to the Island at a later date.
143. The Department envisages that individuals who have been contributing to a private pension in Guernsey for a relatively short length of time and have a total fund in their Secondary Pension that is worth less than a de-minimus level of (for example, less than the current trivial commutation limit of £15,000) should be able to cash-in their pension if they leave Guernsey before reaching pensionable age.
144. For individuals that leave Guernsey before reaching pensionable age and who have a total fund in their Secondary Pension that is worth more than the de-minimus level there would be two options. These individuals could either choose to leave their private pension invested and would be able to draw on it upon reaching pensionable age, or they would be able to transfer the pension to an approved pension in their new jurisdiction. These individuals would not be eligible to cash-in their Secondary Pension fund.

### **Tax Incentives for Private Pension Saving**

145. It is envisaged that the States, would continue to provide a tax incentive for individuals to contribute into a private pension either through the current method of providing income tax relief on the individual's pension contributions or by exempting retirement income paid from the pension fund.
146. Currently, tax relief is given under the so called Exempt-Exempt-Taxed (EET) model of pension taxation for approved private pensions and is essentially a system of tax deferral. Pension contributions are Exempt (E) from tax, investment returns are Exempt (E) from tax, but the income paid out from the pension fund is Taxable (T) (apart from the tax-free lump sum).
147. The maximum amount of pension contributions that an individual can receive tax relief on is subject to limits set by the Treasury and Resources Department, and is currently capped at the lower of 100% of taxable income or £50,000 (in 2015). This tax relief on pension contributions is intended to incentivise private pension saving and reduces the net cost to individuals of contributing into a private pension.

148. Individuals are able to withdraw 30% of their final pension fund as a tax-free lump sum up to the specific limit (for 2015 this limit is £184,000), but pay tax on the remainder of the income from the pension once it is in payment.
149. Further analysis is required to determine whether the States should change its approach to pension taxation to a Taxable-Exempt-Exempt (“TEE”) or an alternative model of pension taxation in the future. It is envisaged that any new approach to pension taxation would apply equally to saving in qualifying pension schemes and to saving into the new Secondary Pension scheme. Under a TEE model of pensions taxation, no tax relief is given on contributions to a pension scheme (T), investment returns are Exempt (E) from tax, but any retirement benefits are Exempt (E) from tax.
150. The next section provides an estimate of the cost of tax deferral assuming a continuation of the current Exempt-Exempt-Taxed (“EET”) model to pensions taxation. If the approach to pensions taxation were to change in the future a further analysis of the revenue implications of changing the approach to pensions taxation would need to be undertaken.

#### **The cost of tax deferral under an Exempt-Exempt-Taxed (EET) Model**

151. Clearly there is a cost to the public finances of providing tax relief on individual’s pension contributions, although ultimately the Treasury will receive tax on the pension when it is in payment so this is really a system of tax deferral, rather than of tax relief.
152. £13 million was contributed by individuals into existing public and private sector occupational pension schemes and a further £18 million was contributed by individuals into personal pension schemes in 2011 – giving total individual contributions of £31 million. Individuals can claim tax relief at 20% on their pension contributions up to the limits set by the Treasury and Resources Department. The annual cost of tax deferral on pension contributions is currently estimated at around £6 million per annum.
153. If the current EET pension taxation model is adopted, the cost of tax deferral on individual pension contributions will depend on both the rate of the statutory minimum level of individual pension contributions in the scheme and the rate of opt out following automatic enrolment. These estimates are therefore subject to a large degree of uncertainty and should be seen as broad estimates rather than as precise forecasts.
154. Table 3 below allows for this uncertainty and provides a range of estimates of the amount of additional deferred tax revenue per annum following the introduction of automatic enrolment into private pension saving under alternative levels of individual pension contributions and using the 10% opt out scenario as the central estimate. The upper and lower estimate is calculated as +/-20% from the central estimate.



155. If the long-term statutory minimum rate of individual contributions into the scheme were 6.5% as the Department has proposed then the cost of the additional tax deferral under an EET pensions taxation model is estimated to be in the range of £2.3million to £3.5million per annum depending on the rate of opt out from the scheme, with a central estimate of £2.9million in 2013 prices. (See Table 3 below).
156. The phasing in of the contributions that would apply in reality has not been factored in to this analysis. The States would have almost 10 years before the full deferred revenue implications of the policy would be felt because of the proposed gradual phasing-in of the contribution levels.
157. These deferred revenue estimates should be interpreted as giving an indication of the broad orders of magnitude of the additional costs of deferred revenue following the introduction of automatic enrolment under an EET approach to pensions taxation, under alternative assumptions about the level of individual pension contributions. These estimates are not precise forecasts as no allowance has been made for future earnings growth or for the gradual phasing-in of contributions.

**Table 3: Estimates of Additional Deferred Tax Revenue (per annum in 2013 Prices) following the introduction of automatic enrolment into private pension saving under an EET pensions taxation model**

	<b>Total Additional Individual Pension Contributions</b>	<b>Lower Estimate  (Central estimate – 20%)</b>	<b>Central Estimate  (assuming 10% opt out)</b>	<b>Upper Estimate  (Central estimate + 20%)</b>
2% individual contribution	£5.0m	£0.7m	£0.9m	£1.1m
5% individual contribution	£12.4m	£1.8m	£2.2m	£2.6m
<b>6.5% individual contribution</b>	<b>£16.2m</b>	<b>£2.3m</b>	<b>£2.9m</b>	<b>£3.5m</b>
10% individual contribution	£24.9m	£3.6m	£4.5m	£5.4m

### SECTION 3: CONCLUSIONS

158. Currently only an estimated 40% of the residents in Guernsey and Alderney of working-age are members of an existing occupational or personal pension scheme. This low level of current private pension saving means that if the States relies on the current voluntary approach to private pension saving and do nothing to encourage greater levels of private pension provision many residents will be relying solely on Guernsey's old age pension to support them in retirement. Inevitably, this would result in many claims for support in the form of taxation financed benefits.
159. The demographic trends in Guernsey and Alderney's population mean that fewer people of working-age will be supporting larger numbers of retired individuals in the future. This trend and the consequent increasing pressure on the sustainability of the current state pension system has been influential in the recently approved change in the old age pension uprating policy, which will reduce to RPIX increases from 2025, subject to improved private pension provision being in place.
160. The Department is proposing a new system of automatic enrolment into private pension saving and a new Secondary Pension scheme to encourage greater take-up in private pension saving among residents of working-age in Guernsey and Alderney.
161. The Department proposes that the new Secondary Pension system should be developed on the following principles:
  - i. Employers would have a legal duty to enrol automatically their eligible employees into either (i) a qualifying pension scheme or (ii) the new Secondary Pension scheme;
  - ii. The States would set out the requirements for employers to use a qualifying pension scheme for automatic enrolment: conditions would include minimum levels of contributions or benefits and evidence of good scheme governance;
  - iii. The States would establish a new low cost pension saving vehicle called a Secondary Pension scheme that would have a universal service obligation to provide a pension scheme to any employer that wished to use it to fulfil their automatic enrolment duties, including small employers and irrespective of the profitability of the new business;
  - iv. Both individuals and their employers would be required by law to contribute at least minimum levels into either a qualifying pension scheme or into the new Secondary Pension following automatic enrolment, however individuals would have an unconditional right to opt out of private pension saving and therefore to cease making their contributions;
  - v. Employers would not be liable to contribute on behalf of employees who have opted out of the scheme;

- vi. In the long-term, around one-third of the total contribution would be payable by the employer and around two-thirds of the total contribution would be payable by the individual;
- vii. Employers would not be permitted to offer inducements for employees to opt out of their pension scheme and would be required periodically to re-enrol employees who have opted out; re-enrolment every 2 years is envisaged;
- viii. Individuals would build up a pension fund in their own individual account in their own name in either a qualifying pension scheme or in the new Secondary Pension. This pension fund would be the individual's own money and would become part of their estate in the event of their death, either before or after reaching pensionable age;
- ix. The States would continue to provide an incentive for private pension saving subject to limits on the maximum amount of tax incentives that an individual can receive;
- x. The States, through the Department , would facilitate the establishment of the new Secondary Pension scheme but the delivery of the administration and investment activities for the new Secondary Pension would be undertaken by the private sector through a contract awarded under a competitive tendering process.
- xi. Self-employed individuals who are under pensionable age and earn more than the lower earnings limit would be automatically enrolled into the new Secondary Pension scheme and would be required to contribute to the scheme unless they opt out.
- xii. Non-employed individuals under pensionable age who currently make social security contributions would be automatically enrolled into the Secondary Pension scheme with a right to opt out. Non-employed individuals who do not receive an income and do not make social security contributions would be able to open a Secondary Pension account on a voluntary opt in basis but would not be automatically enrolled.
- xiii. Individuals would be able to add additional contributions or lump-sum investments into the Secondary Pension scheme by dealing directly with the organisation contracted to administer the scheme. Employers would have no liability for such additional voluntary contributions.
- xiv. The organisation contracted to administer the Secondary Pension scheme would be required to offer a range of investment choices, including an option to invest in a fund mirroring the investment strategy of some of the capital funds currently administered by the States.

## Recommendations

162. The Department recommends the States:

- i. to approve in principle the introduction of automatic enrolment into private pension saving and the development of a Secondary Pension scheme based on the principles outlined in paragraph 161 above;
- ii. to direct the Committee *for* Employment and Social Security to report back to the States no later than 31<sup>st</sup> December 2017 with detailed proposals for the implementation of automatic enrolment into private pension saving and a Secondary Pension scheme; and
- iii. to direct the Committee *for* Employment and Social Security, in reporting back to the States, to provide an economic impact assessment of the proposals.

Yours faithfully

A H Langlois  
Minister

S A James  
Deputy Minister

J A B Gollop  
D A Inglis  
M K Le Clerc

M J Brown  
Non-States Member

**ANNEX A: TABLE A1: CURRENT CONTRIBUTION RATES FOR SOCIAL SECURITY**

		2015 (%)
Class 1	Employer	
	Guernsey Insurance Fund	4.9
	Guernsey Health Service Fund	1.6
	Long-term Care Insurance Fund	-
		6.5
	Employee	
	Guernsey Insurance Fund	3.4
	Guernsey Health Service Fund	1.3
	Long-term Care Insurance Fund	1.3
		6.0
	Combined	
	Guernsey Insurance Fund	8.3
	Guernsey Health Service Fund	2.9
	Long-term Care Insurance Fund	1.3
		12.5
Class 2	Self-employed	
	Guernsey Insurance Fund	6.5
	Guernsey Health Service Fund	2.7
	Long-term Care Insurance Fund	1.3
		10.5
Class 3	Non-employed (under 65)	
	Guernsey Insurance Fund	5.7
	Guernsey Health Service Fund	2.8
	Long-term Care Insurance Fund	1.4
		9.9
	Non-employed (over 65)	
	Guernsey Insurance Fund	-
	Guernsey Health Service Fund	1.3
	Long-term Care Insurance Fund	1.6
		2.9

- The lower earnings limit is £131 per week (£6,812 p.a.)
- The upper earnings limit is £2,601 per week (£135,252 p.a.)
- The lower income limit for non-employed people is £17,030 p.a.
- For non-employed people with income over £17,030 p.a. an income allowance of £7,233 is applied in the calculation of contributions due.
- The upper income limit for non-employed persons is £135,252 p.a.

**ANNEX B: TABLE B1: ESTIMATES OF NUMBER OF GUERNSEY AND ALDERNEY RESIDENTS WHO ARE MEMBERS OF AN EXISTING PRIVATE PENSION SCHEME**

<b>Guernsey &amp; Alderney Tax Residents only</b>	<b>Number of Individuals</b>	<b>Notes</b>
Number of persons contributing into an Occupational Pension scheme (only)	6,142	Income Tax data from an analysis of 2012 tax returns. This figure includes an estimated 4,700 members of the public sector schemes. Implies approximately 1,442 contributors to occupational schemes in the private sector.
Number of persons contributing into a Personal Pension scheme (only)	3,284	Income Tax data from an analysis of 2012 tax returns. These individuals are likely to be working in the private sector.
Number of persons contributing into <u>both</u> an Occupational and a Personal Pension scheme	1,433	Income Tax data from an analysis of 2012 tax returns.
Total number of people contributing into an existing pension scheme in 2012 (Occupational Pension, Personal Pension or both)	10,859	Income Tax data from an analysis of 2012 tax returns. This figure includes contributors to both the public and private sector schemes and contributors to both occupational and personal pension schemes.
Broad estimate of the number of employees in the private sector who may be members of non-contributory pension schemes	4,500	This is a broad estimate based on the difference between the Policy Council survey findings on proportion of employees who are members of a private pension scheme and the Income Tax data on the numbers of employees who actually contribute
Broad estimate of the total number of members of existing personal and occupational pension schemes in both public and private sectors	15,359	Based on the number of actual contributors plus an estimate of the number of employees with access to non-contributory schemes
Estimated number of working-age residents who are currently not members of any private pension scheme	27,339	Estimate based on the difference between the working age population and the estimated number of members of existing schemes
Total working-age population in Guernsey and Alderney (age 16 – 64) at March 2013	42,698	Approximately 40% of working age population are members of an existing private pension scheme

**Sources:**

- Income Tax Data on the number of tax residents who are contributing to Occupational and Personal Pensions from an analysis of Tax Returns for 2012.
- States of Guernsey Policy Council Pensions Survey 2012
- Social Security population data as at March 2013

**Table B2: Estimates of the number of Employees who are contributors to Occupational and Personal Pension schemes in the public and private sectors**

	<b>Employees who are Contributors to an Occupational or Personal Pension scheme</b>	<b>Employees who are non-contributors to an Occupational or Personal Pension scheme</b>	<b>Total Number of Employees (Contributors + non-contributors)</b>
<b>Includes both public sector and private sector employees who earn more than personal tax allowance of £9,475</b>	10,220	14,569	24,789
<b>Estimate for number of public sector employees</b>	4,700 <sup>6</sup>	766	5,466 <sup>7</sup>
<b>Estimate for number of private sector employees</b>	5,520	15,335	19,323

**Source: Income Tax data for 2013**

Note that the table above only includes contributors to private and public sector pension schemes. It does not include individuals who are employees in the private sector and have access to non-contributory pension schemes. It also does not include self-employed contributors as self-employed individuals are not likely to have access to a non-contributory pension scheme.

The Policy Council commissioned a Pensions Survey of 1,000 residents working in the private sector in Guernsey in 2012 to determine the extent of personal and occupational pension provision in the private sector. The survey found that 52% of the employees surveyed working in the private sector had a private sector pension, while 48% of employees working in the private sector surveyed did not have a private pension.<sup>8</sup>

The Pensions Survey also found that 20% of the members of occupational pension schemes in the private sector had access to schemes that were non-contributory for the individual. Non-contributory occupational pension schemes are prevalent in Guernsey's finance sector and are also likely to be larger pension schemes in terms of the total number

6. Source: Joint Working Group on Public Service Pensions 2012 figure

7. Estimate based on number of employees working in Public Administration from Guernsey Quarterly Labour Market Bulletin Q1 2013.

8. States of Guernsey Policy Council, Pensions Survey, 2012, Figure 6

of scheme members, as larger companies are more likely to be able to afford to offer a non-contributory pension scheme as an employee benefit.

The table below uses the Pensions Survey findings on pension scheme membership by employees in the private sector to estimate how many employees in the private sector in Guernsey may have access to non-contributory pension schemes.

**Table B3: Estimates of the number of employees in the private sector who are members of non-contributory pension schemes**

	<b>Private Sector members of a private sector pension scheme</b>	<b>Private Sector non-members of a private sector pension scheme</b>	<b>Total Private Sector Employees earning above personal tax allowance</b>
<b>Applying Pensions Survey percentages to estimate total number of private sector employees who are pension scheme members</b>	10,047 (52%)	9,276 (48%)	19,323
<b>Less estimated number of private sector employees contributing to private sector schemes</b>	(5,520)		
<b>Estimate of number of private sector employees in non-contributory pension schemes</b>	4,527		

In March 2013 there were 6,756 employees working in Guernsey's Finance Sector. The estimate of around 4,500 members of non-contributory pension schemes in the private sector would imply that roughly two-thirds of the employees working in Guernsey's finance sector might have access to a non-contributory private pension scheme. This estimate must be treated with caution as it is based on an extrapolation of survey data, but there are no alternative comprehensive sources of data on the numbers of members of non-contributory pension schemes in the private sector.

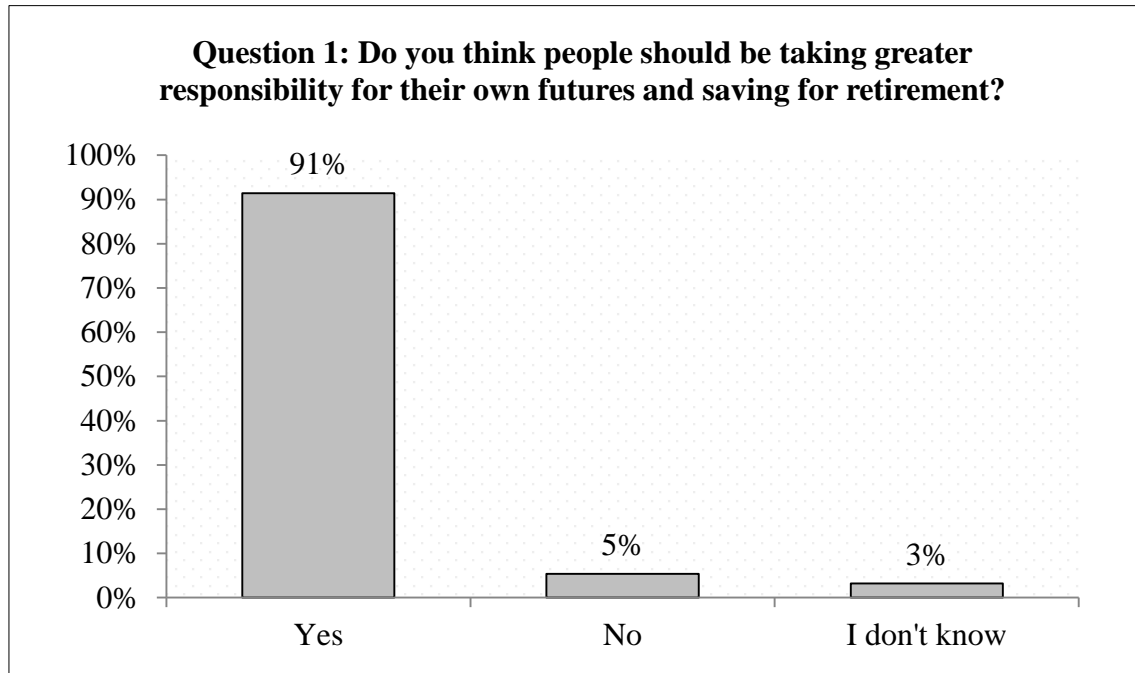


## ANNEX C: THE DEPARTMENT'S PUBLIC CONSULTATION ON SECONDARY PENSIONS

### Feedback On The Consultation Questions

The next section gives a summary of the responses that the Department received on each question along with a description of the comments that were received and a paragraph summarising the Department's response on each question.

#### Chart C1<sup>9</sup>

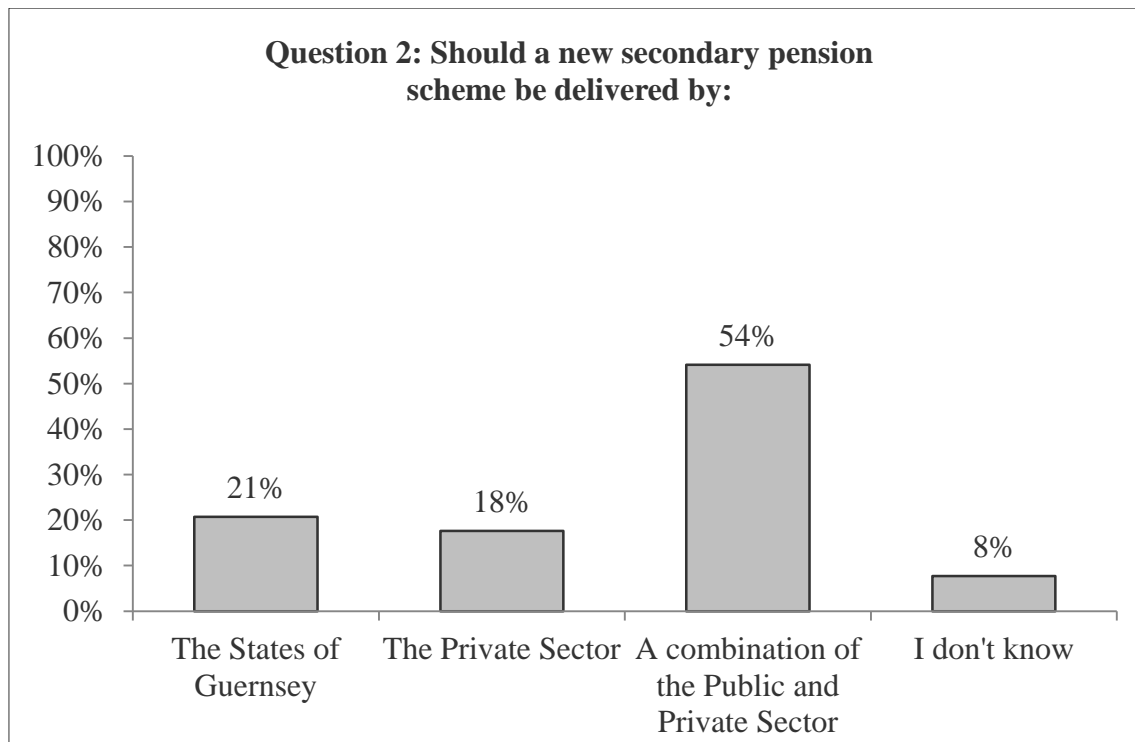


#### Comments on whether Individuals should take Greater Responsibility for their own Futures and Saving for Retirement

A significant majority of respondents (91%) agreed that individuals should take greater responsibility for their own futures and for saving for their own retirement. The majority of these respondents recognised that Guernsey's old age pension was only ever intended to provide a basic platform level of retirement income. Many respondents felt that individuals should be encouraged to make their own saving for retirement. This would enable individuals to have a more adequate level of income in retirement and reduce the risk of individuals falling back on benefits funded by the States in the future at a cost to future generations of taxpayers.

The 5% of respondents that did not agree with the question tended to argue that the State should take responsibility for providing retirement saving to Guernsey residents through the Social Insurance system and the provision of the old age pension. A few respondents also commented that low earners might not be able to afford to save for their own retirement.

9. Totals on all graphs may not sum to exactly 100% due to rounding.

**Chart C2**

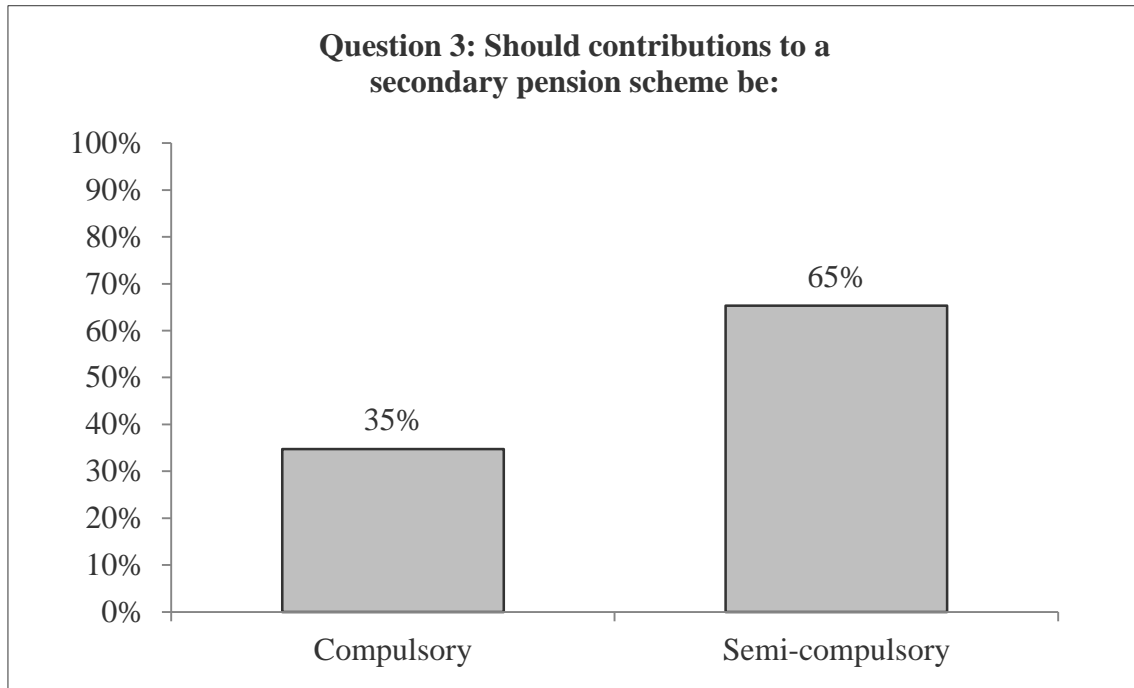
### **Comments on the Delivery of a Secondary Pension Scheme**

The majority of respondents (54%) felt that the Secondary Pension scheme should be delivered by a combination of the public and private sectors. It was noted that the States of Guernsey, in facilitating such a scheme, could provide greater economies of scale and enable scheme members to benefit from lower charges. Some respondents noted that the Social Security Department already has effective systems for collecting contributions through the existing Social Insurance system.

The majority of respondents also expressed a clear view that the administration and investment of any funds in the Secondary Pension scheme should be managed by the private sector. Many respondents felt that the States of Guernsey should not be involved in the day-to-day administration and investment of any funds. It was noted that the private sector has the skills and capabilities to provide administration and investment activities, whereas the public sector does not have existing capabilities in these areas.

Those respondents (21%) who felt that the Secondary Pension should be delivered by the States of Guernsey tended to either be sceptical about the private sector's ability to deliver the scheme at reasonable cost or expressed mistrust in the private sector.

Those respondents (18%) who felt that the Secondary Pension should be delivered by the private sector generally expressed doubt about the ability of the public sector to deliver a Secondary Pension scheme. A number of these respondents noted that there is existing expertise in the private sector for delivering private sector pension schemes that does not currently exist in the public sector.

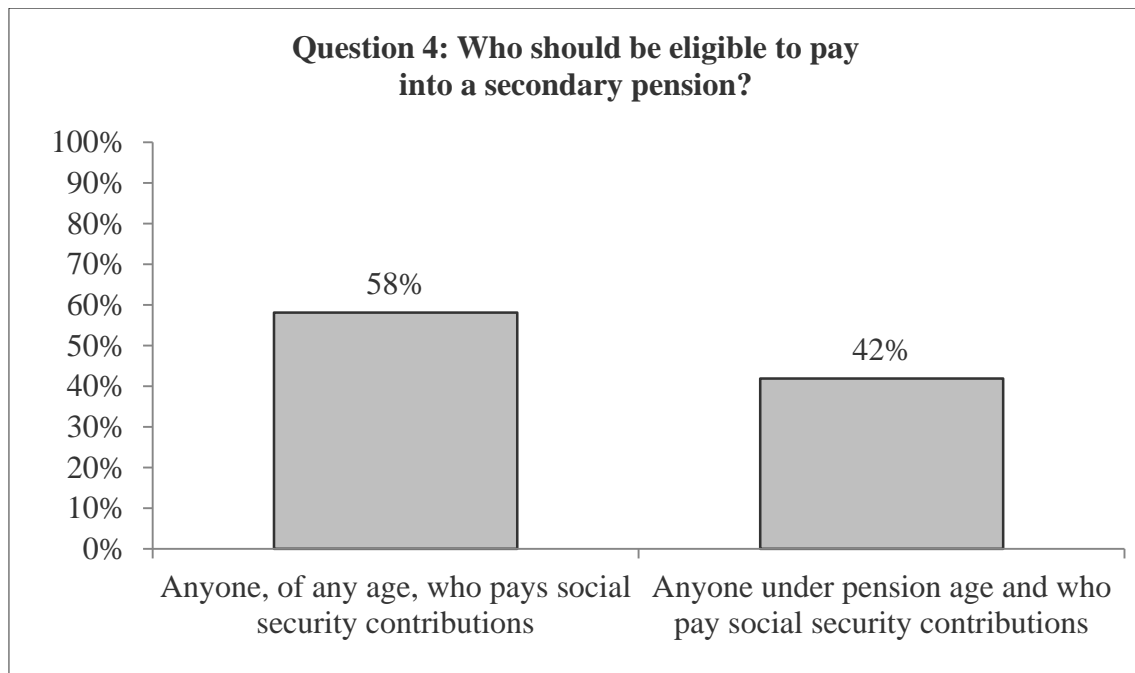
**Chart C3**

**Comments on Whether Contributions to a Secondary Pension Scheme should be Compulsory or Semi-Compulsory**

The majority of respondents (65%) supported a semi-compulsory approach for contributions into a Secondary Pension scheme. These respondents typically argued that individuals who have already made their own pension provision and already have an existing good pension scheme should be able to opt out of participation in the Secondary Pension scheme. Some respondents also noted that individuals on low earnings should have the ability to opt out of the Secondary Pension, as low earners may not be able to afford to contribute to the scheme. A number of respondents commented on the UK Government's successful introduction of its workplace pension reforms and suggested that those reforms could provide a possible blueprint for Guernsey.

Those respondents (35%) who supported a compulsory approach to contributions into the Secondary Pension often expressed concern about the risk of high rates of opt outs that could emerge under a semi-compulsory system. Some respondents suggested that contributions to the Secondary Pension scheme should be compulsory for those individuals who do not already have an existing private pension scheme. These individuals argued that it should be compulsory for individuals to have some private pension provision, but that the actual method of delivery might vary according to an individual's circumstances.

Some respondents suggested that contributions into the Secondary Pension scheme should be entirely voluntary. The Department stated in its consultation document that the current private pension saving system is effectively a voluntary system and that this voluntary system has led to insufficient numbers of residents saving for their own retirement and therefore the Department is not proposing a voluntary approach.

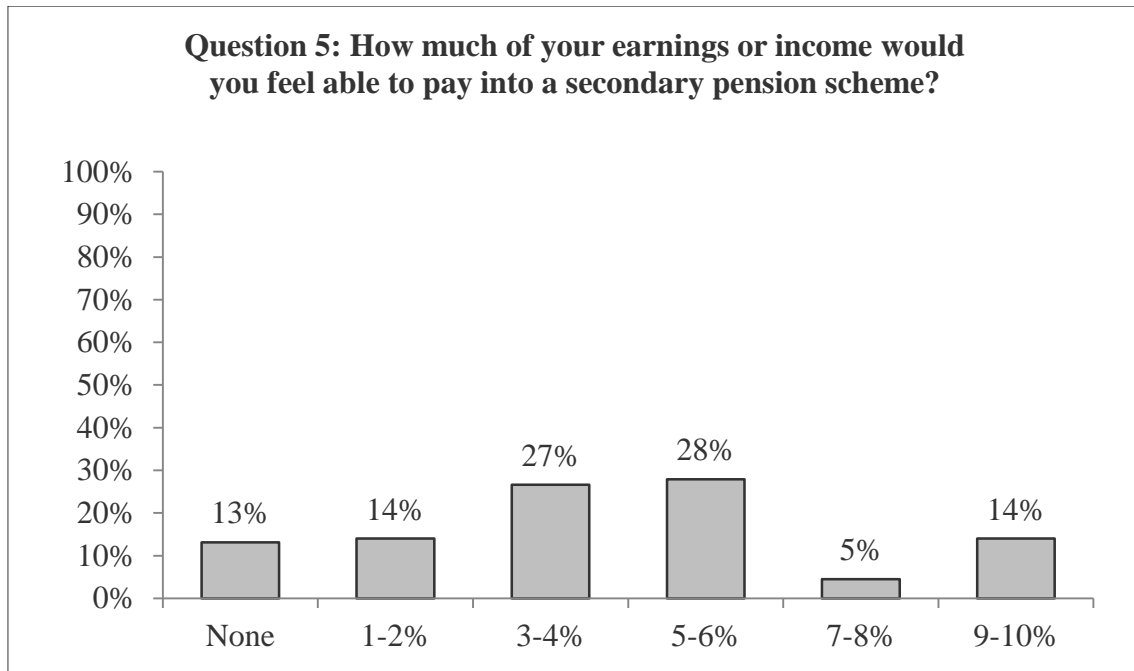
**Chart C4**

#### **Comments on eligibility to pay into a Secondary Pension Scheme**

The majority of respondents (58%) felt that anyone, of any age, who pays social security contributions should be eligible to pay into a Secondary Pension. Reasons given were that it is becoming more common for individuals to work beyond pensionable age and that there has been a move away from fixed retirement ages. These respondents felt that those who continue to work beyond pensionable age and wish to continue to contribute to a private pension should be able to do so.

Some respondents questioned whether it would be appropriate for contributions to be compulsory for individuals who are above pensionable age. A large number of these respondents suggested that continuing to contribute beyond pensionable age should be possible, but that contributions above pensionable age should be voluntary rather than being compulsory.

42% of respondents suggested that anyone under pension age and who pays social security contributions should be eligible to pay into a Secondary Pension. These respondents often argued that it is those individuals of working age who really need to contribute into a private pension scheme and questioned the need for individuals who are over pensionable age to continue to contribute to the scheme.

**Chart C5**

### **Comments on the Affordability of Contribution Levels**

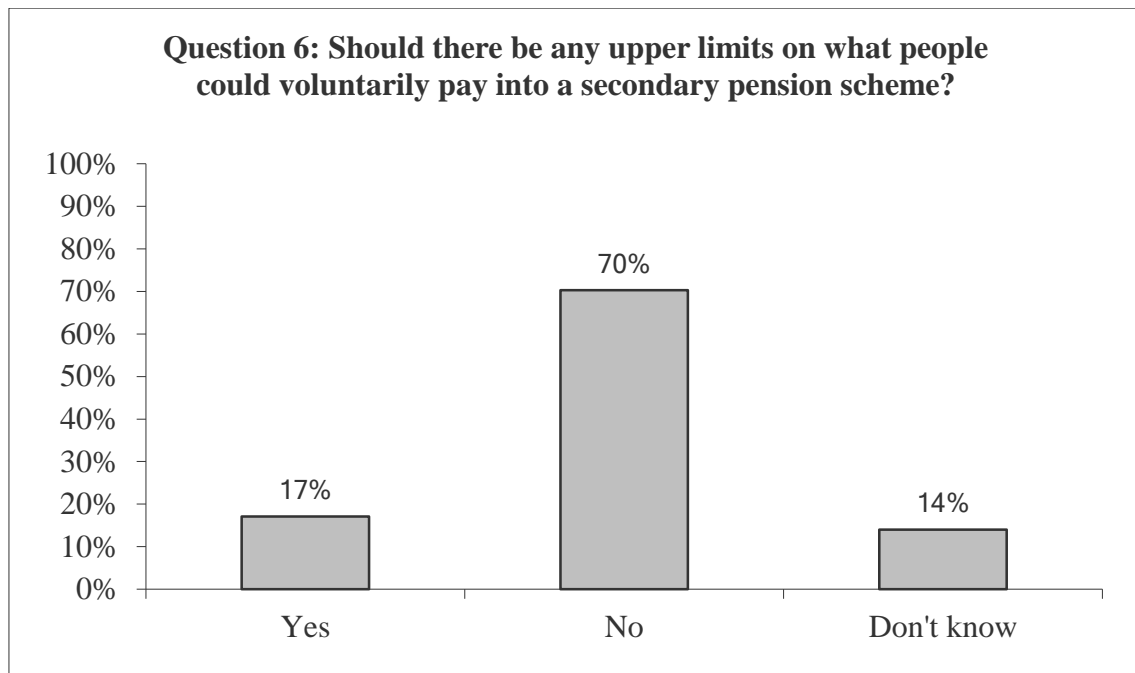
A number of respondents to this question commented that they were already contributing to a private pension scheme and this influenced the extent to which they felt able to contribute to a Secondary Pension scheme.

The most popular response to this question was that individuals felt able to contribute 5-6% of their earnings or income (28% of respondents) followed closely by 3-4% of earnings (27% of respondents.)

Only 19% of respondents felt able to contribute at rates of more than 7% of earnings.

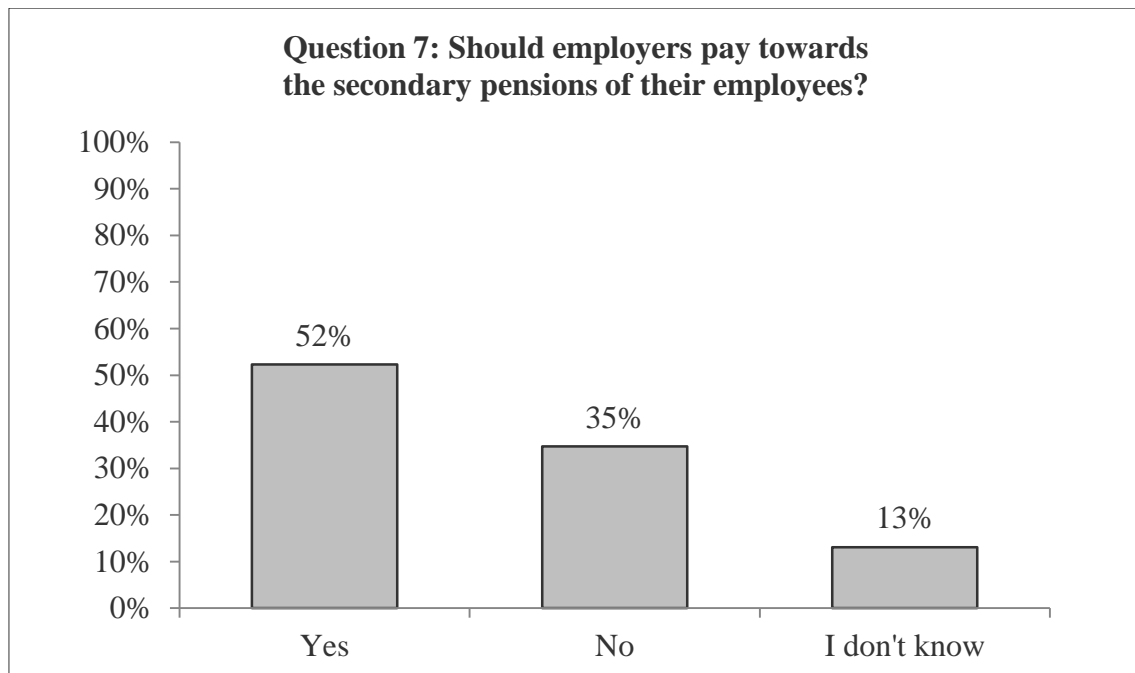
A number of respondents commented that the affordability of contributions would depend upon an individual's financial circumstances. Some respondents commented that households with young children and a mortgage might have more difficulty affording high levels of contributions than older individuals without dependents. These respondents tended to argue for the flexibility for individuals to be able to contribute at different levels at different stages in their lives.

It should also be noted that 13% of respondents said that they would not feel able to contribute anything into the scheme.

**Chart C6****Comments on whether there should be an Upper Limit on Voluntary Contributions**

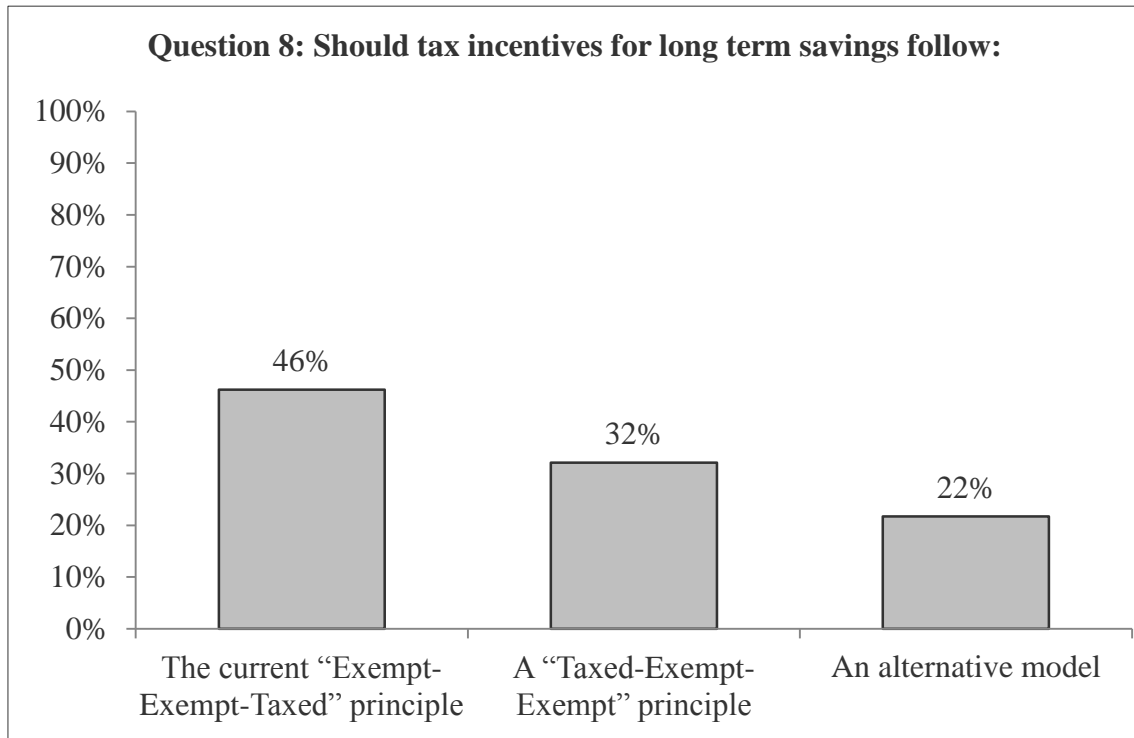
The majority of respondents (70%) felt that there should not be any upper limits on what people could voluntarily pay into a Secondary Pension scheme. A number of these respondents commented that if individuals are able to make additional voluntary contributions this would increase the individual's final retirement income. However, a large number of these respondents recognised that there may need to be limits on the amount of tax relief that individuals could claim on any additional voluntary contributions into the scheme.

Those respondents (17%) who felt that there should be an upper limit on voluntary contributions tended to feel that it was important to ensure that some individuals were not able to take undue advantage of the scheme and, in particular, that any tax advantages that might be bestowed on scheme participants should be limited.

**Chart C7****Comments on whether Employers should pay towards Secondary Pensions**

The majority of respondents (52%) felt that employers should pay towards the secondary pensions of their employees. However, a number of respondents qualified their responses by stating that employers should only be required to contribute to a Secondary Pension if they do not already contribute to an existing Occupational or Personal Pension scheme on behalf of their employees. A number of respondents felt that employers should be able to discharge their obligations by contributing into an existing pension scheme. Some respondents also noted that employers might adjust future pay settlements to offset any potential increased costs from a compulsory employer contribution.

35% of respondents felt that employers should not pay towards the secondary pensions of their employees. Many of these respondents noted that their employers were already contributing to a pension scheme on their behalf and felt that these employers should not be required to contribute to the Secondary Pension in addition to an existing scheme. Some respondents were also concerned that an employer contribution could increase the costs of businesses and, in particular, were concerned about the potential impact on smaller businesses and the potential impact on employment levels of a compulsory employer contribution.

**Chart C8**

### **Comments on the Tax Incentives for Long-Term Saving**

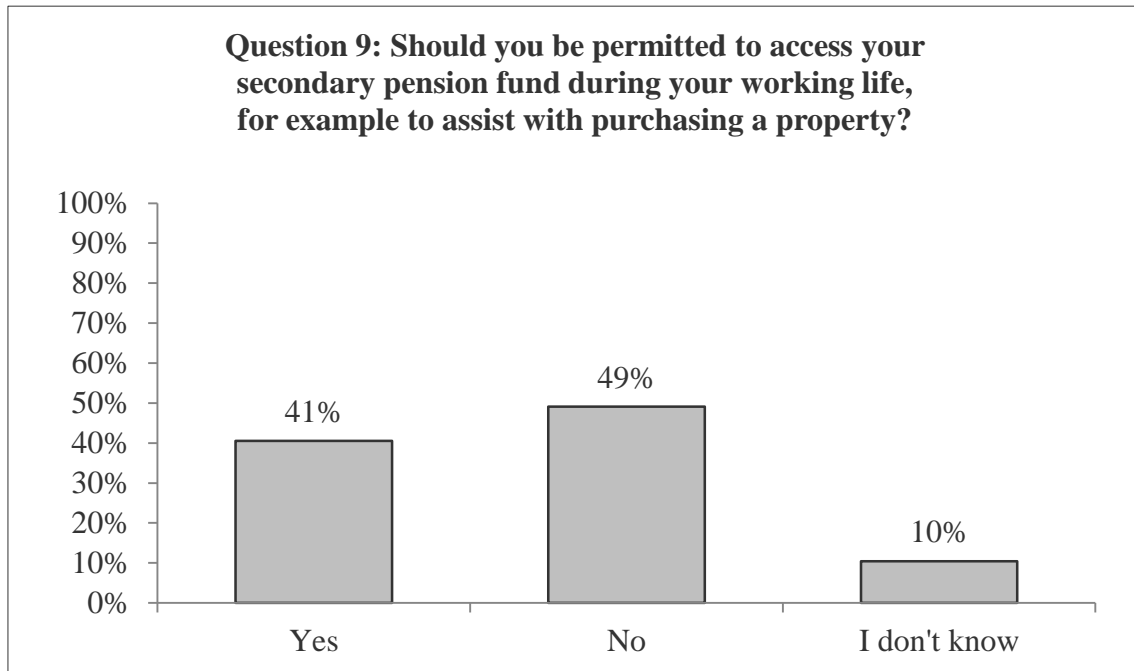
46% of respondents felt that tax incentives should follow the current Exempt-Exempt-Taxed (EET) principle. These respondents argued that the current system of an upfront tax incentive on individual contributions paid in provided a better incentive to save than the alternative Taxed-Exempt-Exempt (TEE) model.

Some respondents also noted that under the current system 30% of the final pension fund can be withdrawn as a tax-free lump sum and that this favourable tax treatment offers a further incentive to save. Some of these respondents were concerned that if the model was changed to a Taxed-Exempt-Exempt (TEE) model there would be no guarantee that future administrations would ensure that pensions in payment would continue to be exempt from tax.

32% of respondents felt that tax incentives should follow the Taxed-Exempt-Exempt (TEE) principle. These respondents often noted that the UK Government is currently considering this type of regime.

22% of respondents suggested that they would prefer an alternative model for tax incentives. A number of respondents suggested that there should be no tax exemptions at all and others suggested that both contributions and pensions in payment should be tax exempt.

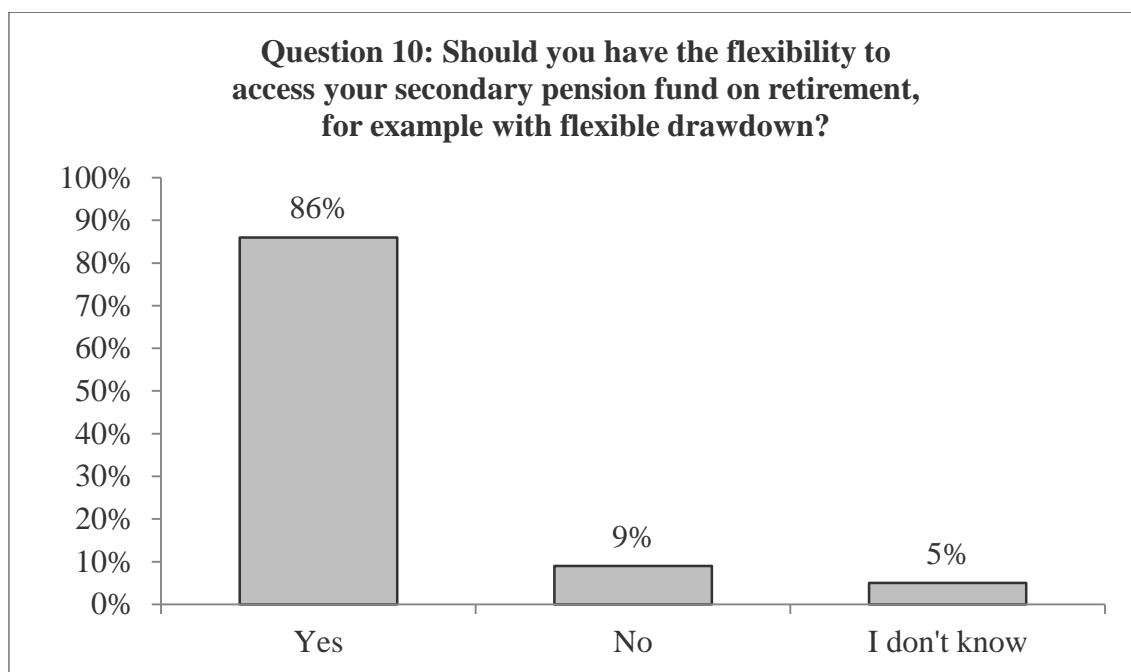


**Chart C9**

### **Comments on access to the Pension Fund during Working Life**

49% of respondents felt that access to the pension fund during working life should not be permitted. These respondents argued that allowing withdrawals from the pension fund during working life would defeat the purpose of saving in a pension. These respondents felt that the purpose of saving in a pension is to provide an income to live on in retirement.

41% of respondents felt that access to the pension fund during working life should be permitted. These respondents often referred to the existing system of borrowing that applies during working life to Retirement Annuity Trusts and felt that a similar regime could be applied to the new Secondary Pension. A number of these respondents felt that if a loan from the pension fund was permitted during working life, the loan should have to be repaid in full along with interest.

**Chart C10**

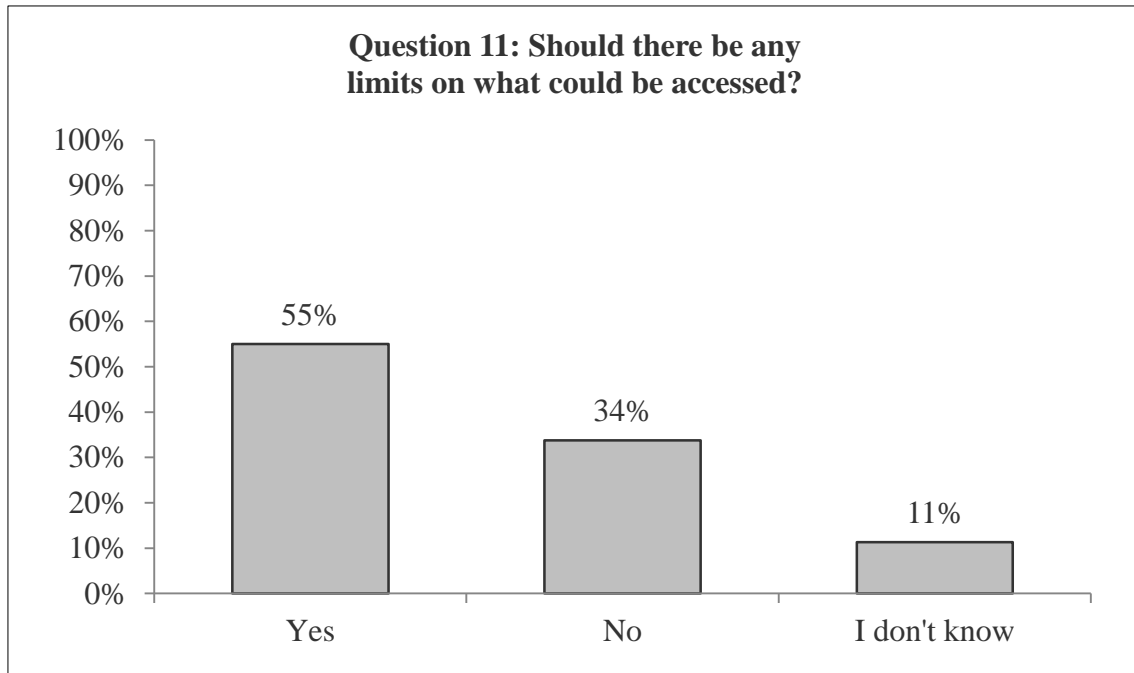
### **Comments on the flexibility to access your Secondary Pension Fund on Retirement**

A very significant majority of respondents (86%) felt that individuals should have the flexibility to access the secondary pension fund on retirement, for example, through flexible drawdown.

However, many of these respondents felt that there should be limits on the amount that individuals could draw down from the pension fund in retirement. A withdrawal limit was proposed to reduce the risk of individuals withdrawing too much from their pension fund, depleting their fund and having to fall back on state funded benefits. An alternative approach that was suggested is a requirement for individuals to be able to demonstrate that they have a minimum guaranteed level of secure retirement income, in order to be able to use flexible drawdown.

A number of respondents to this question commented that individuals should be able to access their pension fund from the age of 55 (as in the UK) and that there should be a continuation of the current system of access to 30% of the pension fund as a tax-free lump sum.

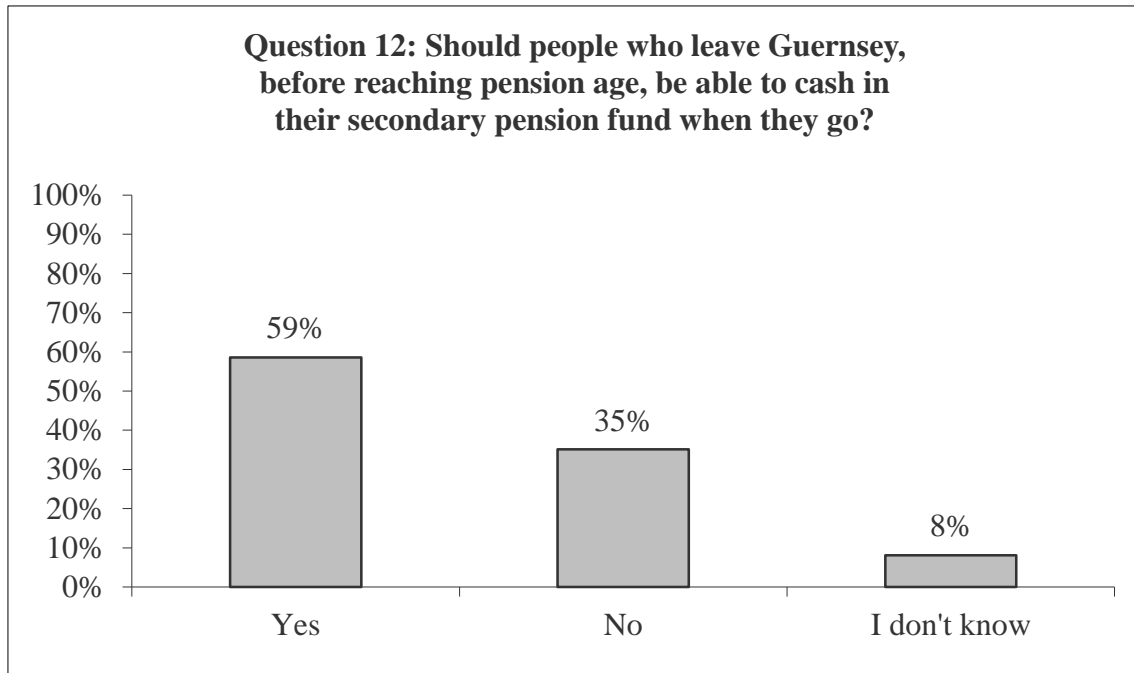
The 9% of respondents who felt that individuals should not have the flexibility to access the secondary pension fund on retirement through flexible drawdown argued that the purpose of saving in a private pension is to provide a secure income to live on during retirement. These respondents suggested that individuals should be required to secure a retirement income with the pension fund (for example, through the purchase of an annuity).

**Chart C11**

**Comments on whether there should be limits on the amount of the Pension Fund that can be accessed in Retirement**

The majority of respondents (55%) felt that there should be limits on how much of the pension fund could be accessed in retirement. Many of these respondents felt that there should be limits on how much of the pension fund could be accessed in order to stop individuals from inadvertently withdrawing too much from the pension fund, depleting the fund and then having to fall back on state funded benefits.

34% of respondents felt that there should not be limits on how much of the pension fund could be accessed in retirement. Most of these respondents noted that there are now no limits on the amount that can be withdrawn from a pension fund in the UK (after age 55), and argued that it would be difficult for Guernsey to impose withdrawal limits or to require a guaranteed secure income when the UK does not.

**Chart C12**

**Comments on whether individuals who leave Guernsey before reaching Pension Age should be able to cash-in their Secondary Pension Fund when they go**

The majority of respondents (59%) felt that people who leave Guernsey, before reaching pension age, should be able to cash in their secondary pension fund when they go. However, a significant proportion of these respondents argued that rather than being able to cash in the fund, the individual should be required to transfer the pension fund to another approved pension fund in the new jurisdiction.

35% of respondents felt that people who leave Guernsey, before reaching pension age, should not be able to cash in their secondary pension fund when they go. These individuals argued that the pension should simply remain invested and that the appropriate pension would be paid to these individuals when they reach pensionable age. A number of these individuals asked what would happen if these individuals were to return to Guernsey later on and the pension had been cashed in. There was a concern that under these circumstances such individuals could end up falling back on state funded benefits.

**ANNEX D: LIST OF ORGANISATIONS THAT PROVIDED INPUT TO THE CONSULTATION**

Written responses were received from the following organisations:

- Ageing Well in the Bailiwick
- BWCI
- Credit Suisse
- Guernsey Association of Pension Providers (GAPP)
- Guernsey Financial Services Commission (GFSC)

Consultation meetings were held with the following organisations:

- Confederation of Guernsey Industry (CGI)
- Guernsey Association of Pension Providers (GAPP)
- Guernsey Chamber of Commerce
- Guernsey Building Trades Employers Association (GBTEA)
- Guernsey International Business Association (GIBA)
- Institute of Directors (IoD)

## **ANNEX E: UK APPROACH TO AUTOMATIC ENROLMENT INTO PRIVATE PENSION SAVING**

The UK Government legislated to require all UK employers to automatically enrol their eligible employees into a workplace pension, starting from 2012.

Eligible employees are defined as those who are aged between 22 and below State Pension Age and who earn more than £10,000 per annum.

### **Contribution Rates**

Once automatically enrolled and once the system is fully implemented, individuals will have to contribute at least 4% of qualifying earnings (£5,824 to £42,385 in 2015/16), the employer will contribute at least 3% and the Government contributes 1% through tax relief on pension contributions for basic rate taxpayers, giving a combined contribution of 8% of qualifying earnings. In practice, during the early years of implementation contribution rates are being gradually phased in for both employers and individuals.

### **Opting Out**

Individuals can opt out of pension saving following automatic enrolment, but in doing so they forfeit the right to the employer contribution. Employers must re-enrol employees who have opted out every 3 years.

The opt out rate following automatic enrolment has been about 10% of those automatically enrolled, i.e. 90% of those who have been automatically enrolled into a private pension have stayed in. It is anticipated that the opt out rate may rise to 15% once smaller employers are brought in.

Self-employed individuals are not automatically enrolled and do not receive an employer contribution but can opt themselves into pension saving (for example, through NEST or another provider).

Employers can choose whether to automatically enrol their eligible employees into an existing qualifying pension scheme (such as an existing Defined Benefit or Defined Contribution scheme), or into the UK Government's new low-cost pension scheme called the National Savings Employment Trust (NEST.)

### **Qualifying Pension Schemes**

Under the qualifying pension scheme test:

- The scheme must be used for automatic enrolment and must not require the jobholder to make an active decision to join the scheme;
- Most Defined Benefit schemes will be designated as qualifying schemes based on the level of benefits that they provide (a reference test).

Defined Contribution schemes will meet the qualifying scheme test if they can be used for automatic enrolment and:

- the employer makes contributions in respect of the jobholder;
- total minimum contributions are at least 8% of the jobholders' qualifying earnings; and
- the employer contributes at least 3% of the jobholders' qualifying earnings.

### **The National Employment Savings Trust (NEST)**

The NEST scheme was established by the UK Government to ensure that small employers would be able to access a pension saving vehicle to fulfil their automatic enrolment duties. The NEST scheme has a universal service obligation in that it must provide a pension to any employer, irrespective of the size or profitability of doing so.

The UK's workplace pension reforms have been extremely successful – the DWP estimates that approximately 9 million individuals are either newly saving or saving more as a direct result of the reforms.

**ANNEX F: TABLE F1 GUERNSEY AND ALDERNEY RESIDENT POPULATION BY EMPLOYMENT STATUS AND THEIR PROPOSED TREATMENT UNDER AUTOMATIC ENROLMENT**

	<b>March 2013</b>	<b>Notes</b>	<b>Proposed Treatment under Automatic Enrolment</b>
Total Guernsey and Alderney population	<b>64,812</b>		
1. <u>Employed</u> of working age and making Social Insurance contributions	27,720	Approximately 4,700 members of the public sector pension schemes in 2012. Estimated 23,020 employees eligible in private and third sector	Automatically-enrolled by their employer into <u>either</u> (i) a qualifying pension scheme <u>or</u> (ii) into the new Secondary Pension
2. <u>Self-employed</u> of working age and making Social Insurance contributions	2,800		Automatically-enrolled into the Secondary Pension
3. <u>Non-employed</u> of working age and making Social Insurance contributions (compulsory or voluntary)	1,060		Automatically -enrolled into the Secondary Pension
4. Working-age residents not making Social Insurance contributions	11,118	For example, carers, housewives, unemployed, individuals earning below the Lower Earnings Limit (LEL)	This group are either not earning, or are earning below the LEL and do not pay Social Insurance contributions and <u>would not</u> be automatically enrolled but can opt in on a voluntary basis.
Total Residents of working age (16 – 64)	<b>42,698</b>		
Total resident population who would be automatically enrolled into either a qualifying pension scheme or the new Secondary Pension under the current proposals.			<b>31,580</b>  Approximately 75% of working-age population would be automatically enrolled.



## **ANNEX G: THE GROSS REPLACEMENT RATE ANALYSIS UNDER ALTERNATIVE SCENARIOS ABOUT THE TOTAL CONTRIBUTION RATE INTO THE PRIVATE PENSION**

Table G1 below shows the estimated total Gross Pension Income for an individual earning at age-specific lower quartile earnings, median earnings and higher quartile earnings from the age of 25 throughout their 45-year career. In each case the analysis assumes that total contributions of 10% of Gross Salary are contributed into a private pension consistently from the age of 25 throughout a 45-year career until the individual retires at age 70 in 2059. Individuals are assumed to take 10% of the final pension fund as a tax-free lump sum and purchase a single-life level annuity with the remainder of the pension fund.

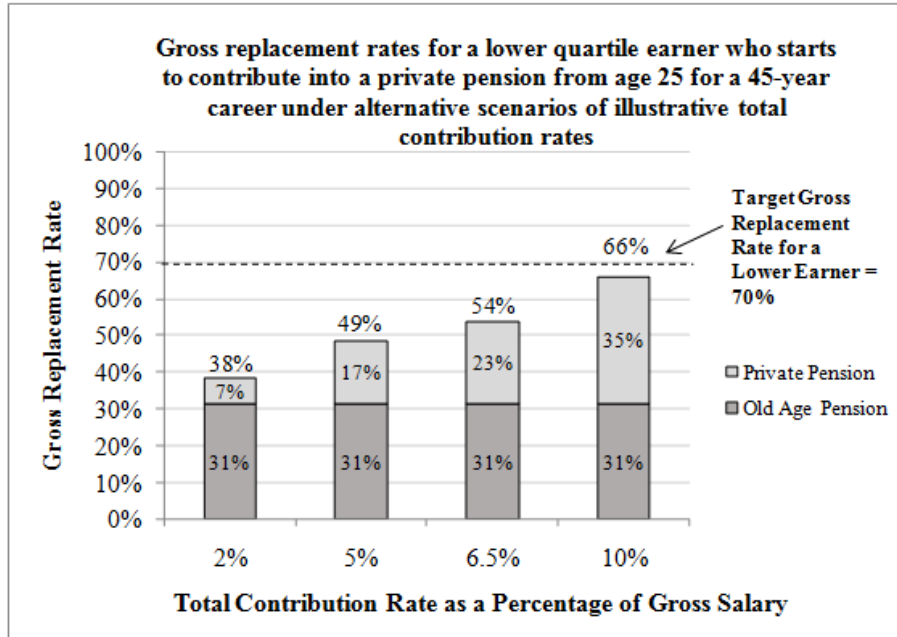
**Table G1: Gross Pension Income for a lower quartile, median, and higher quartile earner, assuming total pension contributions of 10% of Gross Salary**

	<b>Lower Quartile Earner</b>	<b>Median Earner</b>	<b>Higher Quartile Earner</b>
	<b>Gross Income</b>	<b>Gross Income</b>	<b>Gross Income</b>
Pre-retirement Gross employment income in 2058 (in 2014 prices)	<b>£35,291</b>	<b>£52,561</b>	<b>£74,337</b>
Income from Old Age Pension (per annum in 2014 prices)	£10,988	£10,988	£10,988
Income from Private Pension (per annum in 2014 prices)	£12,271	£17,801	£25,694
<b>Total Gross Pension Income (per annum in 2014 prices)</b>	<b>£23,259</b>	<b>£28,789</b>	<b>£36,682</b>
Gross Replacement Rate	66%	55%	49%
Plus 10% of final pension fund taken as a tax-free lump sum in 2014 prices	£24,790	£35,962	£51,906

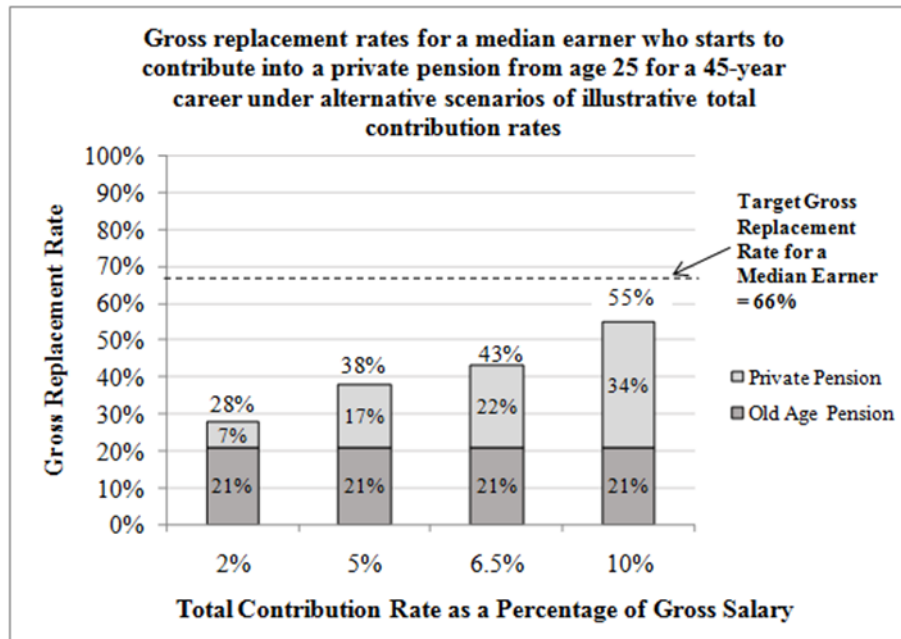
There are a number of assumptions that underpin the Gross Replacement rate modelling. The figures in Table G1 above should be taken as indicative of the anticipated level of gross pension income that individuals with difference earnings level could expect if 10% of Gross Salary is contributed into a private pension consistently throughout a 45-year career. However, a large number of assumptions are made in the analysis. The final pension income an individual might receive in reality could therefore be lower or higher than illustrated above.

It can be seen from Table G1 that at total contributions of 10% of Gross Salary, all three individuals make significant progress towards reaching their target Gross Replacement Rates, as set out by the UK's Pensions Commission. Charts G1, G2, and G3 below show the impact on Gross Replacement Rates of alternative levels of total contributions for a lower quartile earner, median earner, and higher quartile earner.

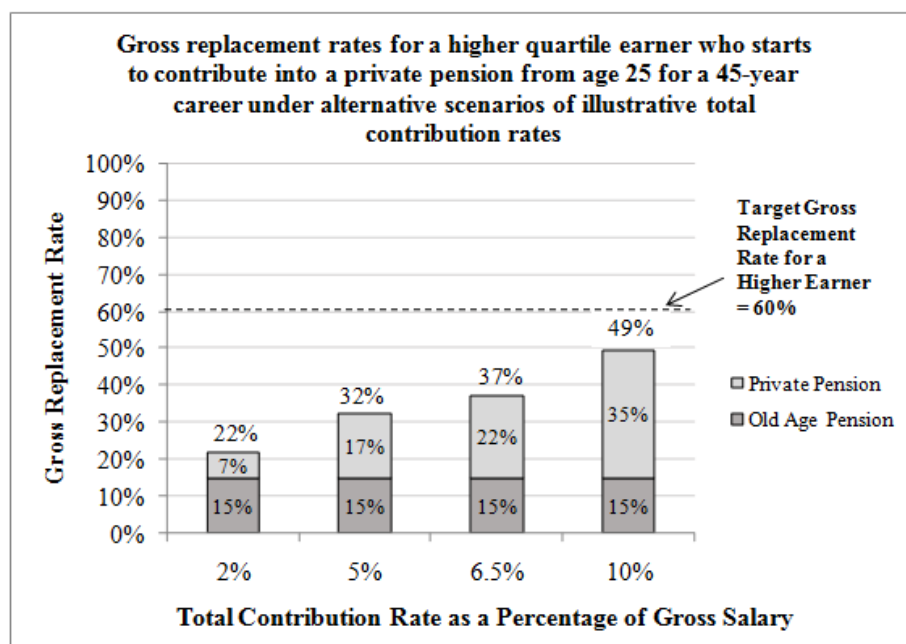
**Chart G1: Gross Replacement Rates for a Lower Quartile Earner under alternative scenarios of illustrative total contribution rates**



**Chart G2: Gross Replacement Rates for a Median Earner under alternative scenarios of illustrative total contribution rates**



**Chart G3: Gross Replacement Rates for a Higher Quartile Earner under alternative scenarios of illustrative total contribution rates**



The following assumptions have been made in the Gross Replacement Rate analysis:

#### Old Age Pension Assumptions

- The old age pension is uprated by one third of the difference between earnings and prices for 10 years from 2015 until 2025, but is linked to RPI(X) thereafter in line with the Department's uprating policy;
- RPI(X) is assumed to be 3% per annum;
- The individual is assumed to have a full Social Insurance contribution history and therefore is eligible for the full rate of old age pension.

#### Private Pension Assumptions

- The median earner and their employer start contributing into the private pension when the individual starts working and saving in a private pension from the age of 25 in 2014;
- The individual and their employer together contribute consistently into the private pension at the illustrative total contribution rate throughout the individual's 45-year career until the individual retires at age 70 in 2059;
- The median earner is assumed to earn at median age-specific earnings throughout the course of their career; real earnings growth is 1.5% above RPI(X);

- Illustrative total contribution rates of 2%, 5%, 6.5% and 10% of Gross Salary have been assumed;
- The private pension fund receives a real investment return of 3% per annum;
- The assumed annual management charge is 0.5% of funds under management;
- The individual takes 10% of their final pension fund as a tax-free lump sum on retirement and is assumed to annuitise the remainder of the pension fund;
- The annuity conversion factor in 2059 is assumed to be 5.5% for the purchase of a single-life level annuity. The market rate that would apply to the purchase of a single-life level annuity at market rates in 2015 at age 70 is 6.7%<sup>10</sup>. The annuity conversion rate in 2059 is assumed to be 20% lower than the actual market annuity rate available in 2015. This assumption reflects the anticipated improvement in average life expectancy at age 70 between 2015 and 2059 using ONS 2012-based principal cohort life expectancy projections. ONS principal projections suggest that average male/female life expectancy at age 70 in 2015 is 18.5 years, rising to 23.15 years in 2059.
- It should be noted that the actual annuity rate that would apply in 2059 could be lower or higher than the assumed 5.5% depending on a number of factors, including the health of the scheme member and the rate of overall improvements in life expectancy over the next 50 years. If the pension scheme member were to purchase a joint annuity which provides an income for both the pension scheme member and a spouse, or were to purchase an index-linked or guaranteed annuity then the annuity conversion rate is likely to be lower than 5.5%.

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10. FT Annuity Table compiled by Hargreaves Lansdowne based on the best buy annuity rates available from a panel of annuity providers including Aviva, Standard Life, Legal & General and other annuity providers. Market Rates accurate as at 19/11/2015.

## **ANNEX H: ASSUMPTIONS MADE IN ESTIMATING THE DEFERRED REVENUE IMPLICATIONS OF THE INTRODUCTION OF AUTOMATIC ENROLMENT UNDER AN EXEMPT-EXEMPT-TAXED (EET) MODEL.**

The deferred revenue analysis aims to estimate the impact of the introduction of automatic enrolment into private pension saving on deferred tax revenues under an Exempt-Exempt-Taxed (EET) model of pensions taxation. If the current EET pension taxation model is adopted, the cost of tax deferral on individual pension contributions will depend on both the rate of the statutory minimum level of individual pension contributions in the scheme and the rate of opt out following automatic enrolment.

Income Tax records report that 10,220 people aged 16 to 64 who were earning employment income above the personal tax allowance of £9,475 in 2013 were already making contributions into an occupational or personal pension scheme, while 14,569 people had employment income above the personal tax allowance but were not contributing to an existing pension scheme.

The analysis assumes that the 10,220 people aged 16 to 64 who were earning employment income above the personal tax allowance of £9,475 in 2013 who were already making contributions into an occupational or personal pension scheme continue to contribute into their existing pension scheme at their current rate of contribution.

The starting point for the deferred revenue analysis is that the 14,569 people who are employed but not currently contributing into a pension will be automatically enrolled into a private pension and will start to contribute into a private pension at the statutory minimum contribution levels. The phasing in of the contributions that would apply in reality has not been factored in to this analysis.

However, an adjustment has been made to exclude the 4,500 employees who are estimated to be existing members of non-contributory schemes who are unlikely to start contributing into another private pension scheme.

In addition, the additional cost of tax deferral from automatically enrolling self-employed and non-employed individuals who pay social security contributions into the Secondary Pension scheme has been estimated. It has been assumed that 1,500 self-employed individuals and 1,000 non-employed individuals start to contribute to a private pension for the first time following the introduction of automatic enrolment. In total the analysis assumes that 12,569 people are automatically enrolled into a private pension and have the potential to start saving in a private pension for the first time. An allowance is then made for a percentage of these individuals to opt out of pension saving.

Table H1 below provides a range of estimates of the amount of deferred tax revenues (per annum in 2013 prices) under alternative levels of individual pension contributions and assuming that 10% of individuals who have been automatically enrolled opt out as the central estimate. The upper and lower estimate is calculated as +/-20% from the central estimate.

If the long-term statutory minimum rate of individual contributions into the scheme were 6.5% as the Department has proposed then the cost of the additional tax deferral under an EET pensions taxation model is estimated to be in the range of £2.3million to £3.5million per annum depending on the rate of opt out from the scheme, with a central estimate of £2.9million in 2013 prices. (See Table H1 below)

The phasing in of the contributions that would apply in reality has not been factored in to this analysis. The States would have almost 10 years before the full deferred revenue implications of the policy would be felt because of the proposed gradual phasing-in of the contribution levels.

**Table H1: Estimates of Additional Deferred Tax Revenue (per annum in 2013 Prices) following the introduction of automatic enrolment into private pension saving under an EET pensions taxation model**

	<b>Total Additional Individual Pension Contributions</b>	<b>Lower Estimate  (Central estimate – 20%)</b>	<b>Central Estimate  (assuming 10% opt out)</b>	<b>Upper Estimate  (Central estimate + 20%)</b>
2% individual contribution	£5.0m	£0.7m	£0.9m	£1.1m
5% individual contribution	£12.4m	£1.8m	£2.2m	£2.6m
<b>6.5% individual contribution</b>	<b>£16.2m</b>	<b>£2.3m</b>	<b>£2.9m</b>	<b>£3.5m</b>
10% individual contribution	£24.9m	£3.6m	£4.5m	£5.4m

- (N.B. Whilst some individual Members have reservations about various elements of the proposed scheme, the Treasury and Resources Department is supportive of the principle of encouraging individuals to take greater responsibility for planning for their retirement. It is expected that, due to the auto-enrolment requirement of the proposed scheme, there will be a future consequential fall in the level of claims made for supplementary benefit by pensioners.

However, the Department is concerned that an employer contribution rate rising to 3.5% may have an effect on the viability / competitiveness of businesses and this could consequentially adversely impact on the wider economy. Undoubtedly, this will be considered by the Committee *for* Employment and Social Security as it carries out an economic impact assessment as part of the development of detailed proposals if the principle of a Secondary Pension Scheme is approved.

The Treasury and Resources Department will continue to consider the most appropriate approach to encouraging private pension provision through tax incentives and the introduction of greater flexibility in accessing benefits in retirement.)

- (N.B. Accepting that the fine details of the scheme are yet to be developed, the Policy Council fully supports the proposals to establish auto-enrolment in a secondary pension scheme based on the principles outlined in this Policy Letter, which has been prepared in accordance with the principles of good governance.

A lack of adequate pension provision poses a long-term financial risk to individuals, households and to public finances, particularly given the increasing 'ageing' of the islands' populations. Based on evidence from other jurisdictions, the introduction of a secondary pension scheme will significantly mitigate this risk, providing a greater level of financial independence for local households in retirement and reducing the potential welfare cost necessary to support those without sufficient savings.

Noting that the main beneficiaries of such a scheme will be individuals, the Policy Council has given careful thought to the proposal to divide contributions between employers and employees which, as acknowledged in the Policy Letter, will increase employment costs for local businesses. The Policy Council is satisfied that an employer contribution to the scheme is necessary in order to achieve contribution rates sufficient to provide Islanders with a reasonable income in retirement, and to ensure that the scheme is attractive enough to limit the number of people who choose to opt out. However, the impact of the scheme on employers and Guernsey's competitive position compared with other jurisdictions should be carefully considered in the next stage of development.

The Policy Council also notes that, while not included in the formal recommendations, the outlined contribution rates for employees (to be achieved after a period of phasing-in) are comparable to the current contribution rate applicable to the public sector pension scheme (6.5%).

Finally, from a fiscal and economic perspective, the Policy Council asks that, when reporting back with detailed proposals, the Committee *for* Employment and Social Security gives consideration to the following:

- further demonstration of the long-term economic, fiscal and social benefits of personal pension saving and reducing welfare dependence in retirement;
- quantification of the impact of the scheme on disposable household incomes, both for households contributing to the scheme and the expected income of those households in retirement;
- the impact that the scheme might have on employer behaviours, including the impact on employee earnings, employment opportunities, business profitability and corporate tax receipts;
- the impact of the introduction of a secondary pension scheme on economic growth;
- how the introduction of the scheme might be managed to minimise any shock to disposable incomes or economic activity;
- how the proposed scheme compares with schemes applied in other jurisdictions, and any influence this might have on Guernsey's competitive position;
- any inheritance issues which might be associated with the scheme.)

The States are asked to decide:-

XV.- Whether, after consideration of the Policy Letter dated 30<sup>th</sup> November, 2015, of the Social Security Department, they are of the opinion:-

1. To approve in principle the introduction of automatic enrolment into private pension saving and the development of a Secondary Pension scheme based on the principles outlined in paragraph 161 of that Policy Letter.
2. To direct the Committee *for* Employment and Social Security to report back to the States of Deliberation no later than 31<sup>st</sup> December 2017 with detailed proposals for the implementation of automatic enrolment into private pension saving and a Secondary Pension scheme.
3. To direct the Committee *for* Employment and Social Security, in reporting back to the States, to provide an economic impact assessment of the proposals.



## HEALTH AND SOCIAL SERVICES DEPARTMENT

### PROPOSALS REGARDING GUERNSEY'S FUTURE AMBULANCE SERVICE

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

30<sup>th</sup> November 2015

Dear Sir

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

- 1.1. This Policy Letter gives an update on the work carried out over the last ten months to review Guernsey's ambulance service and sets out a proposed way forward for the future operation of the service.
- 1.2. A detailed report from the Steering Group tasked with reviewing the service is attached as an appendix which informs the States of Deliberation of the first preparatory steps to be taken. The Steering Group is recommending that ten proposals should be taken forward over the period 2016 – 2021 and is asking the States to approve two recommendations at this juncture so that preparatory work can proceed during 2016 to reduce the risk of future benefits being delayed unnecessarily.
- 1.3. The States is recommended to approve the transfer of the budgetary and non-clinical oversight role for the Emergency Ambulance Service ("EAS") from the Health and Social Services Department ("HSSD") to the Home Department ("Home"), enabling Home to have a combined oversight role for all 'blue light' emergency services (Police, Fire and Ambulance) as they work increasingly to their 'best practice interoperability'<sup>1</sup> agenda. This transfer will take place on a date to be determined, but not before January 2017, therefore the transfer will take place between the two new Committees for Health and Social Care, and Home Affairs.
- 1.4. There are no financial implications for the 2016 States Budget arising from the recommendation.
- 1.5. Detailed proposals covering the ten points below will be actioned, and those requiring resources will be submitted to the next States of Deliberation for approval after May 2016. A summary of the proposals is as follows:

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<sup>1</sup> The ability of diverse systems and organisations to work together.

1. Prepare the Emergency Services to support HSSD's planned transformation and integrated health and social care intentions (in response to an ageing population, avoidance of hospital admission, improved efficiency and productivity).
  2. Redesign Emergency Medical Services with a focus on patient outcomes, including new 'clinical pathways' and processes.
  3. Retain and extend St John's role as a strategic partner for Emergency Ambulance and Medical Services.
  4. Invest in better skills for Paramedics and Clinical Technicians, and deploy them flexibly network-wide (on ambulances, fast-response vehicles, within Accident and Emergency ("A&E") and to the home).
  5. Fully evaluate co-locating the Emergency Ambulance Base from St John's Rohais location with the Fire Service.
  6. Transfer the budgetary and non-clinical oversight role for the EAS from HSSD to Home, at a date to be determined but not before January 2017, to provide Home with the combined oversight role for all 'blue light' emergency services (Police, Fire and Ambulance) as they work increasingly jointly to their "best practice interoperability" agenda.
  7. Pursue better States asset sharing and procurement across the Emergency Services (including property, vehicles, mobile technology and other support services).
  8. Properly resource the HSSD ICT effort, e.g. to make possible the future sharing of core patient record data in emergencies and, moving forward, ensure that these interface with the other emergency systems delivered by the Home Department.
  9. Operate a Non-emergency Patient Transfer System ("NEPTS") as a distinct service separate from the Emergency Ambulance Service Contract, with "pooled providers".
  10. Give notice to agree a "win-win" contract with St John from 1<sup>st</sup> January 2017.
- 1.6. The States is, therefore, also recommended to note that the Committee *for* Health and Social Care – and the Committee *for* Home Affairs where appropriate - will return to the States during 2016 with Policy Letters proposing the more detailed arrangements to implement the strategy outlined in this Policy Letter, once those plans and business cases have been finalised between all parties.

## 2. Background

- 2.1. Guernsey's ambulance service is currently provided by the St John Ambulance and Rescue Service ("SJARS"), a not-for-profit company, which receives an annual subsidy (£2.64m in 2015) from the States for the provision of the ambulance service and patient transfers.
- 2.2. Historically, arrangements were reviewed and renegotiated periodically. One such review was the Lightfoot Review of May 2013, which prompted a move towards more formal definitions of services and performance indicators. During 2014, negotiations began between SJARS and HSSD to renew the contract from 1<sup>st</sup> January 2015.
- 2.3. In September 2014, contract renewal negotiations between HSSD and SJARS reached an impasse. The Civil Contingencies Authority ("CCA") stepped in and imposed terms for the renewal of the emergency and non-emergency ambulance contract. This new contract runs for a 4-year period from 1<sup>st</sup> January 2015, with a break option at 1<sup>st</sup> January 2017 if 6 months' notice has been given.
- 2.4. At the same time, the CCA initiated a project to review the existing service provision and to define service-delivery requirements for the future. This project, entitled "Guernsey's Future Ambulance Service" ("GFAS"), has been progressed by a team (the Steering Group) drawn from the key stakeholder groups of HSSD, SJARS, the Treasury and Resources Department ("T&R") and Home, which first met in January 2015. (Figure 1 shows the relationship between the Steering Group and other key stakeholders in the process.) This Policy Letter addresses the proposals arising from that project and the first preparatory steps to be taken.

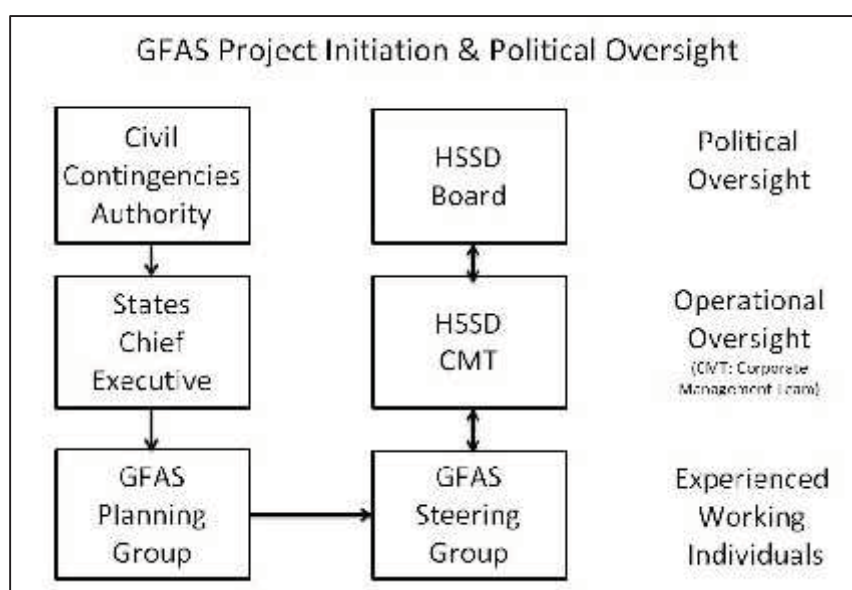


Figure 1 – GFAS Project Initiation & Political Oversight  
Relationship between Stakeholders

2.5. As the diagram on Project Initiation and Political Oversight illustrates:

1. The CCA directed that a cross-departmental team be established under the political oversight of the HSSD Board and with a Chairman drawn from T&R.
  2. The States of Guernsey Chief Executive established a Planning Group to plan the overall project approach and arrangements. This group comprised himself, the HSSD Chief Officer, the Chairman of the Board of SJARS, and a member of the T&R Board.
  3. A Steering Group of senior individuals drawn from HSSD, Home, SJARS and T&R was established to undertake the project.
  4. The Steering Group reported to, and was subject to oversight from, the HSSD Corporate Management Team (“HSSD CMT”) for operational oversight and the HSSD Board for political oversight.
- 2.6. The culmination of the work of the Steering Group, a report entitled “Guernsey’s Future Ambulance Service”, is attached to this Policy Letter at Appendix 1. In the interests of brevity, the content of the report has not been reproduced here in its entirety, but a summary of its key points (scope, methodology, options appraisal, etc.) form the basis of this covering Policy Letter. Appendices to the GFAS Report are not reproduced in the Billet for reasons of brevity but are available online at [www.gov.gg/gfas](http://www.gov.gg/gfas).
- 2.7. This Policy Letter is submitted to the States of Deliberation for debate before the General Election in April 2016, so that experienced politicians in the current States can provide further political input. This will also help the incoming States, because notice of any change in contractual arrangements with SJARS before 1<sup>st</sup> January 2019 will need to be given formally by 30<sup>th</sup> June 2016. This could further help to reduce uncertainty amongst various States’ and SJARS employees, who have lived with significant personal employment uncertainty over the past 2-3 years.

### **3. Scope**

- 3.1. The review conducted by the Steering Group considered only the ambulance service, not the other search and rescue and training/other services provided by SJARS.
- 3.2. The islands of Alderney and Sark have their own arrangements for ambulance services and were therefore outside the scope of the review.

#### 4. Review Methodology

4.1. The review comprised the following six phases of work:

1. International research to understand 'best practices' elsewhere relative to operational approaches adopted in Guernsey.
2. The definition of the extent of 'local ambition' in making Guernsey's ambulance services as good as they can conceivably be. This included workshops on best practices elsewhere, public and professional consultation in Guernsey and challenges with members of local medical and emergency services professionals.
3. The evaluation of options and priorities.
4. The selection of a preferred 'Target Operating Model' for EAS and NEPTS in Guernsey, having identified relative benefits and implications.
5. The design of the nature of 'performance metrics' (i.e. key performance indicators) to assess future performance.
6. The definition of steps to be taken to migrate to the new Operating Model, via a phased implementation plan.

4.2. The Steering Group acknowledged that the development of GFAS must align with, and indeed drive forward, existing HSSD and wider States of Guernsey strategic objectives and policies, such as:

- the HSSD transformation programme, and in particular improved clinical pathways and a move towards “reablement” (rehabilitating service users to enable them to be supported in the community, rather than in hospital);
- the Home Operational Services Transformation Programme (“HOST”) which has an objective of interoperability of blue light services; and
- Public Service Reform – aspects of which include investment in people skills, better use of property/assets and better teaming with private/third sector.

4.3. The Steering Group has also ensured that proposals support the emerging Supported Living and Ageing Well Strategy (“SLAWS”) and comply with the current States’ fiscal model, whereby new policies or services are not to be introduced without having a clear economic benefit and/or funding source, and are to be financed as far as possible via efficiencies made from transforming to 'best practices' and improved utilisation of property or assets.

#### Guiding Principles

4.4. The HSSD established a series of principles to guide the Steering Group in making any proposals. These principles were as follows:

- a. Economies of scale should be pursued wherever possible and appropriate.
- b. There should be the maximum sensible integration of practices between the emergency/urgent response services (Fire, Ambulance & Police).
- c. There should be transparency in any hybrid funding formula, e.g. public understanding of States' financial support, relative to private subscriptions to St John, and clarity about how the two sources of funding are used and might best be used moving forward.
- d. Emergency/urgent response ambulance services should be completely distinct from non-emergency patient transfer services.
- e. In undertaking a clearer 'commissioning role' with service suppliers, there needs to be a strengthening within HSSD of contract management capability so that both Home (post transfer of operational delivery responsibility) and St John (as provider) are set clear priorities and performance measures that are monitored appropriately.
- f. Clear timelines should be provided as early as possible, to aid related forward planning, recognising that a range of interdependencies are likely to exist with other initiatives underway within HSSD.

#### Future Organisation Options

- 4.5. When assessing future organisation options, the Steering Group sought to define a future organisation best able to: meet various changing demands; perform in line with emerging best professional practices; and comply with States of Guernsey policies.
- 4.6. Early in the project, six criteria by which alternative organisational structures would be judged were developed and agreed with the HSSD CMT. These criteria were also 'weighted' in terms of importance, so that the most important criteria scored most heavily when subsequently applied to organisational options.

Operating Model Evaluation Criteria		
Criteria	Explanation	Importance & Weighting
Delivery of best clinical practice	Best patient outcomes	High (10)
Ability to meet service levels	Primary objective for islanders	High (10)
Efficiency and value for money	Relevant to public service	High (9)
Flexibility for migration to future ideal	Industry trends imply change	High (9)
Clear management lines/risk	Muddiness adds delay/risk/cost	Medium (7)
Scope for further service synergies	Potential further value	Medium (6)

Figure 2 Operating Model Evaluation Criteria

- 4.7. The two most important criteria (weighted 10) were patient-related:
- Delivery of Best Clinical Practice for best patient outcomes; and
  - Ability to meet defined Service Levels to the customer - a primary objective for islanders.
- 4.8. The next two criteria weighted 9 were also important: without ‘efficiency & value-for-money’, services are unnecessarily constrained within available budgets. Without ‘flexibility for migration to a future ideal’, there would be less potential to take advantage of evolving best practices in emergency medical services.
- 4.9. The final two criteria are relevant, but were weighted lower at 6: clear and clean management lines for operational planning, related budgets and shared practices are advantageous if slow and costly management of resources is to be avoided. Finally, some Operating Models can generate greater scope for taking advantage of potential synergies in the wider network of emergency services and care.
- 4.10. Having previously defined the evaluation criteria and weighted scoring approach, the Steering Group then defined 6 major Operating Models for evaluation, keeping an open mind for others emerging from research:
1. No Change - Continue 2014 arrangements into the future
  2. Absorb into HSSD per 2014
  3. Agency Oversight by HSSD
  4. Agency Oversight by Home
  5. Operate an Emergency Services structure, overseen by Home.
  6. Fully Integrated Fire & Ambulance Service
- 4.11. Option 1 is effectively the arrangements in place with SJARS in 2014. SJARS has moved on significantly since the Lightfoot Review.



- 4.12. Option 2 represents absorbing SJARSs EAS into HSSD, as proposed by HSSD in September 2014.
- 4.13. Option 3 represents continuing with SJARS as a separate ‘commissioned partner’, with improved governance and performance oversight. This is closer to what has been happening in 2015.
- 4.14. Option 4 represents HSSD continuing to establish the clinical pathways and standards for care as ‘clinical commissioner’, but Home having ‘operational and budgetary oversight’ of operational performance, due to the increasing collaborative overlaps between all ‘blue light’ emergency services - Ambulance/Medical, Fire and Police.
- 4.15. Option 5 also represents HSSD being the ‘clinical commissioner’, but Home pursuing opportunities for ‘shared facilities and interoperability’ across aspects of all emergency services, in line with evolving best practices. The Joint Emergency Services Control Centre (“JESCC”), which went live during summer 2015, is one early example of this.
- 4.16. Option 6 represents a Fully Integrated Fire & Ambulance (“FIFA”) Service, operated by the States as a single service with a single multi-skilled structure. This is an approach used in some other jurisdictions, but is a radical change from practices currently used in Guernsey and the United Kingdom (from which many of Guernsey’s practices are derived, due to regulatory oversight).
- 4.17. The Steering Group also considered ‘Other Customised Approaches’ (not listed), e.g. partnering with others.

## **5. Recommended Option and Proposals**

- 5.1. Option 5 scored most highly and is the Steering Group's recommendation for progressing over the next 5 years. It does not imply that Home absorbs SJARS. It implies an enduring, evolving partnership.



Operating Model Option	Raw Evaluation Criteria Scoring and Weighting						Weighted Score
	1 Best Clinically Raw Weight	2 Service Levels Raw Weight	3 Efficiency/Cost Raw Weight	4 Flexibility Raw Weight	5 Mgt. Issues/Risks Raw Weight	6 Future Emergencies Raw Weight	
1. No Change – Continue 2014 Arrangements into the Future	10	10	9	9	7	5	377
2. Absorb into HSSD (per 2014)	8.80	8.80	7.03	7.03	7.49	7.42	377
3. Agency Oversight by HSSD (with revised governance)	8.80	8.80	7.03	8.72	8.50	7.42	408
4. Agency Oversight by Home	8.80	8.80	8.72	8.72	9.63	8.46	425
5. Operate Emergency Services structure, overseen by Home	8.80	8.80	8.81	9.81	9.63	9.54	459
6. Fully Integrated Fire & Ambulance (F&A) Service	8.80	8.80	8.81	8.72	7.49	10.00	422

Figure 3 – Results of the Evaluation Exercise

- 5.2. HSSD will retain clinical oversight for the EAS as it evolves to support HSSD's future Integrated Health & Social Care model, with care closer to home being the preferred delivery principle in preference to a 'default to hospital', and greater flexible deployment of paramedics and clinical technicians across the whole care network.
- 5.3. Home will then work in a manner supportive of HSSD (effectively being commissioned by HSSD) to provide with SJARS the most effective service to meet HSSD's clinical and patient service performance objectives. Home can best achieve this by implementing a clear 'Emergency Services Structure' with common oversight, and securing additional resilience and value-for-money opportunities from the 'interoperability' mindset being pursued in other jurisdictions. Home's established HOST strategy from 2014 has already seen early progress in this direction, via the JESCC.
- 5.4. It is sensible to phase change over time, either to reduce the risks associated with major change or because there are external dependencies which need to be met along the way. In addition there are a number of interdependencies within HSSD and Home. Furthermore, it is sensible to incorporate flexibility and options into Target Operating Models and phases, because economic or other factors can and will change during a 5-year period. Most importantly, this change needs to be "dovetailed" into the evolving broader HSSD Transformation, which is currently being defined, planned and resourced. There are many parts moving in parallel and all programmes need to fit within a broader States of Guernsey service delivery plan.

- 5.5. The following table portrays a standalone phased implementation plan, before activities are merged into the evolving HSSD Transformation Programme and Home's HOST programme (for greater interoperability of emergency services). It implies various phased implementations of increases in functionality. Some of these may be accelerated if business cases and related resources are brought forward and agreed earlier than currently anticipated.

	Key Early Tasks	Programme Year						Dependency Risks
		2016	2017	2018	2019	2020	2021	
1.	New Contract/MOU	Design	Implement	Monitor	Review	Monitor	Review	Low
2.	Home 'blue light' role	Plan	Implement	Run	Run	Run	Run	Low
3.	Co-locate with Fire	Plan	Design	Implement	Run	Review	Run	Medium
4.	Flexible paramedic skills	-	Plan	Build	Implement 1	Implement 2	Review	High
5.	Share core patient data	Plan	Plan	Design	Build	Implement	Review	High
6.	Mobile technologies	-	Plan	Design	Implement 1	Implement 2	Review	High
7.	Expanded JESCC	Plan	Build	Implement 1	Implement 2	Review	Implement 3	High
8.	Pooled NEPTS	Plan	Implement 1	Review	Implement 2	Review	Implement 3	Medium

Figure 4 – Implementation Plan

- 5.6. The GFAS Project has delivered the following series of proposals for progressive implementation over the 5-year period 2016 – 2021 and these are consistent with the guiding principles established by the HSSD:
1. Prepare the Emergency Services to support HSSD's planned transformation and integrated health & social care intentions.
  2. Redesign Emergency Medical Services with a focus on patient outcomes, including new 'clinical pathways' and processes.
  3. Retain and extend St John's role as a strategic partner for Emergency Ambulance and Medical Services.
  4. Invest in better skills for Paramedics and Clinical Technicians, and deploy them flexibly network-wide (on Ambulances, fast-response vehicles, within A&E and to the home).
  5. Fully evaluate co-locating the Emergency Ambulance Base from St John's Rohais location with the Fire Service.
  6. Transfer the budgetary and non-clinical oversight role for the EAS from HSSD to Home to provide Home with the combined oversight role for all

‘blue light’ emergency services (Police, Fire and Ambulance) as they work increasingly jointly to their “best practice interoperability” agenda.

7. Pursue better States’ asset sharing and procurement across the Emergency Services (including property, vehicles, mobile technology and other support services).
  8. Properly resource the HSSD ICT effort, e.g. to make possible the future sharing of core patient record data in emergencies.
  9. Operate NEPTS as a distinct service separate from the EAS Contract, with “pooled providers”.
  10. Give notice to agree a “win-win” contract with St John from 1<sup>st</sup> January 2017.
- 5.7. With the exception of Proposal 6, which is recommended for agreement in this Policy Letter, each of the proposals made at paragraph 5.6 will be developed in greater detail, with supporting business cases where appropriate, and some will be the subject of separate future Policy Letters after the General Election 2016. (Some provisional detail on the business cases is supplied in paragraph 10.15 of the GFAS Report attached at Appendix 1.)
- 5.8. After the Steering Group completes the agreed scope of its remaining work in 2015, any resulting activities should be defined and managed within two overarching programmes: the HSSD Transformation Programme and Home’s HOST Programme for emergency services interoperability. This will best manage interdependencies.
- 6. Proposal 6: Transfer of operational oversight of the Ambulance Service to the Home Department**
- 6.1. The HSSD acknowledges that the transfer of operational oversight of the Ambulance Service to Home would provide Home with the combined oversight role for all “blue light” emergency services (Guernsey Police, Guernsey Fire and Rescue Service and the Ambulance Service). It is therefore considered that it would therefore create best opportunity for Home to optimise delivery of its “best practice interoperability” agenda through its HOST programme.
- 6.2. The benefits of transferring operational budget oversight to Home whilst retaining clinical oversight within HSSD include:
1. Clinical standards and the definition of clinical pathways (all patient-related processes and standards) remain with HSSD. Hence there is no additional risk to clinical standards.
  2. Home has already been working with the three 'blue light' emergency services to align various processes and systems, most recently during

2014/15 on the JESCC. Home has actively researched emerging best practices across all emergency services in recent years, in conjunction with its service chiefs, in formulating its HOST strategy for greater collaboration and ‘interoperability’. This has led to the proposal already in the 2016 States Capital Investment Prioritisation (“SCIP”) round to consolidate operational bases to some degree.

Case studies and experience in other jurisdictions have highlighted a range of benefits, including: lower total property/rental costs; greater scope for the use of shared composite vehicles; economies in new technologies, training, common systems, procurement and support services; and greater resilience in the emergency services backing up each other with shared skills at times of extreme operational demand. These benefits and related costs will be brought to the States in a detailed business case as part of the 2016 SCIP evaluation process. It is simply time that the accounting/budgeting practices catch up with clear trends in operational management responsibilities across emergency services, and that budget responsibilities are adjusted accordingly.

3. Islanders are likely to receive the most efficient and resilient quality service if HSSD deploy their clinical expertise to the direction of ambulance service requirements and standards, and Home deploy their common emergency services management, logistics and asset utilisation expertise to the operational aspects of emergency services.
- 6.3. The budget transfer could take place from 1<sup>st</sup> January 2017, when a revised contract with SJARS has been negotiated (with both HSSD and Home involvement), or 1<sup>st</sup> January 2018 (when further practical progress towards co-location has been achieved), or at a date agreed between all parties involved, with the support of T&R.
- 6.4. Home is supportive of the future transfer of operational budget responsibility for the EAS from HSSD from 1<sup>st</sup> January 2017 or afterwards, because this supports the potential benefits of their existing blue light services interoperability strategy (HOST).

## **7. Consultation**

- 7.1. In producing this Policy Letter, together with the comprehensive consultation process, HSSD through the Steering Group has worked closely with Home, the Social Security Department and T&R (on resource implications and ICT matters).
- 7.2. Working under the oversight of the HSSD Board, the Steering Group has shared widely its interim reports and scripted presentations in the spirit of open, consultative government.

- 7.3. Extensive public and professional consultation took place during 2015 and the proposals conform with the results of that consultation. Key stakeholders across multiple departments or specialisms have either been directly involved in the Steering Group or have had their opinions sought. These include the Primary Care Committee of the General Practitioner Practices, who are key initiators of ambulance services and who have confirmed their support for the proposition being proposed to the States.
- 7.4. There have been periodic briefings to the management and employees of workforces potentially impacted by these proposals, including States' employees and SJARS.
- 7.5. Full results of the Public and Professional Consultation run in July 2015 are available in the appendices to the GFAS Report and can be found at [www.gov.gg/gfas](http://www.gov.gg/gfas). Copies of the Report have also been lodged at the Greffe.
- 7.6. The Board of SJARS and the Commandery of St John, which oversees all St John activities in the Bailiwick, have been consulted. Their letter of support for the proposals is attached to this Policy Letter at Appendix 2.
- 7.7. The Law Officers have been consulted as a matter of course and have no comments to make on the Policy Letter.

## **8. Resources**

- 8.1. There are no resource implications associated directly with this Policy Letter and the agreement being sought to transfer the operational budget oversight responsibility for the EAS from HSSD to Home.
- 8.2. The timing of the recommended budget transfer should be determined in agreement with T&R, with preparations made in advance of the 2017 Budget, or the 2018 Budget (if the transfer is made closer to the intended period of co-location of Fire and Emergency Ambulance Services). The budget transfer will be made no earlier than January 2017.
- 8.3. Departmental Sponsors will bring forward separate Business Cases from May 2016, after the General Election, for any spending proposals for 2017 and thereafter, including:
  1. Capital investment requirements for any co-location and shared use of property, in the SCIP process;
  2. The HSSD Transformation components of the Future Ambulance Service proposals;
  3. Other Home capital and revenue components of the Future Ambulance Service proposals;

5. Other ICT-related investments in conjunction with the States of Guernsey ICT function.
- 8.4. As indicated within the GFAS Report, the Steering Group has demonstrated that the separate Business Cases are sufficiently attractive to justify moving to the next stage of analysis; namely, the development during 2016 of full Business Cases, which tie into the existing policies and transformation programmes of both the HSSD and Home Departments.
- 8.5. Finally, in arriving at its recommendations, the Steering Group has been aware of the existence of a substantial deficit in the defined benefit pension scheme for certain employees of SJARS. Although this deficit does not impact directly on the Group's proposals, future funding of the pension scheme will be a matter for consideration by both sides in the financial negotiations concerning the future "partnership" approach, as the States must avoid assuming future financial responsibility for previously created deficits. Legally, the future of the scheme is for the Trustees and St John to determine, and as a result the Steering Group considers that continued access to the knowledge and expertise of SJARS personnel, most of whom are not members of the scheme, is the best way forward for the Island.

## **9. Conclusion**

- 9.1. This project to define Guernsey's Future Ambulance Service is a key step to put into operational practice various components of three States of Guernsey policies: HSSD's Transformation to Integrated Health & Social Care; Home Department's HOST strategy for efficient interoperability for all blue light emergency services; and wider Public Service Reform to invest in people, make better use of shared assets, and deliver improved services and value-for-money for islanders.

## **10. Recommendations**

- 10.1. The HSSD recommends the States to:
  1. Agree the transfer of the budgetary and non-clinical oversight role for the Emergency Ambulance Service from the Health and Social Services Department to the Home Department (and their successors), at a future date to be determined but not before January 2017, thereby providing the Home Department (and its successor) with the combined oversight role for all "blue light" emergency services as they work increasingly jointly to their 'best practice interoperability' agenda.
  2. Note that the Health and Social Services Department (and its successors) are will return to the States during 2016 with Policy Letters proposing the more detailed arrangements to implement the strategy outlined in this Policy Letter and the Report of the GFAS Steering Group, once those plans and Business Cases have been finalised between all parties.

Yours faithfully

P A Luxon  
Minister

H J R Soulsby, Deputy Minister  
M K Le Clerc  
S A James MBE  
M P J Hadley  
R H Allsopp OBE, Non-States Member  
A Christou, Non-States Member



**2015**

# Guernsey's Future Ambulance Service



Guernsey's Future Ambulance  
Service  
Steering Group  
November 2015



## **Guernsey's Future Emergency Ambulance Service Final Report - Proposals & Implications**

<b>CONTENTS</b>	<b>PAGE</b>
1. Executive Summary and Recommendations	<b>3</b>
2. Scope, Approach and Team	<b>7</b>
3. Fundamentals & Future Direction of Emergency Services	<b>9</b>
4. The Changing Nature of Primary Care	<b>10</b>
5. Specific Requirements & Opportunities for Guernsey	<b>11</b>
6. A New Operating Model for Guernsey	<b>14</b>
7. Future of Non-emergency Patient Transfer System	<b>25</b>
8. Performance Management	<b>29</b>
9. Implementation Considerations & Plan	<b>32</b>
10. Future Organisation & Oversight	<b>35</b>
11. Management of Change	<b>41</b>
12. Education & Other Issues	<b>44</b>
<b>Glossary</b>	<b>46</b>

### **Appendices**

Appendix 1. Considerations & Best Practice Research
Appendix 2. Consultation Results Within Guernsey
Appendix 3. Lightfoot's 49 Recommendations
Appendix 4. SJARS Organisational changes post Lightfoot
Appendix 5. 'A Day in the Life' – Changing Clinical Pathways
Appendix 6. Project Steering Group
Appendix 7. Acknowledgements

## 1. Executive Summary and Recommendations

### Purpose & Background

#### Purpose

**1.1** This document proposes the nature and organisation of Guernsey's Future Ambulance Service ("GFAS") to be implemented in a phased manner over the 5 year period 2016-2021.

**1.2** It summarises the work of a team drawn from the project's sponsor, the Health & Social Services Department (HSSD), the Home Department (Home), who oversee Fire and Police 'blue light services', St John, the established, long-term supplier of ambulance services in Guernsey and the Treasury & Resources Department (T&R).

**1.3** Working under the oversight of the HSSD Board and Corporate Management Team, the GFAS Project Steering Group has shared widely its interim reports and scripted presentations in the spirit of open, consultative government:

**1.4** This report, addressing Proposals and Implications, is an attachment to the HSSD Policy Letter for the States of Deliberation of February 2016. It seeks to capture the key messages from the other supporting documents listed in the appendices but not to duplicate them. Therefore, those seeking additional information are encouraged to read the supporting materials contained or referred to in those documents.

#### Background

**1.5** In 2013, HSSD commissioned Lightfoot Solutions UK Ltd to undertake an efficiency review of the St. John Ambulance & Rescue Service (SJARS) who since 1938, had been the sole provider of the Island's only professional Ambulance Service.. The outcome of that review was an influencing factor the following year during negotiations between HSSD and SJARS for the renewal of the Ambulance Service contract, effective from January 2015. By September 2014, negotiations had failed to reach agreement in relation to the terms and cost of delivering the renewed contract, which resulted in a move by HSSD to take over the operation of the Ambulance Service. This move did not receive the support of T&R which led to the intervention of the Civil Contingencies Authority (CCA) which is a group comprising of Guernsey's most senior politicians supported by civil servants, mandated by Law to respond to potential or actual civil emergencies. As a consequence, the CCA negotiated the terms of a four year contract with St John, effective from 1 January 2015, including a break point at two years with six months' notice. Within the terms of that contract was an agreement that initiated the formation of this project.

**1.6** During 2015, a project team worked to define the best sustainable future ambulance service for Guernsey. Their terms of reference were set by a Planning Group comprising of the following four individuals and were subsequently agreed by the Corporate Management Team and Political Board of HSSD.

1. Paul Whitfield - Chief Executive Officer, States of Guernsey
2. Dr. Carol Tozer - Chief Officer, Health & Social Services Department
3. Steve Le Page - Chairman, St John Ambulance and Rescue Service LBG

#### 4. John Hollis - Non States Member, Treasury & Resources Department

##### 1.7 The agreed Terms of Reference were:

1. Consider the Lightfoot Review of SJARS, subsequent contractual events and performance being achieved.
2. Identify the general strategic direction for emergency services elsewhere.
3. Identify 'Best Practice' opportunities for Guernsey.
4. Determine Ambition, Risk, Cost and related Guernsey-specific issues.
5. Evaluate options and priorities for Guernsey, with consultation input.
6. Develop the future 'Target Operating Model' for emergency ambulance and related services (dovetailing into Acute & Urgent Care) and Patient Transfer Services.
7. Propose the future organisation, relationship and governance structures.
8. Propose the summary performance management regime (metrics, outline SLAs & MOUs).
9. Develop an outline phased Implementation Plan for change.
10. Support the resolution of any significant unresolved contract performance issues and exceptions.

#### Summary Conclusions & Recommendations

##### Conclusions

**1.8** Three factors have made it necessary for our conclusions and recommendations to be broader in scope than some might expect for an exercise focussed on ambulance services:

1. Our Terms of Reference (point 6) required us to "dovetail our future operating model for ambulance services into Acute and Urgent Care" services. Thus we needed to be mindful of potential developments and interfaces in all related areas.
2. Our early research into relevant international best practice confirmed that 'collaboration and interoperability' across the blue light services - Ambulance, Fire and Police - is an increasingly important factor for improved outcomes and cost-effective service provision.
3. We are very aware that the Emergency Ambulance Service (EAS) forms part of a critical wider network of emergency services, with aspects spanning health, social and civil care. It is unwise to design a single part of a network without considering the shape of the whole network, because apparently desirable changes to one part of the network can have offsetting undesirable implications for other parts of the network.

## Recommendations

**1.9** We recommend the following for progressive implementation over the 5 years 2016-21:

1. Prepare the Emergency Services to support HSSD's planned transformation and integrated health & social care intentions (ageing, home etc).
2. Redesign emergency medical services with a focus on patient outcomes, including new 'clinical pathways' and processes.
3. Retain and extend St John's role as a strategic partner for emergency ambulance and medical services.
4. Invest in better skills for paramedics and clinical technicians and deploy them flexibly, network-wide (on ambulances, fast-response vehicles, within A&E and into the home).
5. Fully evaluate co-locating the emergency ambulance base from St John's Rohais location to a shared base with the Fire Service.
6. Transfer the budgetary and non-clinical oversight role for the Emergency Ambulance Service (EAS) from HSSD to Home, enabling Home to have a combined oversight role for all 'blue light' emergency services (Police, Fire and Ambulance) as they work increasingly jointly to their 'best practice interoperability' agenda.
7. Pursue better States asset sharing and procurement across the Emergency Services (including property, vehicles, mobile technology and other support services).
8. Properly resource the HSSD ICT effort to make possible the future sharing of core patient record data in emergencies.
9. Operate a Non-Emergency Patient Transfer System (NEPTS) as a distinct service, separate from the EAS contract, with a number of transport providers offering a 'pooled service' accessible to islanders requiring patient/special transport services for various reasons.
10. Give notice to agree a more flexible contract with St John with effect from 1 January 2017, providing greater scope for a 'win-win' arrangement that is not possible with the current essentially 'fixed scope - fixed contract. The new contract with St John to run for a phased 5 year period of change.

**1.10** Detailed proposals covering the above will be submitted, together with supporting business cases, to the next States for approval from May 2016. The Policy Letter for the current States is limited to one proposition, so that preparatory work can proceed during 2016 to reduce the risk of future benefits being delayed unnecessarily.

## Next Steps

**1.11** There are two main next steps:

1. After the GFAS Steering Group completes the agreed scope of its remaining work in 2015, any resulting activities should be defined and managed within two overarching programmes by the two key Departments: the HSSD Transformation Programme and the Home's HOST (Home Operational Services Transformation Programme) Programme for emergency services interoperability. This will best manage interdependencies.
2. A Policy Letter is to be submitted to the States of Deliberation for debate before the General Election in April 2016, so that experienced politicians in the current States can provide further political input.

**1.12** The current States is requested to:

1. Agree the transfer of the budgetary and non-clinical oversight role for the EAS from HSSD to Home. This will provide Home with the combined oversight role for all 'blue light' emergency services (Police, Fire and Ambulance) as they work increasingly towards to their 'best practice interoperability' agenda.

### Financial Implications

**1.13** There are no financial implications for the 2016 States Budget arising from the proposed transfer of the budgetary and non-clinical oversight for the EAS from HSSD to Home. The timing of this transfer should be determined in agreement with T&R, with preparations made in advance of the 2017 Budget, or the 2018 Budget (if the transfer is made closer to the intended period of co-location of Fire and Emergency Ambulance Services).

**1.14** During 2016, after the April General Election, the appropriate Departments will bring forward separate business cases for:

1. Capital investment requirements for any co-location and shared use of property, in the States Capital Investment Prioritisation (SCIP) process.
2. The HSSD Transformation components of the Future Ambulance Service proposals. These will include future proposals relating to NEPTS, within which value-for-money gains can be secured by operating a system spanning multiple States Departments (HSSD, Social Security Department (SSD) and Education Department) and multiple providers (non-emergency ambulances, specialist taxis and others).
3. Other Home capital and revenue components of the Future Ambulance Service proposals.
4. Other ICT-related investments in conjunction with the States of Guernsey ICT function."

**1.15** These will provide the following financial and non-financial benefits:

1. Migrate to efficient 'best practice' operations over a phased period, whilst improving services.
2. Improve value-for-money, outcomes and resilience via flexible deployment of paramedic skills.
3. Improve value-for-money via 'a pooled' NEPTS.

4. Save costs via better use of States property, by exploring co-location of Ambulance and Fire.
5. Save costs or capital via improved sharing or financing of vehicles and equipment.
6. Simplify contractual arrangements with St John, to facilitate greater flexible deployment.
7. Consolidate 'blue light' emergency service operations & budgeting within Home.

## 2. Scope, Approach and Team

### Approach Adopted

**2.1** It quickly became clear to the Project Steering Group that a diverse range of pressures and emerging innovations across healthcare, emergency services, technology, island demographics and funding warranted a fundamental exercise to define Guernsey's best possible Future Ambulance Service. A short-term 'quick fix' approach would neither endure nor best serve islanders in what can truly be a 'life or death' set of circumstances.

**2.2** The approach adopted, therefore, comprised the following six phases of work:

1. International research to understand 'best practices' elsewhere relative to operational approaches adopted in Guernsey.
2. The definition of the extent of 'local ambition' in making Guernsey's ambulance services as good as they can conceivably be. This included workshops on best practices elsewhere, public and professional consultation in Guernsey and 'pressure testing' challenges from members of local professions.
3. The evaluation of options and priorities.
4. The selection of a preferred 'Target Operating Model' (TOM) for EAS and NEPTS in Guernsey, having identified relative benefits and implications.
5. The design of the nature of performance metrics (i.e. key performance indicators) to assess future performance.
6. The definition of steps to be taken to migrate to the new TOM, via a phased implementation plan.

**2.3** This was an approach based on an established Operations Design Methodology tailored to Guernsey and the specific project. We also incorporated the standard Emergency Call Process Workflow diagram (**Figure 1**) into our analysis of options.

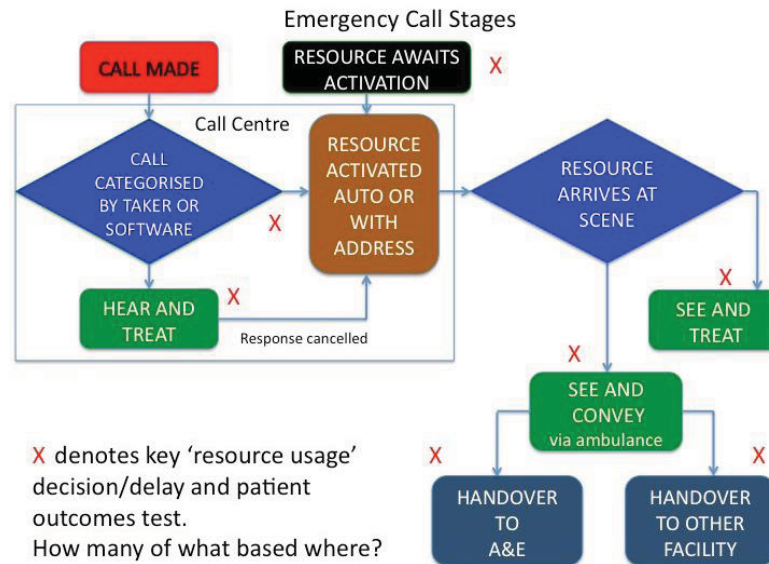


Figure 1

**2.4** Oversight responsibility for the project was exercised by a newly-appointed HSSD Board with a new Minister, Deputy Paul Luxon, supported by a new HSSD Chief Officer (Dr. Carol Tozer, appointed September 2014). All previous HSSD Board members resigned en bloc in November 2014, following a major non-ambulance public service crisis and related investigations during 2014. St John also made significant leadership changes during 2014 and early 2015, involving a new Chairman and Board of the EAS and a re-emphasis of the boundaries between the States' subsidised Ambulance Service and other charitable St John activities.

**2.5** The Lightfoot Review of SJARS in 2013 was an important attitude-changing exercise. Prior to then, the relationship between HSSD and SJARS might be described as 'informal, benign neglect' - the Ambulance Service worked well in delivering the expected level of services to the public and retained high public confidence. However, the SJARS found itself in an unsustainable financial position, which threatened its continued operation. The two main contributors to this were a continuing annual operating deficit and a substantial pension fund deficit. The annual operating deficit was growing, as costs continued to exceed agreed States grant funding, one factor being that the funding of paramedics was borne entirely by SJARS and not the States. Difficult financial challenges across funded and charitable activities followed. The substantial pension fund deficit exacerbated financial and operational challenges, following cuts to pensions associated with the defined benefit pension scheme, which had been transferred to St John Guernsey from St John UK, with the service itself, some years earlier.

**2.6** The 2013 Lightfoot Review was an operational efficiency snapshot at a specific point in time. The 2015 project addressed by this Report has a significantly different scope: it seeks to define Guernsey's Future Ambulance Service within the context of future pressures and changes to healthcare services, social care, emergency services, technology and funding models. In doing so, it also sought wider input from local and international experts, openly shared intelligence reports, conducted interim workshops involving alternative operating models, and received significant public input from an Island survey that achieved one of the highest response rates in recent years. This openness does not automatically result in the final recommendations being any more appropriate, but it did maximise the opportunity for others to help us to arrive at our conclusions. We are very grateful for all such input received.



## Project Team & Wider Input

**2.7** Membership of the Project Steering Group comprised those persons listed in Appendix 6. In addition to extensive international research into emerging 'best practices' in other jurisdictions (Appendix 1), we sought and received valuable input from others, including:

1. The general public and health/emergency professionals in an Island wide on-line survey conducted during June and July 2015 (Appendix 2).
2. Local and international healthcare and emergency ambulance service experts.
3. The Chief Officers of other local emergency services (Fire and Law Enforcement).
4. The Primary Care Committee of GP practices in Guernsey.
5. Current and past members of relevant political boards (HSSD, Home and SSD) and civil servants in those departments.

We are very grateful for the professional advice received.

## 3. Fundamentals & Future Direction of Emergency Services

### Strategic Direction within Emergency Services

**3.1** Our research highlighted the following local, national and international trends;

- An increasing focus on patient outcomes/quality.
- New clinical pathways (innovation in best clinical practices).
- Greater efforts to measure 'full system' performance across the healthcare network.
- Emerging valuable uses of mobile technology.
- Access to mobile patient data by emergency services.
- Joint Emergency Services Control Centre (JESCC).
- Shared support services for Ambulance, Fire and Law Enforcement.
- Greater shared equipment & training.
- Increased "collaboration & interoperability" across emergency services.
- A trend to shared operational bases for emergency services.

### Best Practice Opportunities

**3.2** The EAS can be part of an enhanced collaborative effort. Alternative clinical pathways, mobile technologies and the use of core patient data will present opportunities and challenges. Other jurisdictions are showing that sharing practices and resources across emergency services - "collaboration & interoperability" - offers further opportunities.

**3.3** We have documented and shared our summary research intelligence with key stakeholders throughout the project, including making reference to such developments as part of the public and professional consultation exercise conducted during June and July 2015.



**3.4** We have assessed the potential benefits of such trends and practices for Guernsey and factored them where appropriate into our proposed future 'Target Operating Model' (TOM) for Guernsey.

## 4. The Changing Nature of Primary Care

### Fundamental Forces

**4.1** Guernsey and much of the world is experiencing a combination of the following factors which are requiring governments and healthcare professionals to make difficult judgements and reassess priorities:

1. Changes in patients' health needs and preferences, including long-term conditions.
2. Changes in treatments, technologies and care delivery.
3. Changes in affordability and funding models in an era of global financial austerity.
4. Increases in 'specialisms' to achieve better results and patient outcomes, located in a smaller number of specialist centres.
5. New practices in delivering care by multiple specialist providers, combining clinical care and social care more effectively, resulting in an increasing need to 'treat the whole patient (body and mind)' in a patient-centred care model.
6. Greater deployment of 'care in the community', recognising that a general hospital solution is undesirable and more costly for many requiring care and social support.

**4.2** Further information on these factors can be found in our report *Considerations & Best Practice Research* (Appendix 1) and reference documents referred to therein e.g. the NHS *Five Year Forward View, 2015*.

### Guernsey's Vision

**4.3** At a joint meeting of the relevant Departments (Home, HSSD & SSD), plus SJARS & St John Commandery Board members, the following brief statement was deemed to capture the essence of the vision in moving towards a 'patient centered care' model:

*'Treat the 'whole person', in their environment, physically & mentally, with a range of skills from diverse teams, with good information and outcomes tracked'.*

**4.4** Much can and has been written in other documents about Guernsey's vision and aspirations for healthcare for islanders. We will not duplicate them here. However, noting them, the HSSD Chief Officer provided the following principles to guide the Steering Group when evaluating options for the future:

1. Economies of scale should be pursued wherever possible and appropriate.
2. There should be the maximum sensible integration of practices between the emergency/urgent response services (Fire, Ambulance & Police).
3. There should be transparency in any hybrid funding formula, e.g. public understanding of States support relative to private subscriptions.

4. Emergency/urgent response ambulance services should be distinct from NEPTS.
5. In undertaking a clearer 'commissioning role' with service suppliers, there needs to be a strengthening within HSSD of contract management capabilities/staff.
6. Clear timelines should be provided as early as possible, to aid related forward planning, recognising that a range of interdependencies are likely to exist with other initiatives underway within HSSD.

## 5. Specific Requirements & Opportunities for Guernsey

### Guernsey-specific factors

**5.1** Guernsey must take account of the added impact of an ageing population. The Island is set to move to one of the worst 'age-related dependency ratios' of all islands globally (from a 1.52 to potentially a 1.83 dependency ratio by 2050, per Island Global Research, i.e. approx. 60% worse than in 2015: 100 workers to support 83 dependents, not 52). Therefore, public, private and 'third sector' home-based initiatives will be key.

**5.2** In its favour, Guernsey's inherent characteristics present opportunities:

1. Unlike some larger jurisdictions, the geographical management boundaries of all its services (medical, social and emergency) are aligned. We are aware from international experts (who have 'pressure-tested' the Steering Group's thinking) that a lack of geographical alignment elsewhere between various emergency services has impeded their progress towards increased 'interoperability'.
2. A small, compact community can sometimes take decisions and make faster progress than larger jurisdictions.

### Guernsey's Ambition & Risk Perspective

**5.3** HSSD's Transformation Programme and the associated funding within the Budget approved by the States of Guernsey in October 2015, envisages Guernsey moving to a 'Full Health & Social Care Model.'

**5.4** Over the next 5 years from 2016, changes in different segments of the 'Full Health and Social Care Model' will have consequential effects upon the levels of demand for the EAS and NEPTS. Careful co-ordination of phased changes will be required across the following areas:

1. GP-led community medical health care.
2. Social care and support.
3. Special care (e.g. in the community and specialist centres for dementia, cancer and mental health etc.).
4. Prevention & public health improvement (e.g. obesity, smoking, alcohol and drugs).
5. Acute hospital care and services.
6. Urgent & emergency care, including the use of the emergency ambulance and related services.

**5.5** All major changes involve potential risks as well as benefits. We therefore identified and agreed with the relevant professionals and Departments, the nature of Guernsey's ambition as follows:

1. Ambulance & Emergency Medical Service performance “at least as good as the UK.”
2. Better performance reporting, with a stronger focus on patient outcomes (and clinical pathways).
3. More customer service options, e.g. ‘hear & treat’ capability and minor injuries centre.
4. Flexible use of Advanced Paramedics & Clinical Technicians to improve patient outcomes.
5. Better services to the patient’s home, reducing ‘hospital’ as the default option.
6. Better use of technology in emergencies, with sharing of core patient record data.
7. Better integrated care across the wider Accident and Emergency (A&E) and health and social care network of providers.
8. Patient-centered care for comprehensive service, involving the third and private sectors.
9. Greater collaboration across the Emergency Services for best practice and value-for-money.
10. A clear NEPTS, providing best value-for-money.

**5.6** The level of ambition summarised by the above 10 points was then factored into our subsequent assessments of alternative practices and our final evaluation of options.

## Evaluation of Options & Priorities

**5.7** Very early in the project, we defined the criteria by which we would later evaluate different ‘Operating Models.’ The ranked criteria shown (**Figure 2**), were arrived at by a combination of the GFAS Steering Group and the HSSD Corporate Management Team (CMT).

Operating Model Evaluation Criteria?		
Criteria	Explanation	Importance & Weighting
Delivery of Best Clinical Practice	Best Patient Outcomes	High (10) (HSSD to define publicly).
Ability to meet Service Levels.	Primary objective for islanders.	High (10) (HSSD to define publicly).
Efficiency & value-for-money.	Relevant to public service.	High (9)
Flexibility for migration to future ideal.	Industry trends imply change.	High (9)
Clear management lines/risk.	Muddiness adds delay/risk/cost.	Medium (7)
Scope for further service synergies.	Potential further value.	Medium (6)

**Figure 2**

**5.8** The criteria were ‘weighted’ in importance, so that the most important would be more prominent in the later scoring and assessment of alternative Operating Models

**5.9** The two most important criteria (weighted 10) were ‘patient related’:

1. Delivery of Best Clinical Practices.....for best patient outcomes, and
2. Ability to meet defined Service Levels.....to the customer - a primary objective for islanders.

**5.10** The next two criteria (weighted 9) were also important: without ‘Efficiency & Value-for-money’, services are unnecessarily constrained within available budgets. Without “Flexibility for migration to a future ideal”, we would risk missing out on the ability to take advantage of evolving best practices in emergency medical services.

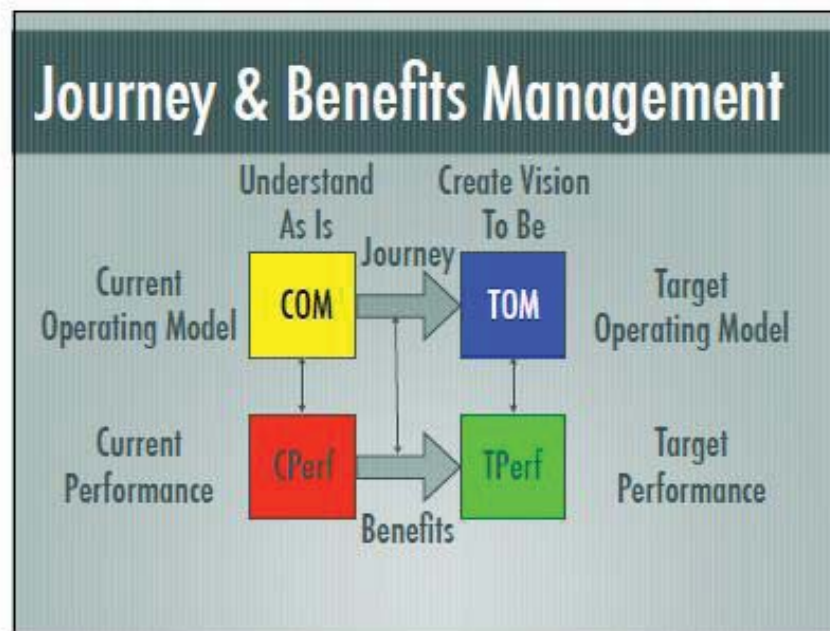
**5.11** The final two criteria are relevant, but were weighted lower at 6: clear and clean management lines for operational planning, related budgets and shared practices are advantageous if slow, muddy and costly management of resources is to be avoided. Finally, some Operating Models can generate greater scope for taking advantage of potential synergies in the wider network of emergency services and care.

## 6. A New Operating Model for Guernsey

### Target Operating Model Considerations

**6.1** An 'Operating Model' is simply a coherent combination of Processes, People, Systems and Infrastructure (e.g. equipment and buildings). Understanding the performance of the Current Operating Model is important to assessing the benefits of change (**Figure 3**).

**6.2** The Target Operating Model is likewise a combination of Processes, People, Systems and Infrastructure. It requires creative thinking to conceive it as good as it can be.



**Figure 3**

**6.3** Conceptually, we will move on a phased 'journey' from our Current Operating Model (COM) to a better TOM. We will only do this if the Target Performance has net benefits over the Current Performance. 'Performance' can be regarded as patient outcomes (or customer service levels), financial (value-for-money), other non-financial factors or 'risk' to service levels etc. under different scenarios. We have stressed before that patients and Clinical Pathways are changing for various reasons and such changes influence the relative merits of different Operating Models.

**6.4** As illustrated in our report on 'Considerations and Best Practice Research' (Appendix 1), other jurisdictions, including St John in Australia, optimise the use of new mobile technologies and communications in emergencies by linking Ambulances/Paramedics to Core Patient Health Data and to hospital A&E departments.

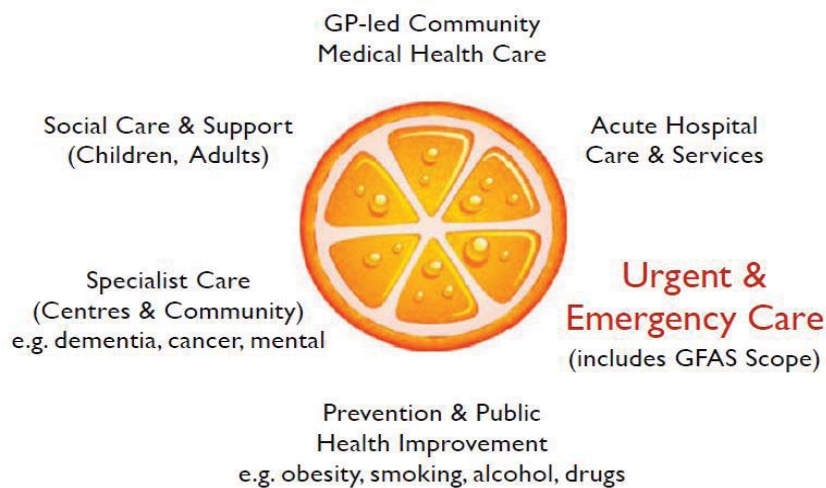
**6.5** Using some of these mobile technologies is indeed 'child's play' and it is increasingly commonplace for medical health and fitness data to be stored on mobile phones. Nowadays schoolchildren can set up their 'Medical ID' on a standard Apple app. In an emergency, safeguards enable the Emergency Services in jurisdictions utilising such technology to electronically bypass the handset security and access that information.

**6.6** Some medical professionals and the public sector are lagging far behind children

in the use of modern mobile technologies.

**6.7** During our Interim Briefing (to the collective Boards of HSSD, Home, SSD and St John), we introduced the 'segments of the Orange' simile (**Figure 4**), representing the scope of integrated health and social care, and stressed that future changes elsewhere can have significant knock-on effects to the Emergency Ambulance/Medical Service and to the NEPTS. That is one reason why our research has looked widely at changes in health and care services, ambulance services and emerging technologies.

#### ..... Migration to a Full Health & Social Care Model



**Figure 4**

**6.8** One example of such emerging technologies is 'Babylon', a 2015 innovation, which could have a significant impact upon how some health services are delivered in the future. Babylon and similar innovations could change the mindset of patients, GPs and other professionals. It also affects the shape of Processes, Systems, networks of People and the Infrastructure supporting health services; it can both complement and disrupt the whole shape of 'Operating Models.'

**6.9** Babylon enables the public/customer/patient to access the following services on their mobile phone or tablet computer:

1. Ask health-related questions and get immediate, reliable answers.
2. Book medical appointments. These may be a video-based consultation with a GP, or a specialist.
3. Monitor their health statistics and trends, similar to standalone health & fitness apps which are becoming popular.
4. Receive test results and notifications of prescriptions being delivered.
5. Receive medical services within a healthcare benefits insurance plan.

**6.10** Babylon was developed in Jersey, a product of the 'Digital Jersey' initiative and is targeted initially at the Jersey, UK and Irish markets. It is 'free' to sign up to but has 'in-app' financial purchases.

**6.11** Moving on from examples of innovation and returning to wider Operating Model

considerations, the key question is therefore: "Do we have the vision to conceive a better TOM and thereafter the ability to implement it?"

### Influencers of Total Network & Channel Demand

**6.12** Population size and demographics (ageing) are key, predictable influencers of demand upon the health and emergency care network. Innovation and new medical treatments will add further to those demands, while improved public health initiatives and education can help to suppress demand.

**6.13** Our international research on alternative models and networks of care also generated some interesting performance issues and trade-offs. The simple conclusion from this was to avoid any temptation to optimise one section of the emergency care network in isolation at the expense of others and the whole network. The trade-offs listed below are illustrative of outcomes experienced elsewhere and locally.

- 'Hear & Treat' phone-based services v. Primary Care Hours
- 'Hear & Treat' caution drives 'Convey & See'
- 'Arrive & Handover to A&E' can become 'Arrive & Wait'
- Hospital bed-blocking drives 'Refuse & Wait'
- 'Refuse & Wait' drives Ambulance Costs and lower Patient Service.
- Lack of home-based Social Care also drives Hospital bed-blocking.
- Hospital bed-blocking drives up total Healthcare Costs.

**6.14** As a result of such trade-offs, leading jurisdictions are seeking to use 'patient outcome measures' across the total network, so that the 'full patient experience' and outcome is measurable for performance assessment. Although this sounds logical, it has significant implications to work well in practice, posing further questions and trade-offs:

- Identification of patient throughout network?
- Core records available to emergency professionals?
- Total network & channel capacity?
- Total network & channel outcome measures?
- Who decides & who 'performs'?
- Who decides & who bears which costs?
- Role of Service Level Agreements?

### Evaluation of Options

**6.15** Having defined our evaluation criteria and weighted scoring approach, we then defined 6 major Operating Models for evaluation, keeping an open mind for others emerging from research:

1. No Change - Continue 2014 arrangements into the Future
2. Absorb into HSSD (per 2014)
3. Agency Oversight by HSSD
4. Agency Oversight by Home
5. Operate an Emergency Services structure, overseen by Home.



## 6. Fully Integrated Fire & Ambulance Service

Option 1 is effectively the arrangements in place with St John in 2014. St John has moved on significantly since the Lightfoot Review.

Option 2 represents absorbing the EAS into HSSD, as proposed by HSSD in September 2014.

Option 3 represents continuing with St John as a separate 'commissioned partner', with improved governance and performance oversight. This is closer to what has been happening in 2015.

Option 4 represents HSSD continuing to establish the clinical pathways and standards for care as 'clinical commissioner', but Home having 'operational and budgetary oversight' of operational performance, due to the increasing collaborative overlaps between all Blue Light Emergency Services - Ambulance/Medical, Fire and Police.

Option 5 also represents HSSD being the 'clinical commissioner', but Home pursuing opportunities for 'shared facilities and interoperability' across aspects of all emergency services, in line with evolving best practices. The JESCC, which went live during summer 2015, is one early example of this.

Option 6 represents a fully integrated Fire & Ambulance (FIFA) Service, operated by the States as a single service with a single multi-skilled structure. This is an approach used in some other jurisdictions, but is a radical change from practices currently used in Guernsey and the UK (from which many of Guernsey's practices are derived, due to regulatory oversight).

We also considered 'Other Customised Approaches' (not shown), e.g. partnering with others.

**6.16** In our *Considerations & Best Practice Research* document (Appendix 1), you will see references to jurisdictions with varying degrees of combined Fire and Ambulance Services. The GFAS Steering Group therefore asked Guernsey's Chief Fire Officer, Jonathon Le Page, to investigate this further and report accordingly. In October 2015, he submitted a comprehensive report. The report refers to the practices of many jurisdictions, before identifying a significant range of opportunities and risks associated with adopting such an approach in our 'unique' local Guernsey. This report formed a major part of our deliberations regarding the relative merits of Option 6.



**6.17** The Steering Group subsequently assessed and scored the 6 Options and used the further 6 weighted scores to arrive at a weighted score for each Option (**Figure 5**).

Applying Evaluation Criteria to Options?								
Operating Model Option	Raw Evaluation Criteria Scoring and Weighting						Weighted Score	
	1	2	3	4	5	6		
	Best Clinically Raw Weight	Service Levels Raw Weight	Efficiency/Cost Raw Weight	Flexibility Raw Weight	High Lines/Risks Raw Weight	Future Synergies Raw Weight		
	10	10	9	9	7	6		
1. No Change - Continue 2014 Arrangements into the Future	8 80	8 80	7 63	7 63	7 49	7 42	377	
2. Absorb into HSSD (per 2014)	8 80	8 80	7 63	7 63	7 49	7 42	377	
3. Agency Oversight by HSSD (with revised governance).	9 90	8 80	7 63	8 72	8 56	7 42	403	
4. Agency Oversight by Home	9 90	9 90	8 72	8 72	9 63	8 48	435	
5. Operate Emergency Services structure, overseen by Home.	9 90	9 90	9 81	9 81	9 63	9 54	459	
6. Fully Integrated Fire & Ambulance (FIFA) Service	9 90	8 80	9 81	8 72	7 49	10 60	432	

**Figure 5**

**6.18** Option 1, the 'No Change' option at 2014, scored a total of 377, (far right). The absolute number is not important, because we are comparing the relative attractiveness of different options.

**6.19** Option 2, 'Absorb into HSSD' as proposed in September 2014, might have scored marginally higher for two main reasons. Firstly, a greater control over Clinical Oversight (Criteria 1) might have been thought capable of being applied directly and secondly, some greater efficiency of operations might have been possible via direct management. Interestingly, we did not see 'direct absorption by HSSD' as being the best route to achieve efficiency, cost savings or value-for-money. Neither did the T&R assessment in September 2014, nor the CCA at that time; both cited significant risks, which also extended to potential service level and financial risks. Hence Options 1 and 2 scored similarly overall.

**6.20** Option 3, 'Agency Oversight by HSSD', is closer to the 2015 Operating Model. It incorporates numerous changes recommended by the earlier Lightfoot Review, accompanied by a better governance regime and reporting of Key Performance Indicators. The improvements have been achieved by replacing a loose or non-existent monitoring role and applying a more professional partnership and contractual relationship between the two key parties: commissioner/customer and supplier. (There is still further to go with commissioning practices at HSSD). As most industries in the modern world have demonstrated (and also communist Russia and China since the 1950s), state ownership of all the resources in the chain or network is neither the only, nor best way to secure enduring performance and efficiencies. Professional partnerships, involving parties deploying their best expertise, can achieve more in a changing world. Thus Option 3 scores marginally higher in strengthened Clinical Oversight and Better Management Lines/Risks via a clearer contractual arrangement, stronger clinical oversight bodies being established and shared KPI monitoring being

implemented. Option 3 could continue to evolve and develop in future.

**6.21** Option 4, however, scores higher still. It retains the benefits of Option 3, but has the ability to add three things, due to common oversight by Home of all Blue Light Services in an era when Ambulance, Fire and Police are driving their processes, systems, infrastructure and people towards greater ‘interoperability.’ Efficiencies, cleaner operational management lines and future synergies (including greater operational back-up and lower service risks) are possible.

**6.22** Option 5, implementing a clear ‘Emergency Services Structure’ with common oversight and maximum teaming, sets about securing additional resilience and value-for-money opportunities from the ‘interoperability’ mindset being pursued in other jurisdictions, starting to emerge in the UK, and having been achieved in Europe, North America and Asia. Although Option 5 scores the highest and implies an enduring, evolving partnership between St. John and Home.

**6.23** Option 6 involves some complex trade-offs between synergies, efficiency and costs on the one hand, and risks or critical ‘care culture’ changes impacting service levels on the other. Even within each area of scoring, there are further complex trade-offs, of which some relate to professional ‘hearts and minds issues’ of the respective workforces delivering care, e.g. there may be greater ‘clean management reporting lines’ in an integrated workforce and improved resilience in logistical back-up services, but this might be offset by a lower, true ‘care’ delivery to the public if the ‘care culture’ is felt to be diminished in any way, or ‘traded away for efficiency gains.’ (This is something which the NHS feels may have happened with aspects of nursing in the UK). Furthermore, it is undesirable for Guernsey to take the risk in pioneering implementation of this prior to the UK, given that currently-accepted regulatory working practice standards (governed by separate Fire and Ambulance Service regulatory bodies in the UK) would need to be redesigned in Guernsey first, probably at disproportionate effort and cost.

**6.24** Neither the Steering Group, nor the public, nor professionals in the Guernsey consultation, saw any non-Guernsey agencies as having a stronger proposition as a quality supplier in preference to St John. We also saw less potential in other Operating Models than those we propose elsewhere in our GFAS report.

## Target Operating Model & Implications

**6.25** Moving on from the detailed numerical scoring (**Figure 5**), the summary below seeks to capture the essence of the choice of Option 5 by the GFAS Steering Group.

Recap of Evaluation of Options			
	Options	Weighted Score	Conclusions
1	No Change or 'Fine Tune'	377	Unable to fund age-related services
2	Absorb into States - HSSD	377	Loses some shared Blue Light benefits. HSSD Transformation overload
3	St. John Overseen by HSSD	403	Some shared services benefits
4	St. John Overseen by Home	435	Greater shared services benefits
5	St. John Partners with Home - Emergency Services Structure.	459	'Best of breed' teaming benefits. Increases 'interoperability' gains
6	Fully-integrated Fire & Ambulance (FIFA) Service	432	Scope for marginal gains. Substantial culture/care/other risk

**6.26** Of course, the relative scores of the options listed above are driven by an understanding of the more detailed combinations of processes, systems, people and infrastructure associated with each option. We list below some of the features associated with the TOM:

### Target Operating Model - Processes:

1. New HSSD Clinical Pathways and Outcomes for accident/emergency responses and outcome KPIs.
2. Aligned 'Blue Light' processes and equipment across all services, including related training.
3. HSSD commissioning role fully established for integrated patient care (medical and social).
4. Home operational oversight role - all Blue Light operations, with greater 'interoperability.'
5. Shared processes (and support systems) between Ambulance and Fire Services at common location.
6. Segregated contracts for EAS and NEPTS.
7. Greater deployment of services to the home; Hospital no longer the automatic 'default.'
8. Greater assessment of patient social care needs at home, rather than segregating medical needs.

### Target Operating Model - Systems:

1. Expanded scope of JESCC - mental & social. Additional medical software modules, plus A&E linkages.

2. Shared Core Patient Records (& opt out) system to be established and successfully implemented.
3. Good interfacing to patient mobile (phone) medical data and 'apps' for personal medical data.
4. Shared emergency network systems for tracking end-to-end patient outcomes.
5. Upgrade mobile 'blue light' technology/communications enabling medical practitioners remotely access data and communicate via video links etc.
6. Pooled Patient Transfer System for non-emergencies, with simpler booking & billing.

#### **Target Operating Model - People:**

1. St John confirmed as trusted provider; longer, flexible contract for skills investment.
2. Skills spectrum widened and increased for Paramedics, Technicians & Nurses to match demands.
3. Flexible deployment of Paramedics; rostered across network (A&E and JESCC) for experience.
4. All 'people' (professionals & third sector) feel part of a 'virtual hub' of skilled providers.
5. Pan-island teamwork for integrated patient care - medical and social.
6. Strong ICT systems encourage wider team communication - central and dispersed specialists.
7. Greater common rostering of Ambulance and Fire personnel, dictated by requirements.

#### **Target Operating Model - Infrastructure:**

1. Shared Emergency Ambulance Service base with Fire Service.
2. Purchase of next generation of multiple use emergency Ambulance and Fire vehicles.
3. Better use of capital assets (shared property, vehicles etc); better States financing options.
4. A&E expanded with Minor Injuries Centre at PEH; pooled triage and paramedic support.
5. Shared 'open' Non-emergency Patient Transfer System (NEPTS) - booking, scheduling & billing.
6. St John non-EAS property opportunity at Rohais - let, lease, capital sale?

**6.27** The general benefits of the TOM, as we migrate from past practices to future practices, are summarised below. The respective values of these will form part of the detailed business cases to be approved before individual investment initiatives are launched.

	<b>From</b>	<b>To</b>
1.	Limited HSSD service spec	Better defined clinical pathways
2.	Patchy outcome reporting	Known/better patient outcomes
3.	Limited patient choice	Greater patient service choice
4.	Patient Record constraints	Network-wide access to core
5.	Service/cost muddiness	Greater patient cost clarity.
6.	A&E resource constraints	Greater A&E resource flexing
7.	Muddy paramedic funding	Enhanced roles for paramedics
8.	Poor technology support	Common mobile technology
9.	Limited care to home	Greater range of home care
10.	Embryonic JESCC	Extended service JESCC
11.	Charity subsidising States (or vice versa)	Clear, segregated service costing.
12.	Costly Patient Transfers	Cost-effective patient transfers
13.	Ad hoc Services sharing	Active collaboration & sharing
14.	Separate operational bases	Shared operational bases
15.	Managing isolated units	Managing emergency network

**6.28** In addition to identifying the general benefits above, we further assessed the benefits for the States and St John in moving to the proposed TOM:

#### **Benefits for States - HSSD**

1. Retains role for setting clinical standards and pathways.
2. Commissions clearer, formal clinical standards and KPIs.
3. Capitalises on JESCC extension for HSSD integrated care vision.
4. Transforms to 'best practice' integrated clinical & social care.
5. Leverages skills of Home for full 'blue light' operations.
6. Leverages paramedic skills for A&E, calls, home & telemedicine.
7. Gains from better value for money (vfm) shared use of property, vehicles & PTS.

#### **Benefits for States - Home:**

1. Secures more benefits from expansion of JESCC investment.
2. Progresses HOST Strategy - 'blue light' interoperability.
3. Builds on post-JESCC 'blue light' collaboration.
4. Improves mutual team understanding, back-up & resilience.
5. Gains from better vfm shared use of property, vehicles.
6. Simplifies operational planning & budgeting - one States Department.

### **Benefits for St John: "an opportunity-generating change."**

1. Public recognition of brand and quality of care/service.
2. Longer-term contract for certainty & investment in people.
3. Simplified contract, involving less profit and loss risk & finance.
4. Flexible 'strategic partner' contract - 'best practice' reference.
5. A property opportunity - space/capital asset/lease.
6. Further strategic opportunity - HSSD integrated care to home.
7. Core driver in new 'pooled' modern PTS system.

### **Benefits for Islanders**

**6.29** Perhaps most importantly, the Benefits for Islanders were also identified as follows. These are being tested in a further round of consultation via 'A Day in the Life' workshops with patient/specialist groups and related professionals.

1. More likely to receive better skilled treatment in emergencies.
2. More likely to receive emergency treatment faster.
3. More likely to receive coordinated health & social care.
4. Less likely to 'bed block' in hospital, awaiting 'other processes.'
5. More likely to be seen in comfort of own, safe home.

### **Flexible use of paramedics across the network**

**6.30** Whilst the catalyst for this Review was the difficult 2014 negotiations for the renewal of the Ambulance Service contract, it is the future that has shaped our findings, underpinned by demographic data, external research and the burgeoning cost of the delivery of health care. Collectively, these are the factors that should incentivise and shape the effective restructure of the delivery of services and collaborative working.

**6.31** The unscheduled care system needs to change how it identifies people at increased risk of a need for urgent or emergency care treatment and to manage that risk with services, care and support at or close to home, preventing needless and avoidable emergency hospital admissions. Reducing unnecessary attendances at A&E may help to reduce unscheduled hospital admissions and bed days. Various value for money initiatives within the proposed TOM will support that aim e.g. better use of collaborative resources will increase available investment to upskill staff in other areas.

**6.32** All the evidence indicates that the scale and pace of change will increase over the coming years and this Review has taken that into consideration, with a focus on placing ambulance services within a wider, whole system.

**6.33** It is widely believed that many people attending A&E Departments do not need to be there and would be better served elsewhere, whether they require minor interventions or not. One way to resolve this is to bring the hospital to the patient and this has been the primary driver behind the development of Advanced Paramedics or Emergency Care Practitioners (ECPs) within the NHS. Elsewhere in this report (1.9 & 5.5) there have been references to investment in better paramedic skills and the flexible use of Advanced Paramedics. What does that mean?

**6.34** Through the development and deployment of Advanced Paramedics in England and Wales, many other benefits have emerged as their practice evolves. This is especially true where Advanced Paramedics work in a number of different environments, usually by rotation, as the skills and experience of each role and environment often directly benefits their practice in others. An Advanced Paramedic is able to provide much more care to the patient, including resolving many calls at the point of response, and referring patients onwards to different care pathways using their own transport, all of which avoids admission to hospital. This makes Advanced Paramedics more operationally effective and frees up other ambulance clinicians to respond to 999 calls. Typically, Advanced Paramedics rotate their practice through two or more of the following areas;

- Emergency response (999)
- Out of hours home responder, telephone advice and face-to-face
- Self-present environments e.g. A&E, minor injuries clinic
- Community Care in hours (GP surgery, home visits)

**6.35** Remote access to core patient data or service directories via mobile technology will be key to maximising opportunities for the operational effectiveness of Advanced Paramedics and indeed other ambulance clinical technicians. Without that technology, opportunities for Advanced Paramedics to divert or prevent unnecessary hospital attendances will be reduced.

**6.36** A new vision for the Island's ambulance services which is clearly defined, realistically achievable and aligned to the whole system direction of travel for unscheduled care services needs to be agreed as a first step. Everything else, including how services are planned, delivered, measured and funded should flow from this vision.

**6.37** The Ambulance Service is an integral part of the future urgent and emergency care system, with further opportunities through the emerging new models of care. These opportunities are set against a background of recruitment challenge and the need to review current training programmes to ensure that the workforce is flexible, has the right skills to deliver out-of-hospital care and forms part of a wider multidisciplinary approach.



## 7. Future of Non-emergency Patient Transfer System

### Current Non-emergency Patient Transfer Function

**7.1** The Non-emergency Patient Transfer System (NEPTS) warrants a separate Target Operating Model to the EAS, otherwise both can operationally compromise each other in terms of scheduling and availability. This view was confirmed by our research in other jurisdictions and reinforced strongly by one of our ‘expert pressure testers’, Hayden Newton.

**7.2** With multiple suppliers (primarily St John, but other providers too), evidence indicates that there is scope to improve on current arrangements.

**7.4** Patient requirements are currently met and financed by multiple service providers and can range from complex to simple. Demographics indicate that demand for these services will grow. We therefore need to conceive a practical alternative, which will achieve net benefits and adequately handle the current complex ‘cost authority’ process, which is split across several States departments.

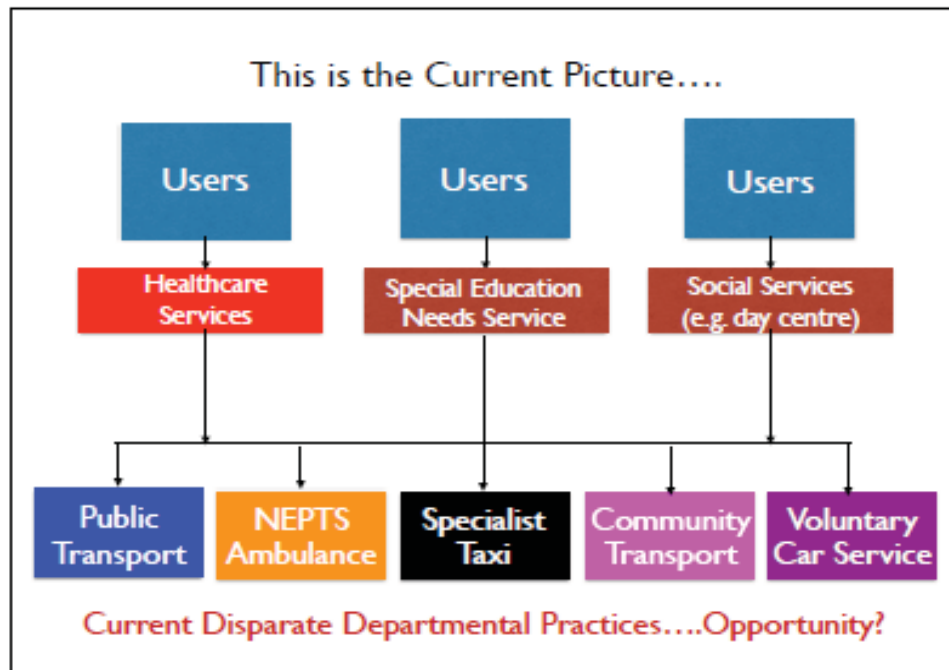
### Performance & Costs; Issues & Opportunities

**7.5** At an early stage of this project the SJARS Chairman suggested that we should contemplate an “Uber Taxi approach with a clinical overlay”, meaning:

1. A common technology-based booking system (capable of mobile self-booking) for all users.
2. A co-ordinated system developed and funded by the States or others as a community-wide scheme.
3. Having the capability to recognise specific customers and specific assistance needs/profiles (the “clinical overlay”).
4. Recognising entitlements or authorisations for charging/billing/payment purposes.
5. Starting with the high volume or commercial providers, then opening the system to other specialist charities when proven and appropriate, e.g. some specialist charities who are reported to have under-utilised vehicles/volunteers.



**7.6** HSSD is one of three States Departments (**Figure 6**) funding a range of transport providers. Education provides transport for 'special educational needs' children and in certain circumstances, SSD provides funded transport for benefit claimants attending medical appointments.



**Figure 6**

**7.7** During a workshop with service providers and user groups, we concluded that:

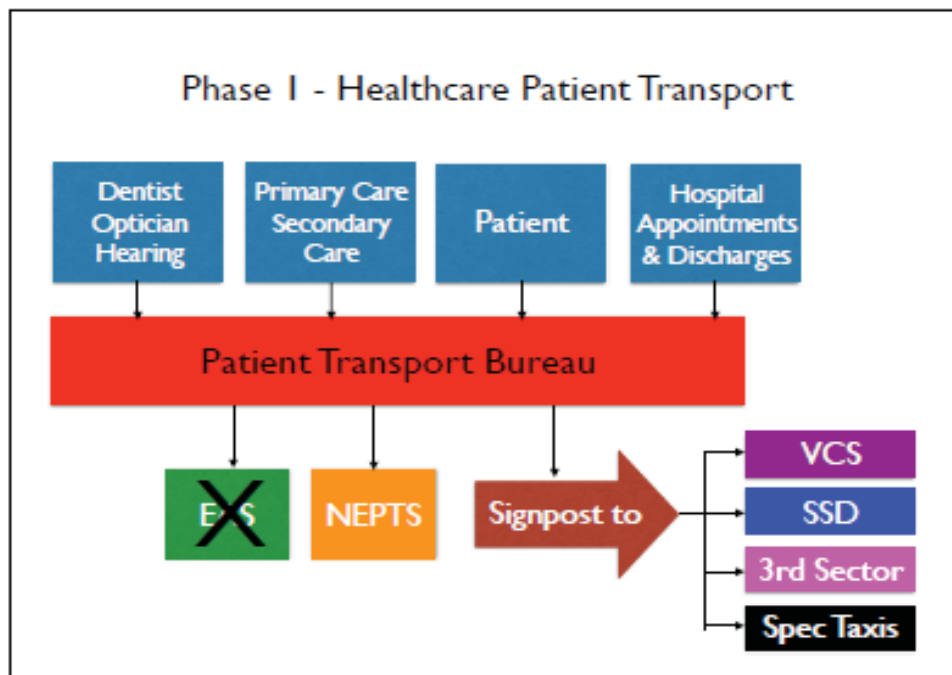
1. Different arrangements would provide greater value-for-money.
2. An opportunity exists beyond solely within Healthcare Services to bring together these disparate departmental practices.

**7.8** Our conclusions are reinforced by a separate written submission made in November 2015 by Ageing Well in the Bailiwick, in response to the States Community Survey on Public Service Reform which made the following suggestions relating to services for older people:

1. Develop “a single front door” to access community services.
2. Enable gatekeepers to effectively to signpost people in the right direction.
3. Improve awareness of and access to care services
4. Resolve the considerable uncertainty of how to access transport for medical appointments.

## Proposed Future of Patient Transfer Function

**7.9** Phase 1 of Change can be carried out in the near term, solely within HSSD's mandate (**Figure 7**):



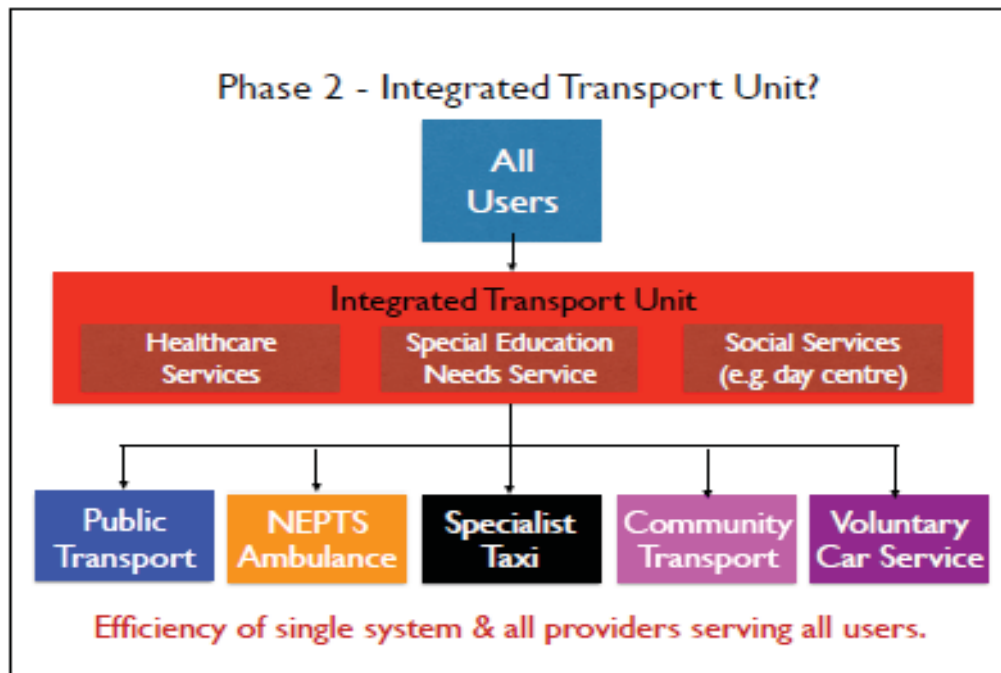
**Figure 7**

1. A Patient Transport Bureau, operated by or on behalf of HSSD, receives transport requests from multiple sources.
2. It then determines needs, entitlements and approvals for a NEPTS or 'signposts' the requestor to other potential service providers e.g. the Voluntary Car Service (VCS), currently funded by HSSD, SSD, who under certain criteria can assist with the funding of transport, usually taxis, the Third Sector or specialist taxis.

**7.10** Unlike in Guernsey, users of voluntary car schemes in other jurisdictions e.g. England and Wales, pay a subsidised contribution towards the cost of journeys. Demographic data and a shift towards the delivery of more home/community based healthcare services will in future increase the pressure and demand upon these services. The planning of any future reconfigured service delivery should consider the benefits of subsidised payments by service users.

**7.11** There are occasions in Guernsey when non-emergency patients require transportation on a stretcher (e.g. elderly people from care homes being admitted or discharged for a pre-booked hospital procedure). Currently this requirement can only be met in 2015 by deploying an Emergency Ambulance and crew operated by the EAS. We envisage that need being met in the future by the NEPTS provider. The use of an emergency ambulance would then be better utilised for emergency use only.

**7.12** Our proposed TOM for Phase 2 (**Figure 8**), based upon a Uber Taxi approach with a clinical overlay, extends beyond merely Healthcare Services and HSSD. The model illustrates how the Integrated Transport Unit (ITU) acts as a single point of contact for all users e.g. hospital, GP, patients, who have a health/social care transport requirement. The ITU could be operated by the main transport provider or by a third party. Overall, the model provides an opportunity for the States of Guernsey to maximize efficiency and flexibility of its cash and physical assets invested in this area of transportation.



(**Figure 8**)

1. All users and States Departments access a common, comprehensive system (which may be called the 'Integrated Transport Unit' or a more appropriate final name).
2. All providers make their services available to it.
3. The ITU system and operator allocate the most appropriate and cost-effective option available to meet the specific needs of the patient/customer for each journey or sequence of journeys.

**7.13** Our evaluation of options for a NEPTS was driven by an understanding of the more detailed combinations of Processes, Systems, People and Infrastructure associated with each option. We list below some of the features associated with the Target Operating Model:

**Target Operating Model - Processes:**

1. PTS segregated from EAS contract.
2. Single point for transport bookings.

3. Migrate to self-booking mobile systems.
4. Open to further providers & charities.
5. Share service with other States Departments.

#### **Target Operating Model - People:**

1. Overseeing pooled transport.
2. Familiar with all providers.
3. Can be a home-worker.
4. Intervene when system requires.
5. Linked by phone/system network.

#### **Target Operating Model - Systems:**

1. New self/group booking system.
2. Matches customer needs to providers.
3. System provides cost-effective matching.
4. System includes 'clinical overlay.'
5. System handles entitlements & billings.

#### **Target Operating Model - Infrastructure:**

1. States or non-States entity.
2. At provider/home-worker base.
3. Providers own transport/bases.
4. System knows vehicle availability.

## **8. Performance Management**

### **Performance Management Regime**

**8.1** We believe that the oversight approach adopted by the States of Guernsey (T&R) during 2015 in relation to certain States Trading Entities is worthy of consideration in any future contractual arrangement with SJARS. Both types of entities are managed by their own professional Boards, with States oversight, but without undue political interference in professional operations for the long-term service and benefit of islanders.

**8.2** Such arrangements incorporate clear political and strategic objectives and key performance indicators. In addition, operational management and performance are

judged at three levels:

1. Strategic Planning - sound, appropriate plans.
2. Operational Efficiency - operational benchmark comparisons and delivery of KPIs.
3. Customer Service - range and quality of service, based on periodic customer surveys.

**8.3** Contract-related performance reporting arrangements required by HSSD, of St John (and others), has changed greatly since 2014, after the Lightfoot Review highlighted the loose practices previously in place and the need for a more professional commissioning approach by HSSD.

**8.4** Current best practice trends elsewhere have moved towards tracking 'patient outcomes' across the full set of clinical processes or 'clinical pathways' through which a patient passes. This applies equally to patients handled by the EAS and the NEPTS.

**8.5** As illustrated in our report (Appendix 1), this trend is also resulting in a gradual move to revise ambulance service KPI reporting. Greater emphasis is being placed on getting the best 'patient outcome' by deploying skilled resources to where they are needed. Correspondingly, less emphasis is being placed on the simpler forms of time-based ambulance vehicle response reporting (although response times do remain important).

**8.6** Locally we need to address other factors before we can evolve much further in our KPI reporting:

1. KPI reporting has been instigated since Lightfoot and is embedded into internal management practices and reporting from SJARS to HSSD.
2. Current KPIs are agreed, based on the Lightfoot Review recommendations and are reported regularly.
3. 'Best Practice' is evolving from time-based to patient outcomes, and will continue to evolve.
4. KPI reporting cannot evolve fully to patient outcome KPIs before:
  - a. Agreed clinical pathways/processes are defined (by HSSD)
  - b. We can track start-to-end patient outcomes (IT reliant).
  - c. We can identify patients (records) 'in the pathways.'
  - d. All involved can provide information (to patient records).
  - e. Investments are made in shared core patient records.
  - f. Emergency Services have mobile technology (as elsewhere).

## Key Performance Indicators

*'Not everything that can be counted counts, and not everything that counts can be counted' – Albert Einstein*

**8.7** It is rather timely given the scope of this project that in November 2015, the National Ambulance Commissioners Network (part of NHS Clinical Commissioners, representing ambulance commissioners working across all 11 ambulance trusts in England) embarked upon a process of consultation with all

stakeholders to review the scope, design and delivery of future ambulance services and the means by which such services should be measured.

**8.8** It is recognised, as in many parts of the NHS in England, that the current way in which ambulance services are delivered were not designed to meet the needs of today's population. Health and care systems cannot afford the year-on-year increases in activity and so the way the service is provided and commissioned needs to change to ensure that the system remains sustainable going forward, while providing the best care for patients.

**8.9** As a consequence, the following key recommendations are being promoted by the Commissioners:

- The ambulance service should develop into a mobile health provider, working in multidisciplinary teams.
- There should be a refocus on commissioning and provider systems that support non-conveyance and provision of the right care closer to home as its principal aim for most patients, whilst continuing to provide immediate transport and treatment solutions for those patients who need a fast response.
- There should be a shift away from time-based targets for the majority of responses, to ones focused around patient and clinician experience and patient outcomes, building on the current ambulance quality indicators.
- There is a need to develop a workforce and training plan with commissioners to support the shift to new models of care which are realistic in terms of timescales for implementation.
- Collaboration is fundamental in developing new models of care through a multiplicity of collaborative forms including sub-contracting, alliance and prime providers.

**8.10** Similar issues to these recommendations were identified and shared during briefings undertaken by this Steering Group, as the passage of our research and consultation evolved.

**8.11** The Steering Group believe that future service targets should be based upon patient outcomes, building on the current quality indicators and patient experience data, with a reduced focus on time-based targets other than for the most critical patients requiring such a response. Determining those targets will be a matter for HSSD, as the commissioning body, in consultation with the providers of ambulance services. The framework and timing of the introduction of such targets will be dependent upon the scope and timing of HSSD's development of hospital and social care services and the wider supporting ICT infrastructure. It would therefore be inappropriate and premature for this Committee to seek to specify new KPI targets at this time, other than in the wider holistic sense.

## Interim Performance & Costs

**8.12** Following the 2013 Lightfoot Review, SJARS has evolved, moving from their previous 'Operating Model' to the current 2015 Operating Model. Examples of these organisational changes in Process, People, Systems and Infrastructure are detailed within Appendix 4.

**8.13** Summarised below is the progress achieved by SJARS in relation to Lightfoot's 49 recommendations (Appendix 3). Some of the recommendations required parallel changes in areas outside of St John's sole control, e.g. in HSSD or elsewhere, such as the implementation of a JESCC, which went live in Summer 2015.

- There were 49 prioritised recommendations
- 90% were agreed by HSSD & SJARS of which:-
- 51% are complete with:-
- 34% in progress
- and 14% not commenced, comprising:-
- 5 contested (9, 13, 18, 24, 29),
- 1 for HSSD (27)
- and 1 not started (45).

There were no major contract exceptions during 2015 between HSSD and SJARS that required the GFAS Steering Group to intervene.

## 9. Implementation Considerations & Plan

### Phased Implementation

**9.1** In practice, we need to phase change over time, either to reduce the risks associated with major change or because there are external dependencies which need to be met along the way. In addition there are a number of interdependencies within HSSD and Home. Furthermore, it is sensible to incorporate flexibility and options into TOMs and phases. This is because economics or other factors can and will change during a 5 year journey.

**9.2** As a result of such interdependencies, and related risks, it would be wholly unrealistic to portray now a complex 5 year bar chart showing all tasks, dependencies and deadlines. It would become rapidly out of date, wrong and be a misleading waste of effort.

**9.3** Any one or more of the dependencies listed below could be disruptive, resulting in missed deadlines:

1. Investment in people/skills - paramedics/care culture extension/interoperability.
2. ICT investment success for resilient patient records/mobile systems.
3. Roll-out of HSSD Transformation and JESCC enhancement.
4. Priority-based phasing of States-wide resources.
5. Site planning permission for dual Fire & Ambulance use.

6. Site build-out prior to dual Fire & Ambulance use.

**9.4** In addition to the above there are further interdependencies. Most importantly, we are trying to “dovetail” into the moving feast of a broader HSSD Transformation which is currently being defined, planned and resourced. There are many parts moving in parallel and all programmes need to fit within a broader States of Guernsey service delivery plan.

**9.5** However, we know our direction of travel to three futures, based on ‘best practices’:

1. HSSD’s Integrated Health & Social Care.
2. Home’s Emergency Services Interoperability, and
3. A technology-enabled ‘pool’ system for providers of NEPTS

**9.6** We also know the range of benefits to be targeted; other jurisdictions have already achieved some of them. Whilst we cannot know all the precise phases of our journey, the range and scale of benefits are such that we should:

1. Take the first steps on the journey.
2. Monitor progress and evolving best practices/technologies along the way.
3. Conduct major Checkpoint Reviews every 2 years.
4. Revise the journey destination and phasing to accelerate perceived net benefits.
5. Be alert to any changing economics of options.

**9.7** For example, a longer term joint Fire/Ambulance/Police location might become a more (or less) realistic option, based on Police deployment plans with mobile technologies, changing site acquisition/disposal values and numerous other factors. This will be evaluated in detail as part of the HOST States Capital Investment Prioritisation Process (SCIP) process during 2016.

### Interim Checkpoints

**9.8** The following table (**Figure 9**) portrays a standalone phased implementation plan, before activities are merged into the evolving HSSD Transformation Programme and Home’s HOST programme (for greater interoperability of the Emergency Services). It implies various phased implementations of increases in functionality. Some of these may be accelerated if business cases and related resources are brought forward and agreed earlier than currently anticipated.



**9.9** The plan (**Figure 9**) also contains various major review checkpoints, at which the overall economics and resource plans should be re-confirmed, or the programme realigned to changing circumstances.

	Key Early Tasks	Programme Year						Dependency Risks
		2016	2017	2018	2019	2020	2021	
1.	New Contract/MOU	Design	Implmnt	Monitor	Review	Monitor	Review	Low
2.	Home 'blue light' role	Plan	Implmnt	Run	Run	Run	Run	Low
3.	Co-locate with Fire	Plan	Design	Implmnt	Run	Review	Run	Medium
4.	Flexible paramedic skills	-	Plan	Build	Impl 1	Impl 2	Review	High
5.	Share core patient data	Plan	Plan	Design	Build	Implmnt	Review	High
6.	Mobile technologies	-	Plan	Design	Impl. 1	Impl. 2	Review	High
7.	Expanded JESCC	Plan	Build	Impl. 1	Impl 2	Review	Impl 3	High
8.	Pooled NEPTS	Plan	Impl. 1	Review	Impl. 2	Review	Impl. 3	Medium

**Figure 9**

### Delivery Responsibilities.

**9.10** As already suggested the programme of work outlined above should not proceed in isolation of other HSSD, Home and States initiatives. It needs to be integrated with them, so that priorities, interdependencies and resources can be best managed.

**9.11** In the remainder of this States term, the following actions should be taken:

Responsible	Near-term Actions (This States Term)
1. HSSD	Submit States Report. Strengthen 'Commissioner' role. Strengthen ICT partner/capability.
2. Home	Proceed with HOST strategy. Evaluate co-location property options in SCIP.
3. All Sponsors/SROs	Take ownership for next steps.
4. T&R	Approve timing of HSSD/Home budget transfer. Include NEPTS in States transport strategy.
5. GFAS Steering Group	Complete documentation and disband.

### Other Issues

**9.12** A successful and efficient future service delivered by the Ambulance & Emergency Services depends upon both a strong culture of care and much better use of available technologies than has been the case in the past. Strong patient information and core record systems are fundamental. The public consultation in Summer 2015 also

confirmed that the public wanted and expected their core medical records to be available and shared with emergency professionals in emergencies. Their lives might depend on it.

**9.13** Steps therefore need to be taken to remove the barriers to sharing of key patient data information across the Emergency Services and healthcare network, providing sensible opt-outs for the minority of people (20%, per the consultation) who do not support the sharing of their information. These issues may be legal, technical or managerial. Overall, they are a professional healthcare and technical delivery issue.

**9.14** During 2014, the States of Guernsey ICT Sub-committee had 'withering criticism' of the Electronic Health & Social Care Record (EHSCR) project, which was intended to form the basis of personal medical records. This criticism related to prolonged 'project drift', resourcing, management and political oversight.

**9.15** ICT project practices have subsequently been strengthened. However, the following still apply:

1. HSSD Transformation will fail without SoG ICT Transformation.
2. A "best efforts with few departmental resources" approach is untenable.
3. Strong development and operations partners are needed for ICT developments within the States of Guernsey. This relates to technical ICT platforms, mobile apps and potentially, to shared solutions/costs with Jersey etc..

## 10. Future Organisation, Financial Implications & Oversight

### Future Organisation & Contract Implications

**10.1** As outlined at the outset of this report, this project was initiated in January 2015, as a result of the intervention of the CCA the previous September, following the unsatisfactory outcome of contract negotiations between HSSD and SJARS for the renewed delivery of an ambulance service.

**10.2** The gross operating cost of the service contract between the States of Guernsey and SJARS is £3.5m, which incorporates £0.9m in membership subscriptions revenue from members the St. John Supporter Scheme and net costs (to HSSD) of £2.6m. These are covered by a 'fixed scope - fixed cost' contract, which includes both the Emergency Ambulance Service (EAS) and the Non-emergency Patient Transfer Service (NEPTS).

**10.3** The contract is due for renewal on 1<sup>st</sup> January 2019, but has a break clause at 1<sup>st</sup> January 2017 if 6 months' notice is given (by 30<sup>th</sup> June 2016).

**10.4** Since the signing of the contract St John has not had significant financial or other exceptions. There remains a separate issue relating to unfunded pension liabilities from a historical defined benefits pension scheme (as within the States) but this is a separate non-contractual matter, outside the scope of the GFAS review. It is and needs to be, dealt with in a manner isolated from the contract.

**10.5** The GFAS proposes a significantly different contract from 1<sup>st</sup> January 2017, if the States wants to pursue related HSSD Transformation and Home 'Blue Light Interoperability'/HOST-related policies and benefits before 1<sup>st</sup> January 2019. Alternatively, the States could elect to delay changes until 2019, but we believe this

would be undesirable as it would defer the wider benefits associated with those recently-approved States programmes or policies for 'Blue Light Services'.

**10.6** The proposed new contract (from 2017) would be more flexible, more focused and different from the current 'fixed scope - fixed cost contract', which was perhaps driven by a need for 'legal certainty' in a very fractious period in the autumn of 2014. It is the design of this that is of far greater relevance to the States and Home than the historical contract.

**10.7** The new contract envisaged for the EAS separates out the NEPTS (not 'blue light') and strips out property costs (co-location in States property), strips out vehicle/equipment capital costs/maintenance (best kept States-owned and probably financed, especially future 'hybrid use' vehicles), strips out other support overheads (e.g. HR, accounting and IT etc. as being shared across all blue light services), and hence, effectively strips out most P/L management risks for both easier management by St John and reduced States exposure to volatility.

**10.8** What remains in a future EAS contract? Primarily skilled employees - paramedics, technicians and management, the core competences within St John for the delivery of 'care' to islanders, plus, training/development costs and the public subscription system. The contract should therefore be driven more by an agreed level of skills and workforce numbers (paramedics, technicians etc. at 'going rates'), working to flexible rosters across locations, to match the clinical pathway standards set by HSSD and expected incident volumes. Expected incident volumes would drive flexible rostering of paramedic and other skilled individuals, located/rostered flexibility across multiple locations including A&E, on ambulances and staged for delivery of services to the home in line with HSSD's stipulated clinical pathways (for falls, diabetes, cardiac arrest etc.). As Home implements their 'blue light interoperability' policy and rostering, they have a key role to play in any future St John volumes, contract negotiations and budget-setting/oversight. Thus, the historical contract has little relevance in the future but Home Department's involvement in a future contract is key.

**10.9** St John are already taking 'enabling' steps with the subscription system to segregate the two components of EAS and NEPTS in overall subscriptions being paid, including tightening group rules relating to the latter.

### Financial Implications

**10.10** The GFAS Steering Group has sought to define best practice future operations in the light of agreed States policies, namely the Transformation drive to Integrated Health & Social Care within HSSD (approved in the 2016 Budget passed by the States in November 2015) and the HOST-related 'blue light interoperability' strategy established within Home, for which the JESCC has been the most visible concrete evidence to date (going live in Summer 2015).

**10.11** GFAS therefore should not be viewed as a stand-alone 'project', but one which supports those other programmes. Accordingly, business cases will be brought forward during 2016 in conjunction with those wider programmes. This is not to avoid spelling out the financial cost/benefit business cases for GFAS, but to ensure that 'double-counting' of benefits does not arise in any business cases. For example, the co-location business case will be part of the existing States Capital Investment Prioritisation (SCIP) programme, with co-location of Ambulance and Fire Services being one such option to be justified within that SCIP proposal. A further example is the flexible use of paramedics and clinical technicians providing greater services to the home, or at home and A&E, as envisaged by GFAS; this is also envisaged by the approved HSSD

Transformation business case (2016 States Budget) and related emerging initiatives such as SLAWS (Supported Living & Ageing Well Strategy).

**10.12** Existing political Boards are not being asked by this GFAS Final Report to approve extra funding or policy changes in 2016, or commit to either in 2017 or thereafter. In that sense, there are 'no financial implications' directly associated with this report's proposals, until further business cases are made from mid-2016. This report is coming to the States 'early', rather than accept a 'political void' for 6 months due to the election, so that political Boards can take the opportunity to demonstrate a collective degree of encouragement and support for the operational public service workforces involved, who have operated under much personal/family uncertainty over the past 2 years.

**10.13** That said, members of the GFAS Steering Group have worked with officers from T&R to define, as far as possible at this stage, all financial cost and benefit implications associated with every proposed change in processes, people, systems and infrastructure associated with the moves to proposed new Operating Models described in this report. Although the final values of such costs and benefits will necessarily only be included within later 2016 business cases, when full interdependencies from those other emerging programmes are factored in, we can provide the necessary financial reassurance at this early stage that such business cases are sufficiently sound to accept the broad recommendations of this Report.

**10.14** In summary, the financial implications of this report's proposals are to:

1. Save costs via better use of States property, by exploring co-location of Emergency Ambulance and Fire Services.
2. Save costs or capital via improved sharing or financing of vehicles and equipment.
3. Improve value-for-money outcomes and resilience via flexible deployment of paramedic skills etc.
4. Improve value-for-money via 'a pooled' NEPTS.
5. Simplify contractual arrangements with St John, to facilitate greater flexible deployment.
6. Consolidate 'Blue Light' Emergency Service operations and budgeting within Home.
7. Migrate to efficient 'best practice' operations over a phased period, whilst improving services.

**10.15** Sponsors will bring forward separate business cases for:

1. Capital investment requirements for any co-location and shared use of property, in the SCIP process.
2. The HSSD Transformation components of the Future Ambulance Service proposals, including the volumes of increased paramedic skills to be deployed and a Non-emergency Patient Transfer System, segregated from the Emergency Ambulance Service.
3. Other Home capital and revenue components of the Future Ambulance Service proposals.

4. Other ICT-related investments in conjunction with the States of Guernsey ICT Function.”

### Future Business Case 'Sense-checks'

**10.16** The following approximations illustrate that the separate business cases outlined above are sufficiently attractive to justify moving to the next stage of analysis, namely the development during 2016 of full business cases, which tie into the existing policies and transformation programmes of both HSSD and Home. For each area of potential investment, we show a potential magnitude of marginal investment cost, recurring spending and recurring savings. By applying a cost of capital of 4% (States core borrowing costs), it is possible to ascertain the annual savings required to justify upfront investment costs and then conclude on the practical feasibility of achieving those annual savings. In some instances, this has been done by reference to case studies from other jurisdictions (e.g. regarding interoperability across blue light services); in other instances, this has been done by reasonableness tests (e.g. the potential systems investment for better managing a NEPTS across multiple States departments. The comments on financial and non-financial benefits are illustrative and not exhaustive.

**10.17** Some investments will be 'joint investments' from which GFAS-related activities could benefit, but for which sensible cost allocations are not yet practical. For example, the use of the next generation of mobile technologies by all blue light services would have a range of operational benefits (as shown in other jurisdictions), but ride on the back of mobile data networks required by some four or more separate States of Guernsey departments and being justified jointly within the States ICT Strategy. Attempting to disaggregate such costs at this stage is too inexact to be appropriate, especially as the related benefits to GFAS are not critical to the timing or scale of the overall total of benefits envisaged from GFAS. However, it is still feasible to apply judgement to ascertain the broad justification for preparing full business cases during 2016 with related HSSD, Home, Public Services Reform or States ICT transformation initiatives.

**10.18** Finally, some investment initiatives are highly scale-able, meaning that the risks are reduced, i.e. investments can be scaled upwards from earlier modest sums when benefits become proven in practice. For example, investing in greater paramedic skills across the emergency network and to home, should help to achieve the HSSD Transformation targeted benefits of fewer hospital admissions and related high costs (as described in the BDO analysis of HSSD's potential future cost savings, published with 2016 States Budget). This would be phased in gradually, as HSSD defines new 'clinical pathways' (incident-handling processes), which result in fewer unnecessary hospital visits or admissions and hence form part of concrete operational steps to help achieve the scale of the BDO HSSD Transformation savings.

**10.19** Within GFAS, the operational changes (new clinical pathways) were defined for the 10 highest volume emergency ambulance calls as part of the 'A Day in the Life' exercise, illustrating changes, benefits and patient outcomes. Given HSSD's clinical oversight responsibilities, these will be further refined during 2016, using HSSD's 'Senate' processes, as part of HSSD's move to new approved clinical pathways.

**10.20** Additional investments in paramedics deployed across the network:

Possible cost <b>p.a.</b>	£200,000+	Investment in people costs/skills.
Possible benefits/savings <b>p.a.</b>	£200,000+	Fewer/shorter hospital admissions.
		Chargeable minor injuries work.

Scaleable, in line with benefits.

**10.21** Extension of Joint Emergency Services Control Centre to 'hear & treat':

Possible investment cost.	£120,00	System/software module.
Possible cost <b>p.a.</b>	£150,000+	People costs/skills (incl. paramedics).
Possible benefits/savings <b>p.a.</b>	£150,000+	Fewer ambulance trips or A&E visits. Fewer/shorter hospital admissions. New, faster services to customers.

**10.22** Co-location of Emergency Ambulance with Fire Service (to be assessed as part of existing SCIP evaluation during 2016 and heavily dependent on specific properties and whether extended to Police):

Possible investment cost.	£8m	Property modifications and/or move. Ambulance & Fire, new technologies.
Possible benefits/savings <b>p.a.</b>	£300,000+	Lower rent to third parties (Rohais). Shared support services & systems. Shared composite vehicles/service. Staffing interoperability/back-up.

**10.23** Separate pooled NEPTS, spanning multiple States departments, but potentially a simpler, rudimentary system initially:

Possible investment cost.	£200,000	System build, if not acquired. Booking system with clinical overlay.
Possible benefits/savings <b>p.a.</b>	£25,000+	Less use of expensive ambulances. Modified taxis and third sector cars. Target 8%+ saving in current costs.

**10.24** Greater use of mobile technologies and potential subsequent extension to telemedicine:

Possible investment cost.	£600,000+	Decision for all blue light services. Higher cost if phase in telemedicine.
Possible benefits/savings <b>p.a.</b>	£100,000+	Reduction in patient/clinical visits. Extension to overseas visit reduction. Reduced, faster administration Better access to patients and records. Faster, better services.

**10.25** Properly resourced ICT for key HSSD projects, e.g. Electronic Health & Social Care Record (EHSCR). This is not an additional GFAS-related investment cost, simply the completion of past systems investment delivery as part of a modern way of working. It may be appropriate that the critical 5-6 pieces of core information usually needed by emergency ambulance/medical services could be held for access separately to core medical records. e.g. with a degree of patient mobile phone maintenance. Various models for this exist in other jurisdictions.

Possible investment cost.	N/A	An existing, planned investment. Standard modern way of working. Scope for simpler core system for EAS.
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**10.26** As stated elsewhere, full business cases will be developed prior to investments being made. In early 2016, the States are not being asked to commit to any of the above



investments, merely that Home should have a greater oversight role in Emergency Ambulance Service operational budgets if Home is to pursue its blue light interoperability policy (HOST Strategy) to its full potential.

## St. John

**10.27** The future offers some exciting opportunities for St John, coupled with some challenging implications in managing change (as is indeed the case for HSSD and the States of Guernsey). In continuing to build the St John brand, and retaining strong public trust in its 'skilled people delivering quality care', St John has opted to make three major strategic choices. These choices involve three major 'Best Practice' opportunities:

1. Strategic Partner in Blue Light EMS Interoperability
2. Potential Strategic Partner in Integrated Patient Care to the home.
3. Core Partner in best practice NEPTS pooled system.

**10.28** These are all consistent with the aims of a restructured and simplified "One St John - Skilled People Delivering Care" to islanders whenever and wherever needed.

**10.29** Change is never easy but the scope of these proposals can help create a modern, flourishing, local St John organisation, in conjunction with St John's other complementary initiatives spanning volunteers, training, retail and fundraising activities.

## Governance & Oversight

**10.30** Clinical oversight currently operates at three distinct levels:

1. Regulatory Bodies
2. Guernsey/HSSD, and
3. St John's Clinical Oversight Committee.

**10.31** No change is envisaged to this basic shape, however, for operational and financial oversight, past and current practice becomes increasingly less sensible the greater that desirable joint planning and asset sharing across Blue Light Services exists. This became increasingly apparent during the development of the JESCC and during early live operations. Consider the scenario whereby:

1. The three Service Chiefs (Ambulance, Fire & Police) sensibly get together (under Home's coordination) to plan 'best practice' joint operations, investments, use of assets and mutual support.
2. There follows a 'degree of negotiation' across States Departments to determine who should take what proportion of a joint cost. This generally benefits no-one but cost accountants, who enthuse about obscure unproductive allocations.
3. The Ambulance Service (and hence HSSD) might end up with a third of the cost, but they might not.
4. Worse still, when the actual costs are incurred, another bout of unproductive cost

accounting follows to allocate those joint costs, sometimes using the same method, and sometimes based on 'who has budget to spare?'

5. And yet worse still, the resulting tracking of 'actuals v. budgets' becomes even more divorced from the original joint operational plan and decision.

**10.32** Clearly, as we move to make increasingly productive use of shared property, assets and technology across Blue Light Services, we should cease these unproductive accounting practices and consolidate budgets and budgetary accountability for all Blue Light Services within the Home Dept. This will affect the budgeting process for 2017, if not implemented earlier by mid-year budget transfers during 2016, as new Boards are established following the April 2016 Election.

**10.33** It is proposed that HSSD has a 'clinical commissioning' role for services at defined service levels, for which the budget must be agreed in advance with Home who then decides how best to deliver those services with all resources at its disposal.

## 11. Management of Change

### Journey Management

**11.1** Journey Management' isn't about spending the cost budget on time producing pretty charts; it is about working with operational management to maintain clear focus on the achievement of maximum net benefits, and deploying resources flexibly to get there. In practice, only the lead operational departmental heads have full, flexible resource control, so only they (rather than temporary project team members) can take responsibility for delivering operational benefits. They therefore need to begin the journey with the end in mind, namely securing the net benefits. This is one reason why this report and related Briefing presentations have listed at the outset the range of benefits to be pursued.

**11.2** There is always a desire to "Learn the Lessons" from past project experience and from 'problem projects', but it is surprising how quickly they can be forgotten. This is true both in the wider world and in projects carried out within the States, particularly those involving technology. When reading 'post implementation reviews' of projects which have been completed and which have, or have not, achieved their full potential in terms of net benefits secured, it is surprising how many common themes exist which drive relative success or relative failure. Therefore, it is appropriate to be reminded of those factors which encourage 'relative success', and aim to put them in place. Likewise, it is wise to be reminded of those factors which encourage 'relative failure', and aim to ensure they are avoided. Assessing such factors at the outset and throughout the journey is not merely a task to be carried out by the designated programme manager; it is something to be at the forefront of thinking of all members of Steering Groups and oversight Boards. It is remarkable how often 'project failures' can be traced back to prior basic resourcing or judgement errors, which should have been identified by multiple people much earlier in the process.

**11.3** The successful management of change in areas within the scope of the GFAS recommendations will be challenging. The full breadth of transformational change challenges are involved: changes in processes across multiple departments (a regular cause of problems within the States in the recent past, e.g. SAP and FTP); changes in technology, including new mobile technologies; changes in people, spanning new working practices and deeper skills (e.g. paramedics), new working locations (new physical bases and working flexibly across the emergency services network) and new



organisation structures/responsibilities; and changes in infrastructure (e.g. new shared physical bases, vehicles and equipment). In addition, as highlighted in the Implementation Planning section of this report, there are numerous dependencies on other factors outside the immediate control of a GFAS project implementation team, primarily dependencies on related people, technology or infrastructure projects elsewhere within HSSD and Home (e.g. JESCC expansion). Hence, focused but flexible programme management will be required.

#### 11.4 Factors which positively influence success include the following:

1. A Programme Governance and Oversight Board comprising skilled individuals with a clearly aligned vision of the future and with sufficient time to steer the programme to a successful conclusion.
2. A programme team working to a Benefits Realisation Plan, not simply a 'Work Plan' of days, dates and costs.
3. A strong Communications Plan, ensuring that the rationale for change and positive enthusiasm for it remains clear. This can be linked to awareness training in 'best practices' to be adopted. For those concerned about the effort of training, the following phrase can be relevant: "If you think training is expensive, try Ignorance instead (and see how much more expensive that can be)."
4. Fully committed operational line management and users, capable of delivering the planned benefits in practice. The programme team's role is to support them with a benefits realisation focus through the difficult peaks of resource demands and change assimilation.
5. A programme team comprising individuals sufficiently respected to redesign a Department's ways of working for everyone in future, and not comprising junior, weaker personnel just 'because they are available.' Otherwise their equally weak design input will dictate the way the best departmental people will have to work in future. Projects and programmes similar to GFAS should not carry "passengers" - that is what buses are for.
6. Operational line management formally signing up to the planned benefits (Benefits Realisation Plan) at the start of the programme, and hence being required to get to grips with how and when they will operationally deliver them. Otherwise, the benefits won't be delivered.

#### 11.5 Factors which will negatively drive failure include the following:

1. The absence or partial absence of the positive success influencers listed above.
2. A lack of leadership drive at the Board programme management or programme team level.
3. Unrealistic expectations arising from naive personnel (at any level) who underestimate the time it takes to achieve either changes in mindsets, workforce cultures or familiarity with new processes and technology.
4. A failure to deploy a stable, experienced programme team without disruptive changes to personnel. Otherwise, the 're-learning effort' of new joiners will undermine collective knowledge and progress.

5. A focus on 'process' over targeted results, by people happy to travel without actually ever arriving at the required destination.

## Arrival Times

**11.6** As Guernsey's favourite airline Aurigny often demonstrates, arrival times might be published in advance, but can be upset by conditions immediately prior to take-off and natural turbulence en route. On-time arrival requires a good pilot, crew, plane, fuel and engineers - all with a very clear idea of the final destination. But these still do not guarantee on-time arrival.

**11.7** Keeping with an airline analogy, the skies above the States of Guernsey are becoming increasingly crowded by proposed new Policy Letters seeking funding, which does not exist and which, if collectively agreed, would break the existing States policies of financial restraint. T&R has indicated very clearly and publicly on multiple occasions that new policy initiatives can only be funded by a process of prioritisation: either the sponsoring Department has to prioritise new policy spending above other existing initiatives and spending within its own Department, and hence stop doing lower priority things, or the States as a whole has to do likewise and remain within agreed fiscal rules by correspondingly reducing budgets for all other Departments.

**11.8** The proposals arising from this report relate primarily to migrating to 'best operational practice', not establishing new policies or net new spending. In summary, the GFAS proposals involve investing in people (paramedics and skills) and funding this by making more efficient use of shared property, shared equipment, shared systems/technology and other shared resources. There would be up-front technology costs in 2017/18 associated with developing a booking system for Non-emergency Patient Transfer Services (NEPTS), but the business case for this would involve an immediate reduction in operational costs via the better matching of patient requirements/entitlements with the lowest cost suitable mode of transport. The timing of introduction of such a NEPTS system can be flexible and driven by the future business case and resource priorities at that time; it is a matter of economics and its timing is not fundamental to other wider GFAS recommendations relating to the EAS.

**11.9** However, as stated elsewhere in this report, some key GFAS proposals are dependent upon other policy initiatives being pursued successfully within their agreed parameters of funding and delivery:

1. Co-location of the Emergency Ambulance and Fire Services is dependent upon the outcome of an existing Home proposal (within the 2016 SCIP capital expenditure priority-setting process).
2. The use of mobile technologies by the Emergency Services is a common occurrence in other jurisdictions but is dependent upon approval being granted to the States ICT function to meet the common needs of a mobile network requested, and to be used, by multiple States Departments. The States Corporate Information Systems & Services (CISS) Function are already pursuing funding from the States-wide Transformation & Transition Fund for this.
3. Access by the Emergency Services to core patient records data in an emergency will require at least three things: a successful eventual outcome to past attempts by HSSD to complete the Electronic Health & Social Care Record (EHSCR) system; a mobile network and technologies; individual patient consent within ethical/legal guidelines. However, it may well prove possible to make progress in this area by focusing on the very limited data set required at speed by the emergency professionals (e.g. blood

type, major allergies, major conditions, current medication etc.) and making it available pragmatically.

4. HSSD's wider Transformation Programme initiatives (for which funding was set aside in the 2016 States Budget, following the BDO Report), in particular different ways of working by health and social care professionals, with the end result of treating more patients in the community rather than unnecessarily in hospital (the latter being at greater cost and disruption to the patient). This includes the definition and formal agreement by the HSSD clinical professionals of new clinical pathways (appropriate treatment processes), especially those relating to pathways/responses to specific types of emergency calls. The GFAS project (and Final Briefing Presentation) has illustrated these for the most common types of different emergency calls; however, they should be tested and confirmed by the HSSD clinical leadership via inclusive testing involving patients and clinicians during 2016. (HSSD have established procedures via their 'Senate' process for doing this).
5. The successful future extension of the core investment already made in the JESCC, which went live in Summer 2015, and which could add further services and standard software modules from 2017-19 after a period of stable operation. As with other items, this would be the subject of a separate business case from the Home Department during 2017-19.

**11.10** Given the above clear dependencies outside the immediate GFAS project, 'arrival times' for individual components will be subject to change, even with strong programme management of direct GFAS tasks. However, by attempting to provide a clearer vision of the route to best future operating practices, the GFAS report will hopefully increase the likelihood of a successful future arrival.

## 12. Education & Other Issues

### Education's Role in 'Managing the Health Network'

**12.1** For the past 115 years in Guernsey, an extensive annual report has been issued publicly by the Director of Public Health to highlight general health issues for islanders and related recommendations.

**12.2** Public education has never been more important and valuable in helping to manage and meet increasing demands for healthcare services, which in turn impact the emergency services. We live in an era of changing patient demands (e.g. associated with changing demographics and an ageing population), changing healthcare solutions (e.g. associated with medical and technological breakthroughs) and difficult choices: a small island of 63,000 people like Guernsey cannot by itself replicate and finance the full range of health services offered by larger jurisdictions. This is not defeatism, it is simply an inconvenient truth:

1. Statistics repeatedly demonstrate that medical success in complex treatments invariably improves with experience (patient volumes) of the medical specialists involved. This is increasing the global trend to a smaller number of larger specialist medical treatment centres, serving patients from multiple jurisdictions
2. New medical breakthroughs often involve very expensive medical technology equipment, which can only be afforded by those medical centres dealing with a sufficiently high number of patients requiring it. This therefore reinforces the preceding point and is increasing the trend to 'health tourism', i.e. the practice of

travelling to recognised specialist medical centres based in other jurisdictions. Malta is one island which pursues such inward 'health tourism', with public-private initiatives to encourage such activity. Benefits include economic diversification and improved local services to islanders.

### **12.3** Thus, public education is needed to serve multiple objectives:

1. Educate islanders of all ages to help them take greater responsibility for their health, via a healthy diet and lifestyle.
2. Educate islanders of the practical limits to which on-island healthcare provision can operate in an era of increasing medical specialisation globally. Referrals to specialist off-island centres will increase over time, with implications for taxpayer or personal funding of related consultation and travel costs. This directly impacts the urgent and emergency care services and patient transfer services addressed in this study of Guernsey's Future Ambulance Service. It also points to the increasing needs to maintain strong linkages to off-island networks of specialist centres and embrace new telemedicine technologies to improve access to medical specialists whilst reducing travel costs and delays for islanders.

### **Influencing Other Network Outcomes & Cost Drivers: Working with Jersey**

**12.4** As is often said, "there is scope to work more closely with Jersey for our mutual benefit." Jersey's plans and aspirations for its healthcare and emergency ambulance services are evolving in parallel. Jersey:

1. Has similar aspirations for integrated clinical & social care (e.g. like the Isle of Wight Hub model), due to similar demographic challenges.
2. Is behind Guernsey on JESCC and the Emergency Services 'interoperability' agenda.
3. Is ahead of Guernsey in ICT ('Digital Jersey' etc) and intent to operate with strategic technology partners.
4. Is somewhat clouded by a large Island Budget deficit and attempted major public sector spending cuts - 'Jersey FTP+'.

**12.5** We should continue with past cooperation and perhaps add three further areas, to improve value-for-money and quality, and possibly reduce risk in relation to Emergency Ambulance Services:

1. Joint procurement of vehicles & equipment.
2. Joint Clinical Peer Reviews
3. Shared ICT efforts/costs - platforms, mobile technologies & strategic development/operations partners.

**12.6** Jersey also has a similar background to Guernsey regarding Electronic Health & Social Care Records (EHSCR) systems. The sharing of various working practices and technology arrangements should be pursued by Guernsey. This has already been recognised by the States of Guernsey Chief Information Officer and his team. Such co-operation could be extended operationally to the choice of mutually supportive specialisms as part of a wider healthcare network of specialist clinical or care services.

## GLOSSARY

A&E	Accident & Emergency Department - Princess Elizabeth Hospital
CCA	Civil Contingencies Authority – a small group of Guernsey’s senior politicians and civil servants, which meet rarely and on demand, in the event of a potential crisis or threat to secure the well-being of the island.
CMT	The Corporate Management Team of HSSD, led by the Chief Officer.
Commandery	<p>Established in July 2012, the Commandery of St John in the Bailiwick of Guernsey has the mission to further the works and purposes of the Order of St John, taking its lead from the Order of St John through the Priory of England. In the Bailiwick this has a wider context than in mainland UK.</p> <p>The Guernsey organisation works across the Bailiwick islands of Guernsey, Alderney, Sark and Herm to provide:</p> <ul style="list-style-type: none"> <li>Emergency Ambulance Service</li> <li>Marine Ambulance</li> <li>First Aid cover at local events</li> <li>Cliff Rescue</li> <li>Inshore Rescue</li> <li>Community First Responders</li> <li>First Aid training to the workplace, public, schools and colleges</li> <li>Health Care Shop - provision of health support equipment</li> <li>Youth Activities</li> <li>Community Library</li> </ul> <p>These services are provided through:</p> <p>The St John Ambulance &amp; Rescue Service (SJARS), a Guernsey-based charitable company, a subsidiary of the Bailiwick of Guernsey’s Commandery of St John, which operates, with the authority of the States of Guernsey as the Island’s emergency ambulance service. It operates 24 hours a day, providing accident and emergency cover, paramedic response and Non-emergency Patient Transfer Services (NEPTS).</p> <p>St John Alderney Ambulance Service (SJAAS), an Alderney-based charitable company, a subsidiary of the Bailiwick of Guernsey’s Commandery of St John, which operates, with the authority of the States of Alderney as the Island’s emergency ambulance service. It operates 24 hours a day, providing accident and emergency cover and NEPTS.</p> <p>St John Ambulance, Guernsey (SJAG), a Guernsey based charity and subsidiary of Guernsey’s Commandery of St John, which provides volunteer first aid cover for community events and youth services to teach young people first aid.</p> <p>St John Training Services Guernsey (SJATS), a company owned jointly by the St John Ambulance &amp; Rescue Service and St John Ambulance Guernsey, provides First Aid and other Health &amp; Safety related training for businesses, organisations and the public.</p>

EAS	Emergency Ambulance Service.
GFAS	Guernsey's Future Ambulance Service – the 2015 project name to define this review.
Hear and Treat	Is where a clinician in a control centre speaks to patients of their carers and gives advice over the telephone, once they have assessed the patient's condition and ruled out any potentially life-threatening or urgent medical conditions.
Hear, Treat & Refer	Is where a clinician in a control centre speaks to patients or their carers over the telephone and once they have assessed the patient's condition and ruled out any potentially life-threatening or urgent medical conditions, refers them to a local service, such as their GP, that is more appropriate to help the patient.
Home	The States of Guernsey Home Department has a wide portfolio and covers a diverse range of services and activities, delivered through 7 business units or operational service areas including Guernsey Fire & Rescue Service and Guernsey Police.
HOST	<p>Home Operational Services Transformation Programme - a transformation programme designed to fundamentally change the delivery of the Home Department's operations. The aims of HOST are to improve service to the public and to generate long-term financial savings by:</p> <ol style="list-style-type: none"> <li>1. Introducing multi-disciplinary and coordinated joint-working;</li> <li>2. Establishing the flexibility to incorporate future changes in working methods;</li> </ol> <p>Optimising the operational efficiency of the Emergency Services and the Department's operations.</p>
HSSD	<p>The Health &amp; Social Services Department is responsible to the States of Guernsey, to promote, protect and improve the health and social well-being of the people of Guernsey and Alderney.</p> <p>The Department has a wide mandate delivering a diverse range of services including preventing, diagnosing and treating people with illnesses and disease and caring for them in its hospital services and supporting people in the community, including people with disabilities.</p>
ITU	Integrated Transport Unit
JESCC	Joint Emergency Services Control Centre
NEPTS	Non-Emergency Patient Transfer Service
PTS	Patient Transport Service

SCIP	States Capital Investment Prioritisation - process, which evaluates and confirms priorities for capital/project funding.
See and Treat	Is where patients are treated at the scene by ambulance staff, rather than being taken to hospital.
Senate	An approach adopted within HSSD to involve stakeholders in process review and development.
SSD	The States of Guernsey Social Security Department is mainly responsible for the collection of Social Security contributions and the day to day running of the States' contributory Social Insurance Scheme, contributory Health Insurance Scheme, contributory Long-term Care Insurance Scheme and the States' non-contributory schemes,
SJARS	St. John Ambulance & Rescue Service
T&R	Treasury and Resources Department
Uber	An international organisation which uses technology smartly for booking and managing the demand and supply of taxi services.
VCS	Voluntary Car Service





**The Commandery of the Bailiwick  
of Guernsey of the most Venerable Order  
of the Hospital of St John of Jerusalem**



Our ref: SLP/NvL/jmp/138/15

30 November 2015

Deputy P Luxon  
Minister, Health & Social Services Department  
Corporate Headquarters  
Le Vauquiedor  
St Andrews  
Guernsey  
GY6 8TW

Dear Deputy Luxon

**Guernsey's Future Ambulance Service**

The Commandery of the Order of St John in the Bailiwick of Guernsey (Commandery), together with the Board of its subsidiary company St John Ambulance & Rescue Service (SJARS), fully support the proposals and propositions in the Health and Social Services Department's (HSSD) Report on Guernsey's future ambulance service.

St John in its local aspects has been fully represented on the Steering Committee which was tasked to define Guernsey's future ambulance service.

The Order of St John, since 1999 through SJARS, a not-for-profit company, has been providing Guernsey's emergency and non-emergency ambulance services for almost 80 years. We are delighted that the public consultation carried out in support of this project has reinforced that we are a trusted provider of Guernsey's ambulance service, with two thirds of the general public (63%) stating that it should remain with us.

We believe that the work of the Steering Committee has been thorough, and support it having been tested independently by medical and other professionals. This, combined with the comprehensive response to the public consultation, and the evolution currently taking place where collaboration between the emergency services is strengthening year on year, leads us to the conclusion that supporting these proposals is a positive step forward for the future delivery of this service.

Together with representatives from HSSD, and the Home and Treasury & Resources Departments, we have contributed to the proposals contained in the Report which are drafted for progressive implementation over the period 2016 – 2021. We also support the preparatory steps to be taken, particularly the retention and extension of the role of St John as a strategic partner for emergency ambulance and medical services.

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It is our view that Guernsey's ambulance service provided by St John, working in closer collaboration with the other emergency services and in support of HSSD's planned transformation and integrated health & social care intentions, is key to the future, which must focus on patient outcomes and include new 'clinical pathways' and processes. We believe that the proposals and propositions in the Report address these and the Report has our full support.

Yours sincerely



**Nik van Leuven**  
Knight Commander  
Commandery of St John, Bailiwick of Guernsey



**Steve Le Page**  
Chairman  
The St John Ambulance & Rescue Service

- (N.B. The Treasury and Resources Department acknowledges the considerable amount of research and consultation that has been undertaken by the Steering Group in order to produce the detailed report which clearly sets out proposals for introducing an optimum operating model for the provision of an Ambulance Service in Guernsey.**

**It is noted that there are no resource implications arising from this Policy Letter. The Department looks forward to contributing, as appropriate, towards developing the proposals in accordance with the principles of public service reform to ensure that they meet the needs of service users in a sustainable manner which represents best value for money.)**

- (N.B. The Policy Council commends the Health and Social Services Department – and, in particular, the Steering Group that has conducted the review - for its comprehensive and wide ranging report on the future of Guernsey’s Ambulance Service. It is evident that, in accordance with the Principles of Good Governance, this has involved extensive research and consultation to develop a new operating model for both emergency and non-emergency ambulance services, informed by international best practice.**

**Although the States is asked to make a decision on only one aspect of the review, it would be remiss not to acknowledge and formally support the efforts that have been made collaboratively to design ‘fit for purpose’ ambulance services focussed on patient outcomes.**

**The Policy Council is particularly pleased to note that rather than being treated as a stand-alone service, the Ambulance Service is to be integrated: (i) operationally with other ‘blue light’ services; and (ii) strategically within the programme to transform the delivery of health and social care services; with benefits - both financially and non-financially – for Islanders, for the States and for St. John Ambulance. The Policy Council further notes that the proposed new arrangements have at their heart the objectives of Public Service Reform.**

**The Policy Council, therefore, fully supports the proposal to transfer the budgetary and non-clinical oversight role for the Emergency Ambulance Service from the Health and Social Services Department to the Home Department as the first step towards the implementation of new operating arrangements.)**

The States are asked to decide:-

XVI.- Whether, after consideration of the Policy Letter dated 30<sup>th</sup> November, 2015, of the Health and Social Services Department, they are of the opinion:-

1. To agree the transfer of the budgetary and non-clinical oversight role for the Emergency Ambulance Service from the Health and Social Services Department (and its successor) to the Home Department (and its successor), at a future date to be determined but not before January 2017, thereby providing the Home Department (and its successor) with the combined oversight role for all “blue light” emergency services as they work increasingly jointly to their ‘best practice interoperability’ agenda.
2. To note that the Health and Social Services Department (and its successor) will return to the States of Deliberation during 2016 with Policy Letters proposing the more detailed arrangements to implement the strategy outlined in that Policy Letter and the Report of the Guernsey’s Future Ambulance Service Steering Group, once those plans and Business Cases have been finalised between all parties.

## COMMERCE AND EMPLOYMENT DEPARTMENT

### LEGISLATIVE CHANGES RELATING TO THE FUTURE OVERSIGHT OF GUERNSEY ELECTRICITY LIMITED AND GUERNSEY POST LIMITED

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

3<sup>rd</sup> December 2015

Dear Sir

#### 1. Executive Summary

- 1.1 On 9<sup>th</sup> April 2015, the States approved (Billet d'État VI of 2015, Resolution III). joint proposals<sup>1</sup> from the Commerce and Employment Department ("C&E" / "the Department") and the Treasury and Resources Department ("T&R") on an alternative framework for the oversight of Guernsey Electricity Limited ("GEL") and Guernsey Post Limited ("GPL").
- 1.2 That alternative framework requires the amendment of a number of pieces of legislation and the Department was directed to bring forward proposals for such amendments.
- 1.3 The purpose of this Policy Letter is to make detailed proposals for the legislative amendments and other matters necessary both to make GEL and GPL exempt from the requirement to be licensed by the Guernsey Competition and Regulatory Authority ("GCRA" / "the Authority"), and to enable the States, in effect, to suspend the independent regulation by the Authority of the wider electricity and postal sectors in the Island of Guernsey and the Bailiwick of Guernsey, respectively ("the electricity and postal sectors").

#### 2. Introduction and background

- 2.1 On 9<sup>th</sup> April 2015, after consideration of proposals laid out in a joint C&E and T&R States Report ("the Departments' joint report") the States resolved (Billet d'État VI of 2015, Resolution III):

1. *To direct that Guernsey Electricity Limited and Guernsey Post Limited be made exempt from the licensing and regulation provisions within the respective electricity and postal laws by no later than 1<sup>st</sup> January, 2016.*

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<sup>1</sup>States Report dated 05 January 2015 entitled 'Alternative Framework for the Oversight of Guernsey Electricity Limited and Guernsey Post Limited', published in Billet d'Etat VI (2015).

2. *To direct that the existing shareholder guidance to the Treasury and Resources Department in respect of Guernsey Electricity Limited and Guernsey Post Limited be amended as described in Section 4.41 of that Report*
  3. (a) *To direct the Treasury and Resources Department to develop its role as a more active shareholder in accordance with the objectives set out in that Report and to note that the Department intends to carry out that function through a supervisory sub-committee as detailed in that Report*  
  
 (b) *To note that the mandate of the Commerce and Employment Department includes “to be responsible for the strategic approach to, and the regulation of, utilities” and “to be responsible for consumer advice and protection.....”; and, therefore, to direct that the interests of the consumer with regard to the incorporated companies referred to in the propositions above and any other unregulated utilities shall be promoted by the Commerce and Employment Department.*
  4. *To direct the Commerce and Employment Department, in liaison with the Law Officers of the Crown, to report on the detailed legislative changes necessary to give effect to the Departments’ joint proposals.*
  5. *To direct the Commerce and Employment Department to report on the effectiveness of the replacement oversight arrangements by no later than three years from the date on which these arrangements come into effect”.*
- 2.2 This Policy Letter has been prepared in pursuance of Resolution (4), above, and in accordance with the rationale of the Departments’ joint report, cited above.
- 2.3 It therefore provides instructions for the Law Officers of the Crown for the drafting of legislation to make GEL and GPL exempt from the requirement to be licensed by the Authority, and to remove the Authority’s functions, duties, and powers within the electricity and postal sectors, whilst also preserving as far as possible the legislative framework for the regulation of these sectors, should independent regulation need to be reintroduced.
- 2.4 This Policy Letter also includes proposals for the transfer from the Authority to C&E of a number of extant statutory duties, functions, and powers relating to the electricity and postal sectors by way of amendment to legislation which regulates those sectors.
- 2.5 This Policy Letter notes that several extant States’ Directions to the Authority will need to be rescinded in due course, as a necessary consequence of removing from the Authority the relevant statutory duties, functions, and powers relating to its current role as regulator within the electricity and postal sectors. The extant States’ Directions to the Authority which most likely will need to be rescinded are listed at Schedule 1 of this Policy Letter.

- 2.6 The statutory duties, functions, and powers to be transferred from the Authority to C&E include the functions of the Authority relating to the granting of licences within the electricity and postal sectors. Further to section 8.3 of the Departments' joint report, in order to continue to preserve and protect the monopoly positions of GEL and GPL within their respective sectors once no longer subject to regulation, the States should be given power to direct C&E not to issue any licences within these sectors. To this end, the Policy Letter therefore proposes that specific statutory powers to issue such a direction or directions of a similar type (such as directions not to issue licences in a particular area of a sector) should be created for the States to exercise.
- 2.7 This Policy Letter also includes proposals that GEL and GPL should be "deemed" to be licensed for some provisions of the legislation governing the sectors in which they operate in order to continue operating effectively, and for the purposes of taxation under the Income Tax (Guernsey) Law, 1975 ("the Income Tax Law").
- 2.8 It also proposes consequential amendments to legislation to implement these proposals.

### **3. Transfer of extant functions, powers, and duties of the Authority**

- 3.1 In order to achieve the proposals set out in this Policy Letter a number of legislative amendments will have to be made. The effect of the amendments will be that the Authority shall no longer be required to discharge the functions, powers, and duties provided by the relevant legislation insofar as these relate to postal and electricity services. For the avoidance of doubt, the regulatory functions of the Authority, insofar as these relate to telecommunications services, are outside of the scope of these proposals.
- 3.2 Another effect of the amendments will be that the licences currently held by GEL and GPL are likely to cease to serve any effective function, because the amendments will enable C&E to exempt GEL and GPL from the requirements to hold licences to provide the services which they currently provide and it is C&E's intention to grant appropriate exemptions when it is empowered to do so. In addition, C&E will be given certain other functions, powers, and duties under the relevant legislation so that it can ensure appropriate regulation of the postal and electricity services sectors. Finally the Department proposes that the States should have a statutory power to direct C&E about how it is to exercise its licensing powers, including a direction not to issue licences at all. The legislative changes necessary to implement the policies set out in this Policy Letter are described below.

#### *The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001*

- 3.3 The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 ("the RoU Law") provides the statutory framework for the regulation of utility services throughout the Bailiwick. As things stand, that framework extends to electricity generation and supply in Guernsey and Bailiwick-wide postal and telecommunications

services. It is proposed that the definition of "utility services" contained in the Law is amended so as to exclude postal and electricity services. That single amendment will extinguish the obligations of the Authority to regulate the electricity and postal services sectors and leave it solely responsible for regulation of Bailiwick telecommunication services.

*The Electricity (Guernsey) Law, 2001*

- 3.4 The Electricity (Guernsey) Law, 2001 ("the Electricity Law") regulates the generation, conveyance and supply to premises of electricity in Guernsey. In essence it prohibits non-exempt generation etc. except under a licence granted by the Authority. It is proposed that the Law be amended by Ordinance in order to enable most powers currently exercisable by the Authority under the Law to be exercised by C&E. In particular, the power of the Authority, under section 1 (2) of the Electricity Law, to grant exemptions from the requirement to have a licence to generate, convey, or supply electricity, should be transferred to C&E.
- 3.5 The power of the Authority, under section 2 of the Electricity Law, to grant or refuse to grant licences as described in that section, should be transferred to C&E. As indicated above, C&E believes that no licences should be granted by C&E following amendment of the Electricity Law, which might weaken the monopoly position of GEL and GPL in the provision of its core businesses. In relation to GEL, it proposes that a provision should be included in the Electricity Law that would enable the States to direct C&E to issue no such licences (or no such licences in a specified area of the sector) and that such a direction should be given as soon as the Electricity Law has been suitably amended, the amendments brought into force and the Authority ceases to be responsible for regulation of the sector.
- 3.6 Other powers of the Authority including powers under section 9 and relating to Schedule 1 ("the Code") to the Electricity Law, concerning access to and use of land, should also be transferred to C&E. It is proposed that an additional provision will be inserted into the Electricity Law enabling C&E to apply the Code to GEL so that GEL may continue, as an exempt service provider in due course, so that if required, it would be able to exercise powers under the Code in the same manner as a licensed provider.
- 3.7 Part II of the Electricity Law deals with the generation, conveyance and supply of electricity by public electricity supply licensees ("PESL"). The only PESL in Guernsey is GEL and Part II imposes obligations on, and creates privileges for, GEL as a PESL. It is proposed that provision is inserted into the Electricity Law so that GEL should continue to be regarded as a PESL for the purposes of sections 10 ("duty to supply on request"), 11 ("exceptions from duty to supply"), 16 ("special agreements with respect to supply"), 17 ("determination of disputes") and 18 ("the Electricity Supply Code"). This will ensure the continuity of some obligations and privileges under Part II of the Electricity Law that currently apply to GEL.



- 3.8 Section 17 of the Electricity Law provides that the Authority shall investigate and resolve any dispute arising under sections 10 to 16 of the Electricity Law. As indicated above, GEL shall be “deemed” to be a PESL for the purposes of certain provisions including the provisions of sections 10, 11 and 16 of the Electricity Law. In order that some form of dispute resolution function remains in place, the powers of the Authority, under section 17 of the Electricity Law should be transferred to C&E insofar as the section relates to the provisions of sections 10, 11, and 16 of the Electricity Law. For the avoidance of doubt, GEL shall not be “deemed” to be a PESL for the purpose of sections 12 (“power to recover charges”), 13 (“power to recover expenditure”), 14 (“power to require security”) or 15 (“additional terms of supply”) of the Electricity Law, and issues arising relating to the powers under these sections of the Electricity Law shall be addressed within GEL’s terms and conditions of business with its customers.
- 3.9 In order to enable C&E to fulfil the above disputes resolution function effectively and fairly, it will be necessary for C&E to have power to appoint an independent person or body to determine unresolved disputes referred to C&E where they relate to GEL and to delegate functions relating to disputes involving GEL to such a person or body. Any such power will include powers to enable recovery of any costs incurred in the process, where it is considered appropriate to do so.
- 3.10 The powers of the Authority, provided by sections 19 and 20 and relating to electrical safety and supply and electrical inspections, shall be transferred to C&E. The Electricity Law will be amended in order that section 21 and Schedule 3 (“use of electricity meters”) continue to apply in relation to metered supply provided by GEL. Suitable amendments will be made to section 22 and Schedule 4 (“preservation of amenities and fisheries”) so that those provisions will also continue to apply to GEL once it has become exempt for the requirement to hold a licence.
- 3.11 Any additional remaining functions of the Authority under the Electricity Law, including those relating to enforcement will also be transferred to C&E. However as GEL is the sole licensee under the Electricity Law and likely to remain so, it is highly unlikely that any enforcement powers will need to be exercised. Finally it is proposed to include provision that will enable appeals against decisions made by C&E under the Electricity Law to be dealt with on appeal to the Royal Court in the same manner as appeals against the Authority may be made under the Electricity Law and RoU Law as things currently stand.

*The Post Office (Bailiwick of Guernsey) Law, 2001*

- 3.12 The Post Office (Bailiwick of Guernsey) Law, 2001 (“the Post Office Law”) regulates the provision of postal services in the Bailiwick of Guernsey. In brief, it prohibits the non-exempt provision of postal services within the “reserved area” except under a licence granted by the Authority. It is proposed that the Law be amended by Ordinance in order in effect to enable most powers currently exercisable by the Authority under the Law to be exercised by C&E. In particular the power of the Authority, under section 1 (3A) of the Post Office



Law, to grant exemptions from the requirement to have a licence to provide postal services, would be transferred to C&E.

- 3.13 The power of the Authority, under section 2 of the Post Office Law, to grant licences for the provision of postal services, would be transferred to C&E. As indicated above, C&E believes that no licences should be granted by the Department following amendment of the Post Office Law, which might weaken the monopoly position of GEL and GPL in the provision of its core businesses. In relation to GPL, it proposes therefore that a provision should be included in the Post Office Law that would enable the States to direct that C&E should issue no such licences (or no such licences in a specified area of the postal services sector) and that such a direction should be given as soon as the Post Office Law has been suitably amended, the amendments brought into force and the Authority ceases to be responsible for regulation of the sector.
- 3.14 Under the Post Office Law a licensee providing a universal postal service is classified as a "universal postal service provider" ("UPSP"). As such, the licensee is subject to certain obligations and enjoys certain privileges. GPL as a licensee is a UPSP and it is proposed that it should continue to be treated as a UPSP under the Post Office Law when it ceases to hold a licence and is granted an exemption from the need to hold a licence. In order to preserve GPL's position, appropriate provision will need to be included in effect to deem that GPL is a UPSP whether or not it holds a licence.
- 3.15 Other material provisions of the Post Office Law where GPL will still need to be "deemed" to be a licensee for the purposes of the Post Office Law include:
  - 3.15.1 Section 14 of the Post Office Law, which includes provision to exempt licensed UPS providers: firstly, from prosecution for the possession of an item contained in a postal packet where possession of such an item is prohibited by law; and secondly, from prosecution where it has failed to comply with conditions and restrictions set out by law relating to the possession, conveyance or delivery of an item contained within a postal packet;
  - 3.15.2 Section 15 of the Post Office Law, which includes provisions relating to a licensed UPS provider's liabilities towards the services' users;
  - 3.15.3 Section 19 of the Post Office Law, which enables an authorised person to detain at a UPS post office a postal packet to inspect its contents where there is a suspicion that the item may contain items that could be dangerous, indecent, menacing etc;
  - 3.15.4 Sections 20 to 24 of the Law, which contain provisions that: safeguard a licensed UPS provider's post offices, post boxes and other equipment; prohibit unlicensed operators from misleading the public into believing that they are operating a UPS; make it an offence to obstruct the business of a licensed UPS provider; sets out the prohibitions on the creation and use of post marks, envelopes, wrappers, cards and other forms of paper in imitation of one issued by a licensed UPS provider;

and prohibitions on the creation, use and trading of fictitious stamps, including the associated equipment and material for making such stamps;

- 3.15.5 Sections 26, 39, 40 and 41 relating to the operation and use of money and postal orders by and through a licensed UPS provider;
- 3.15.6 Sections 35 and 36 relating to the carriage of mail bags and parcels on ships;
- 3.15.7 Section 42, which sets out how and in what circumstances a stamp or official mark of a UPS provider can be considered to be sufficient proof of the amount of postage that has been paid; and,
- 3.15.8 Section 43, which sets out the evidence that a UPS provider can provide in legal proceedings to demonstrate that a post box (or other receptacle) that it may have provided was being made available for the purpose of receiving postal packets for onward transmission as part of its service.
- 3.15.9 Finally it is proposed to include provision that will enable appeals against decisions made by C&E under the Post Office Law to be dealt with on appeal to the Royal Court in the same manner as appeals against the Authority may be made under the Post Office Law and RoU Law as things currently stand.

#### **4. States' Directions**

- 4.1 As stated at section 8.3 of the Departments' joint report, the Authority in due course should no longer be required to comply with the States' Directions relating to electricity and postal services, and any extant States' Directions to the Authority should be rescinded insofar as these relate to electricity and postal services. The extant States' Directions to the Authority which the Department believes should be rescinded are listed in Schedule 1 of this Policy Letter. When the relevant regulatory legislation has been amended in accordance with the proposals set out in this Policy Letter, it is proposed that the States will be requested to rescind those States Directions. For the avoidance of doubt, the States' Directions to the Authority relating to telecommunications services are outside of the scope of these proposals.
- 4.2 The States, however, will also have the power under the amended legislation to issue to C&E directions relating to electricity and postal services, with which C&E shall be required to comply. It is proposed that the States be asked when the revised legislation has been approved by them to direct C&E to issue no new licences relating to electricity and postal services. This is to ensure the continued exclusivity of GEL and GPL as the monopoly providers of services within the electricity and reserved postal sectors, respectively.

- 4.3 The extant States' Directions to the Authority include those requiring a licensee within the postal sector (i.e. GPL) to maintain a Universal Service Obligation ("USO"). As explained in section 4.26 of the Departments' joint report, whereas GPL's existing licence from the Authority requires it to provide the Universal Service agreed by the States<sup>2</sup>, in future it will be a requirement of the Memorandum of Understanding ("MoU") between T&R and GPL that GPL provides the USO, as determined by the States from time to time. For clarification, GEL is not subject to a USO.
- 4.4 Although the Department herein proposes in due course the rescinding of the States' Directions to the Authority relating, *inter alia*, to the USO, as explained in the Departments' joint report, the agreed MoU between T&R and GPL (and GEL, respectively) include shareholder objectives for these trading companies which, in the case of GPL, include the objective for GPL to provide in the Bailiwick of Guernsey a USO as defined by States' Resolution.
- 4.5 For the avoidance of doubt, the proposals to enable the States to issue directions are intended to ensure that the States may continue to preserve and protect GPL (and GEL's) monopoly within their respective sectors, and to ensure that GEL and GPL can continue to meet their shareholder objectives (which, in the case of GPL, includes the requirement to provide a USO), as they would have done as sole licensed operators under regulation.

## 5. Consequential amendments

### *The Income Tax (Guernsey) Law, 1975*

- i. Under the Income Tax Law, income from trading activities regulated by the Authority is subject to taxation at the higher company rate of 20%. An amendment to the Income Tax Law will be required to ensure that both companies will continue to pay tax at this rate, notwithstanding that they are no longer regulated by the Authority.

### *The Post Office (Bailiwick of Guernsey) Law, 2001*

- ii. Consequential amendments to the Post Office (Bailiwick of Guernsey) Law, 2001 ("the Post Office Law") will be required to reflect the status of GPL as the provider of a USO not as a consequence of being a licensee but instead as a requirement of its MoU with T&R.

### *The Post Office (Bailiwick of Guernsey) (Amendment) Ordinance, 2012*

- iii. Section 12(a) of the Post Office (Bailiwick of Guernsey) (Amendment) Ordinance, 2012 ("the Post Office Ordinance") provides that the Authority may make an Order to revoke any Order made under the

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<sup>2</sup> The current USO was agreed by the States in 2011 and is set out in a Direction made as Resolution VIII.1 of Billet d'État XVII of 2011.

repealed section 9 of the Post Office Law. The power of the Authority described in section 12(a) of the Post Office Ordinance should be transferred to C&E.

- iv. In view of the number of potential items of legislation which may need to be amended as a consequence of the proposals in this Policy Letter, further consequential amendments, which are yet to be identified, may need to be made.

## **6. Consumer protection**

- 6.1 As stated at section 2.1., above, the States, after consideration of the Departments' joint proposals on an alternative framework for the oversight of GEL and GPL, resolved<sup>3</sup>, *inter alia*:

*“To note that the mandate of the Commerce and Employment Department includes “to be responsible for the strategic approach to, and the regulation of, utilities” and “to be responsible for consumer advice and protection.....”; and, therefore, to direct that the interests of the consumer with regard to the incorporated companies referred to in the propositions above and any other unregulated utilities shall be promoted by the Commerce and Employment Department”.*

- 6.2 Although the purpose of this Policy Letter is principally to make detailed proposals for legislative amendments, the Department also wishes to take this opportunity to provide an update on work to give effect to the above States' Resolution.
- 6.3 Further to section 4.4.3. of the Departments' joint report published in Billet d'État VI (2015), and in pursuance of the above States' Resolution, C&E's Economic Development Unit and Trading Standards Service, in liaison with T&R, are updating the existing processes for handling unresolved consumer complaints relating to GEL and GPL, to reflect the change in reporting structures described in the aforementioned section of the Departments' joint report.
- 6.4 Both companies' MoU with T&R require them to maintain establish and maintain an independent User Council to supplement existing methods of communication with their customers. These User Councils will provide an opportunity for the company's customers to convey to an independent body issues, ideas and observations on the provisions of its services.
- 6.5 It has proven necessary to reconstitute the independent user body for electricity services, the Electricity Users' Council (“EUC”), which in recent years has been inactive, and whose previous membership is no longer sitting. In view of the States' Resolution described at section 6.1, above, T&R has invited C&E to

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<sup>3</sup> States' Resolution No. III 3b, dated 09 April 2015, concerning Billet d'État VI (2015)

approve a refreshed mandate for the EUC, as well as the appointment of its new chairperson and membership. For clarification, the independent user body for postal services, PostWatch, remains an active entity with a sitting chairperson and membership, and therefore, unlike the EUC, does not require such reconstitution. Nevertheless, following an approach from PostWatch, discussions have commenced between representatives of the T&R Supervisory Sub-Committee and PostWatch to establish how PostWatch might be able to play an enhanced consumer role under the new arrangements for GPL.

- 6.6 Whereas the above States' Resolution refers specifically to C&E's mandate, under the changes to the organisation of States' affairs to be made in 2016, responsibility for trading standards and consumer protection will be transferred from C&E to the future Committee for Home Affairs<sup>4</sup>. It will be for that future Committee to determine how it wishes to exercise its mandate in respect of the utilities, and therefore C&E has not sought to be overly prescriptive in how the future Committee for Home Affairs should carry out its role in this respect.

## **7. Resources**

### *Need for legislation*

- 7.1 The proposed legislative changes referred to in this Policy Letter are necessary in order to give effect to the States' Resolutions of 9<sup>th</sup> April 2015 (Billet d'État VI of 2015, Resolution III).

### *Funding*

- 7.2 The Departments' joint report describes the resource implications relating to the administration of the T&R Supervisory Sub-Committee. This information is therefore not repeated in this Policy Letter.
- 7.3 The proposals contained in this Policy Letter, however, have the potential to create resourcing issues for C&E in the exercise of the functions, powers, and duties of the Authority to be transferred to the Department. C&E understands that in recent years the Authority has only exceptionally had to exercise some of these functions, powers, and duties, and the Department has therefore not made any significant budgetary allowance other than setting aside a small contingency for any technical work which may be required to bring about the transfer of these functions, powers, and duties. Based on the experience of the Authority, it is reasonable to assume that the Department would be required to exercise these regulatory functions, powers, and duties only on an exceptional basis and if it is unable to meet any costs incurred from within its existing resources, it will request additional funding from the Budget Reserve.

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<sup>4</sup> States' Resolution No. 7, dated 09 July 2015, concerning Billet d'État XII (2015)

*Risks and benefits associated with enacting/not enacting the legislation*

- 7.4 The risk of not enacting the relevant legislation is that the States' Resolutions of 9<sup>th</sup> April 2015 (Billet d'État VI of 2015, Resolution III) are not given effect. The benefit of enacting the relevant legislation is that it will enable both C&E and T&R to achieve the objectives set out in the Departments' joint report.

*Estimated Drafting Time*

- 7.5 The amendments which will need to be made to the RoU Law are relatively simple. However the amendments envisaged for the Electricity Law and the Post Office Law are more complex and detailed. In total it is thought that five working days would be required to draft the amendments which can be made by way of Ordinance.

**8. Consultation with the Authority, Alderney, and Sark**

- 8.1 As required by the relevant legislation, the Department has consulted with the Authority, the States of Alderney and the Chief Pleas of Sark.
- 8.2 Neither the States of Alderney nor the Chief Pleas of Sark identified any concerns.
- 8.3 The Authority responded by stating that it had already covered many of the relevant issues in previous consultation responses , but that it wished to reiterate a number of key points. These are summarised below.
- 8.4 The Authority commented that it welcomes a dedicated shareholder function for the activities of GEL and GPL, as recommended by the Regulatory Policy Institute ("RPI") in its report to the Department published in October 2010, but is not aware that the RPI recommendations regarding the need for broader policy have been progressed. The Authority advised that *"in the absence of a policy for these sectors that positively guides decision making and strategic planning which then sets the direction and boundaries for action by the commercialised utilities, circumstances and context are in practice more likely to dictate policy than the considered position of Guernsey's elected representatives"*.
- 8.5 The Authority reiterated its concern that the proposed alternative framework deviates significantly from accepted practice in terms of protecting consumer interests. The Authority advised that a particular concern with the proposal to move consumer protection to C&E is the risk that *"similar factors contributing to the historic lack of focus of the shareholder role by Treasury and Resources will contribute to a weak focus on the consumer protection role by Commerce and Employment despite the best of intentions"*.
- 8.6 The Authority, with reference to the RPI report which stated there was *"widespread agreement that infrastructure regulators should be independent from the regulated entities and, as far as possible from government influence"*, commented in its consultation response that *"independence of the consumer*



*protection role ensures decisions on matter that are essentially commercial in nature are not based on political priorities outside of established policy direction". The Authority further commented that the Department's proposals are therefore, in the view of the GCRA, "contrary to the advice given by RPI and established practice. As a consequence where difficult trade-offs are required there is a greater likelihood that consumers will bear a disproportionate share of costs and risks they have little or no control or influence over".*

- 8.7 The Authority noted the establishment of the User Councils and stated its support of these, as an important complement to independent regulation; however, *"adequate consumer protection requires bodies with...the powers to oblige compliance with measures to protect consumers, the means to undertake adequate scrutiny and challenge, and a key approval role for decisions that impact on consumers"*. The Authority commented that *"User Councils do not provide such protection for customers"*.
- 8.8 The Authority also questioned the need to retain exclusivity of supply and generation in the electricity market, commenting that *"if commercial barriers exist it would appear redundant to also introduce legal barriers to entry. Developments in distributed generation for example offer modern solutions to energy constraints and environmental policy aims which are at a considerably more advanced stage of development elsewhere in Guernsey. Legal barriers to progress in these areas would not appear to be in consumers interests"*.
- 8.9 The Department is of the view that States has explored the issues raised above in its consideration of the Departments' joint States Report and therefore does not consider that the above comments warrant any change to this Policy Letter.

## **9. Recommendations**

The Department recommends:

1. That the States direct that the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 is amended by removing postal and electricity services from the definition of "utility services" (as indicated at section 3.3 of this Policy Letter), in order that the regulation of those sectors is no longer a responsibility of the Guernsey Competition and Regulatory Authority.
2. That the States direct that the Electricity (Guernsey) Law, 2001 and the Post Office (Bailiwick of Guernsey) Law, 2001 are amended, with the intention that the Commerce and Employment Department (or the committee of the States which has responsibility for utility regulation as successor to the Department) may discharge the regulatory functions under the Laws as indicated in sections 3.4 to 3.15 of this Policy Letter.

3. That the States should direct the Law Officers of the Crown to prepare the legislation necessary to give effect to the above which may need to be made.

Yours faithfully

K A Stewart  
Minister

A H Brouard  
Deputy Minister

D de G De Lisle  
G M Collins  
L S Trott

Advocate T Carey  
(Non-States Member)



## SCHEDULE 1

EXTANT STATES' DIRECTIONS TO THE AUTHORITY  
LIKELY TO BE RESCINDED

Ref	Extant States' Directions: electricity	Made by	Reference
A1	<b>Identity of the First USO Electricity Licensee</b> <i>"The Director General of Utility Regulation shall issue the first licence to contain an electricity Universal Service Obligation to Guernsey Electricity Limited, once that company is established to take over the functions of the States Electricity Board"</i>	States' Resolution	States' Resolutions, Billet d'Etat No. XVIII (2001) Item XIII (No.9)
A2	<b>Special or Exclusive Rights: Supply:</b> <i>"Issue a States Direction to the Director General of Utility Regulation that an exclusive licence be issued to Guernsey Electricity for supply activities subject to any exemptions granted by the Director General under Section 1 (2) of the Electricity (Guernsey) Law, 2001 for the period ending 31<sup>st</sup> January 2022".</i>	States' Resolution	States' Resolutions, Billet d'Etat No. XV (2011) Item XIV (No. 11a)
A3	<b>Special or Exclusive Rights: Conveyance:</b> <i>"Issue a States' Direction to the Director General of Utility Regulation to issue to Guernsey Electricity an exclusive licence for conveyance activities, subject to any exemptions granted by the Director General under Section 1 (2) of the Electricity (Guernsey) Law, 2001 for the period ending 31<sup>st</sup> January 2022".</i>	States' Resolution	States' Resolutions, Billet d'Etat No. XV (2011) Item XIV (No. 11b)
A4	<b>Special or Exclusive Rights: Retail and Network Activities</b> <i>"Direct the Director General of Utility Regulation that the exclusive licences set out in Directions (a) and (b) above [Resolutions 11a and 11b of Billet d'Etat XV (2011)] should be replaced with exclusive licences for retail and network activities respectively when new legislation is enacted amending the nomenclature".</i>	States' Resolution	States' Resolutions, Billet d'Etat No. XV (2011) Item XIV (No. 11c)
Ref	Extant States Directions: post	Made by	Reference
A5	<b>Universal Service Obligation:</b> <i>"The following universal postal service shall be provided by at least one licensee throughout the Bailiwick of Guernsey at uniform and affordable prices, except in circumstances or geographical</i>	States' Resolution	States' Resolutions Billet d'Etat No. XVII (2011)

	<p><i>conditions that the Director General of Utility Regulation agrees are exceptional:</i></p> <ul style="list-style-type: none"> <li>• <i>One collection from access points on five working days, Monday to Friday, each week;</i></li> <li>• <i>One delivery of letter mail to the home or premises of every natural or legal person in the Bailiwick (or other appropriate installations if agreed by the Director General of Utility Regulation) on five working days, Monday to Friday;</i></li> <li>• <i>Collections shall be for all postal items up to a weight of 20Kg;</i></li> <li>• <i>Deliveries on a minimum of five working days shall be for all postal items up to a weight of 20kg;</i></li> <li>• <i>Services for registered and insured mail.</i></li> </ul> <p><i>In providing these services, the licensee shall ensure that the density of access points and contact points shall take account of the needs of users, "access point" shall include any post boxes or other facility provided by the Licensee for the purpose of receiving postal items for onward transmission in connection with the provision of this universal postal service".</i></p>		Item VIII (No.1)
A6	<p><b>Identity of the First USO Postal Licensee</b></p> <p><i>"The Director General of Utility Regulation shall issue the first licence to contain a postal Universal Service Obligation to Guernsey Post Limited, the company established to take over the functions of the States Post Office Board pursuant to the States agreement to the recommendations of the Advisory and Finance Policy letter published in this Billet".</i></p>	States' Resolution	States' Resolutions Billet d'Etat No. XVIII (2001) Item XIII (No.10)
A7	<p><b>Special or Exclusive Rights:</b></p> <p><i>"To give a direction to the Director General in accordance with section 3(1)(b) of The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 to award to Guernsey Post Limited the exclusive right to provide postal services in the Bailiwick to the extent that such exclusive right is necessary to ensure maintenance of the universal postal service specified by States' directions under section 3(1)(c) of that Law".</i></p>	States' Resolution	States' Resolutions Billet d'Etat No. XVIII (2001) Item XIII (No.15)
<b>Ref</b>	<b>Extant States' Directions: other</b>	<b>Made by</b>	<b>Reference</b>
A8	<b>Principles of Economic Regulation:</b>	Ordinance	Section 2 (1)

	<i>“The Director General shall follow the six principles for economic regulation set out in paragraph 5.11 of the report of the States Commerce and Employment Department entitled "Review of Utility Regulation" and dated the 8th July, 2011c ("the report") and take them into account in the performance of his functions and powers”.</i>		of The Regulation of Utilities (States' Directions) (Bailiwick of Guernsey) Ordinance, 2012
<b>A9</b>	<b>Memoranda of understanding with States' owned utilities:</b> <i>“The Director General shall prepare, with Guernsey Post Limited and Guernsey Electricity Limited respectively, a Memorandum of Understanding setting out formally the approach, process, practice and procedure, objectives, deliverables and measurements of success for the future regulation of each company as described in paragraphs 5.14 and 5.15 of the report”.</i>	Ordinance	Section 3 of The Regulation of Utilities (States' Directions) (Bailiwick of Guernsey) Ordinance, 2012

- (N.B. The Treasury and Resources Department notes that should there be any one-off expenditure associated with the exercise of the functions, powers and duties being transferred from the Guernsey Competition and Regulatory Authority that cannot be met from existing resources, a request will be made for additional funding from the Budget Reserve which contains allowance for funding such matters that only occur on an ad-hoc basis and hence cannot be incorporated into ongoing Cash Limits.)**
- (N.B. The Policy Council supports the proposals in this Policy Letter and confirms that it complies with the Principles of Good Governance as defined in Billet d'État IV of 2011.)**

The States are asked to decide:-

XVII.- Whether, after consideration of the Policy Letter dated 3<sup>rd</sup> December, 2015, of the Commerce and Employment Department, they are of the opinion:-

1. To direct that the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 is amended by removing postal and electricity services from the definition of "utility services" (as indicated at section 3.3 of that Policy Letter), in order that the regulation of those sectors is no longer a responsibility of the Guernsey Competition and Regulatory Authority.
2. To direct that the Electricity (Guernsey) Law, 2001 and the Post Office (Bailiwick of Guernsey) Law, 2001, are amended, with the intention that the Commerce and Employment Department (or the committee of the States which has responsibility for utility regulation as successor to the Department) may discharge the regulatory functions under the Electricity (Guernsey) Law, 2001 and the Post Office (Bailiwick of Guernsey) Law, 2001, as indicated in sections 3.4 to 3.15 of that Policy Letter.
3. To direct preparation of such legislation as may be necessary to give effect to the above decisions.

## SOCIAL SECURITY DEPARTMENT

### INTRODUCTION OF PARENTAL BENEFITS

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

30<sup>th</sup> November 2015

Dear Sir

#### **Executive Summary**

1. This Policy Letter recommends the preparation of the necessary legislation to replace the existing maternity benefits available to expectant and new mothers under the Social Insurance (Guernsey) Law, 1978, with the package of parental benefits which was given approval by the States of Deliberation in February 2012 (Billet d'État IV, Volume 1 of 2012), with effect from 1<sup>st</sup> January 2017. The Policy Letter also addresses some matters of detail, not included in the original report. It also proposes transitional arrangements which will apply to individuals who have a maternity allowance claim in payment as at 31<sup>st</sup> December 2016.
2. These changes will, for the first time in Guernsey, provide benefit entitlement to fathers who take on the role of primary care-giver for their child for a limited or more extended period of time, and also for adoptive parents. The introduction of the new parental benefits will help demonstrate better compliance with the United Nations Convention on the Elimination of all forms of Discrimination Against Women ("CEDAW"), which the States of Deliberation had previously prioritised for extension to Guernsey.

#### **Introduction**

3. In February 2012 the States approved a Report from the Policy Council ("the 2012 Report") (Billet d'État IV, Volume 1 of 2012) that recommended the introduction of statutory maternity and adoption leave, and proposed changes to the maternity benefits currently available to women under the Social Insurance (Guernsey) Law, 1978 in order to go some way towards meeting the requirements of CEDAW, which the States have previously prioritised for extension.
4. Extracts from the 2012 Report pertaining to the proposed benefit changes are set out in Appendix 1. The resolutions made by the States on 21<sup>st</sup> February 2012 following consideration of the 2012 Report are set out in Appendix 2.

5. The benefit changes approved by the States in February 2012 can be summarised as follows:
  - a) To make the maternity grant available to all mothers of newborn children regardless of whether or not they are eligible for any other maternity/parental benefits;
  - b) To replace maternity allowance with a maternal health allowance which would only be available to women whilst off work in the pre-birth or initial post-birth period, finishing at the end of the compulsory maternity leave two weeks after birth, and a new born care allowance, available to either parent who takes time off work to care for their newborn child. The rate of both benefits was proposed to be £180 per week (2011 rate);
  - c) To introduce a new adoption grant at the same rate as a maternity grant in the case of adoption of a child under the age of 18;
  - d) To introduce a new benefit of parental allowance, payable at the same rate as maternal health allowance and newborn care allowance, which could be claimed by either parent immediately following the adoption of a child under the age of 18.
6. In this report, the maternity and adoption grants and the maternal health, newborn care and parental allowances are collectively referred to as “parental benefits”, reflecting the fact that the benefits available to people who have taken time off work in order to care for a child are gender neutral, unlike the current maternity benefits which may only be claimed by women.
7. In February 2012, following consideration of the 2012 Report, the States directed the Social Security Department to report back to the States, at the same time as it reported on the funding of other benefits, with proposals for funding the revised benefits and requesting the preparation of the necessary legislation to provide for the changes set out in paragraph 5 of this report.
8. On 30 October 2015, following consideration of a report from the Social Security Department entitled ‘Benefit and Contribution Rates for 2016’ (Billet d’État XVIII of 2015), the States resolved to increase, with effect from 1<sup>st</sup> January 2017, the Class 1 (employed) contribution rate by 0.2%, split equally between the employee and the employer, in order to fund the new parental benefits. This discharged part of the above resolution. This Policy Letter seeks a States direction to prepare the necessary legislation to introduce parental benefits with effect from 1<sup>st</sup> January 2017.

## **Parental benefits for people expecting a child**

### ***Maternity grant***

9. The current maternity grant is a lump sum payment of £376.00 (2016 rate) to help with the cost of having a baby. At present, a woman who is an insured person is

entitled to a maternity grant if she is ordinarily resident in Guernsey<sup>1</sup>, she is pregnant and it has been certified that it is expected that she will give birth within a period of 12 weeks. At present, no woman may receive both a maternity allowance and a maternity grant, although that was the case prior to changes made with effect from 1<sup>st</sup> January 2000.

10. Recognising that all newborn babies have the same basic needs and associated costs, the 2012 Report proposed that the maternity grant be available to all new mothers, regardless of any other maternity benefits that they might be entitled to or receiving. This proposal was approved by the States following consideration of the 2012 Report.

### ***Maternal health allowance***

11. The current maternity allowance is a weekly income replacement benefit for pregnant women and new mothers who have given up work on a permanent or temporary basis during the third trimester of their pregnancy or upon the birth of their child. It is normally paid for a flexible 18 week period. It starts no earlier than 12 weeks before the woman's expected date of confinement (i.e. due date) and ends no later than 18 weeks after the baby is born. The woman must satisfy certain Social Security contribution conditions in order to qualify for the allowance.
12. In the 2012 Report, the Policy Council recognised that all birth mothers need a certain amount of leave for health reasons. However, it was noted that the mother might not necessarily be the primary care-giver for the child, and her partner should not be prevented from taking that role because of a lack of financial support. It was therefore proposed that maternity allowance be replaced by two new benefits - maternal health allowance which may only be claimed by the birth mother, whilst off work in the pre-birth or initial post-birth period, and newborn care allowance which may be claimed by either parent, provided that they had ceased work as an employed or self-employed person. In both cases, entitlement would be based on the contribution record of the claimant. This means that the contribution test varies, depending on which partner is seeking to claim the allowance.
13. The Policy Council proposed that the maximum rates of both benefits would be substantially increased from £132.23 per week to £180.00 per week (2011 rates). By applying the same percentage increases to this rate as were applied to the other social insurance benefits for the years 2012 to 2016 (inclusive), the 2016 maximum rate for these benefits would be £204.82.
14. The proposal in the 2012 Report to enhance the rates of income replacement benefits available to new parents was intended to meet the requirement of Article 11 of CEDAW to introduce maternity leave with pay or with comparable social

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<sup>1</sup> References in this Policy Letter to 'Guernsey' include the Islands of Alderney, Herm and Jethou.



benefits in order to prevent discrimination against women on the grounds of maternity.

15. In the 2012 Report it was proposed that there be flexibility to start claiming maternal health allowance from no earlier than 12 weeks prior to the expected date of confinement (i.e. the child's due date) and no later than the actual date of confinement (i.e. the child's date of birth). It was proposed that maternal health allowance would cease at the end of the two week compulsory maternity leave period. These proposals were approved by the States.

#### *Newborn care allowance*

16. The current maternity allowance may be claimed by the birth mother only. As noted in paragraph 12, the Policy Council proposed in the 2012 Report that newborn care allowance be payable to either parent, provided that they had ceased work as an employed or self-employed person. This proposal recognised the common responsibility of men and women in the upbringing and development of their children, as required under Article 5 of CEDAW.
17. It was proposed that entitlement for newborn care allowance would be based on the claimant satisfying the relevant contribution conditions.
18. It was proposed that maternal health allowance and newborn care allowance in respect of the same confinement would not overlap and would be payable for a maximum combined period of 26 weeks. As noted in paragraph 11, maternal health allowance could be claimed by the mother from no earlier than 12 weeks prior to the expected date of confinement (i.e. the child's due date) and no later than the actual date of confinement (i.e. the child's date of birth) up until the end of the two week compulsory maternity leave. Newborn care allowance would be payable for the remainder of the 26 week period, or until the claimant returned to work, whichever was the sooner. Therefore, the length of time that newborn care allowance would be payable would depend on how far in advance of the child's birth the maternal health allowance was claimed by the expectant mother. The maximum period of newborn care allowance payable would be 24 weeks if the mother started claiming maternal health allowance on the date of her child's birth.
19. To make the allowance fully flexible, the Policy Council proposed that parents be able to elect to split the newborn care allowance into two or three periods divided between the parents.
20. The above proposals were approved by the States.



### **Parental benefits for people adopting a child/children**

21. The current maternity benefits are not available to people who adopt a child or children. In the 2012 Report, the Policy Council proposed that there should be similar social insurance benefits available for parents adopting a child under the age of 18, as those proposed for other parents.

#### ***Adoption grant***

22. In the 2012 Report, the Policy Council proposed the introduction of an adoption grant, payable at the same rate as the maternity grant, in the case of adoption of a child under 18 years of age. This proposal was approved by the States.
23. The adoption section of the 2012 Report did not specify whether the adoption grant would be gender neutral, i.e. whether male or female adoptive parents would be eligible to claim the grant. However, paragraph 11.4 in the section of the report concerning legislative implications did state:

*“In drafting the legislation the Policy Council is mindful that it should be as flexible as possible to allow for same sex couples as well as surrogacy and adoption.”*

24. The Department is of the view that the policy intention which underpinned the Policy Council’s proposals in the 2012 Report was to move away from the current model of benefit provision for mothers only, as it serves to reinforce the gender stereotype of the female care-giver. The Department proposes, therefore, that adoption grant should be available to male or female adopters, provided that the claimant is an insured person and that they are ordinarily resident in Guernsey.
25. It is further proposed that where a person adopts more than one child, an adoption grant may be claimed in respect of each child, as is currently the case for maternity grant in respect of multiple births.

#### ***Parental allowance for adoptive parents***

26. The Policy Council also proposed the introduction of a parental allowance, available to either parent (subject to meeting the relevant contribution conditions) in the case of adoption of a child under 18 years of age. The allowance would be payable for up to 26 weeks (i.e. the same as the combined period of the maternal health allowance and the newborn care allowance). The full rate of the allowance was proposed to be £180 per week (2011 rate) (i.e. the same rate as maternal health allowance and newborn care allowance). By applying the same percentage increases to this rate as were applied to the other social insurance benefits for the years 2012 to 2016 (inclusive), the 2016 maximum rate for this benefit would be £204.82. This proposal was also approved by the States.

### **Further considerations**

27. While the States have already approved the basic structure of the new parental benefits, as set out in the foregoing paragraphs, a number of points of detail were not addressed in the 2012 Report and are considered in this Policy Letter for the purpose of providing clarity for the necessary changes to Guernsey's Social Insurance and related legislation.

### ***Rates and amounts of benefit***

28. Section 19 of the Social Insurance (Guernsey) Law, 1978 provides that the rate of maternity allowance and the amount of maternity grant shall be such rate or amount as the States shall from time to time by Ordinance determine. It is recommended that the rates and amounts of the new parental benefits shall be determined in the same manner.

### ***Requirement to be providing care in respect of newborn care allowance and parental allowance***

29. As the name of the benefit implies, newborn care allowance is intended for the primary care-giver of a newborn child. Parental allowance is the equivalent benefit for the primary care-giver of an adopted child. The Department proposes that a condition of entitlement to these benefits is that the person claiming benefit is providing care for the child. Although, in the majority of cases the Department will be able to accept the declaration of the claimant that they are/will be providing care for the child, the condition will potentially be relevant in determining entitlement to benefit where both parents make a claim for the allowance (for example in the case of a relationship breakdown – see paragraph 47 for further detail) and in preventing or ceasing payment of the allowance if a child is taken into care.

### ***Residency criteria***

30. At present, the Social Insurance (Guernsey) Law, 1978 provides that a woman who is an insured person shall be entitled to a maternity grant if she is ordinarily resident in Guernsey. The Department proposes that this residency test applies in respect of all of the parental benefits.
31. Regulations provide that a woman shall not be disqualified from receiving maternity allowance by reason of being absent from Guernsey if payment of an allowance commenced before her departure. The Department proposes that this rule applies in respect of the new allowances, provided that, in the case of newborn care allowance and parental allowance, the claimant is caring for the child. So, for example, in the case of a mother who has been claiming newborn care allowance, if she were to leave the island without her baby, she would no longer be eligible to receive newborn care allowance as she would no longer be caring for her child.

***Contribution conditions for entitlement to benefit***

32. There are currently no contribution conditions in respect of the maternity grant. This means that a woman who has paid insufficient contributions to qualify for maternity allowance may claim the grant instead.
33. It is proposed that this should not change in respect of the maternity grant and that there should be no contribution conditions in respect of the adoption grant as it is intended to be the equivalent benefit for people adopting a child.
34. The contribution conditions for maternity allowance are that –
  - i. not less than 26 reckonable Class 1 (employed) or reckonable Class 2 (self-employed) contributions have been paid by the claimant between the day that she became insured and the day for which the benefit is claimed; and
  - ii. not less than 50 reckonable Class 1 (employed) or reckonable Class 2 (self-employed) contributions or their equivalent have been paid by or credited to the claimant in the relevant contribution year<sup>2</sup>.
35. Regulations provide that where a person satisfies the first condition but does not satisfy the second condition, they shall nevertheless be entitled to maternity allowance payable at a reduced weekly rate. If less than 26 reckonable contributions of the relevant classes have been paid by or credited to the claimant in the relevant contribution year, maternity allowance is not payable.
36. Provided that a claimant has paid at least one Class 1 or Class 2 contribution to Guernsey in the relevant contribution year, contributions paid to other countries with which Guernsey has a Reciprocal Agreement may be used to build up entitlement to maternity allowance.
37. The Department recommends that the contribution conditions set out in paragraphs 34 and 35 should apply in respect of maternal health allowance, newborn care allowance and parental allowance.

***Miscarriages, still births and early infant mortality***

38. Currently, maternity allowance or maternity grant are payable any time after the 24<sup>th</sup> week of pregnancy regardless of whether a living child is born. If a pregnancy lasts less than 24 weeks, the allowance or grant is only paid if a living child is born. It should be noted that sickness benefit may be claimed by anyone not fit to work due to a miscarriage prior to the 24<sup>th</sup> week of pregnancy.

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<sup>2</sup> 'Relevant contribution year' means, in respect of a claim for benefit made from 1 January to 30 June (inclusive), two years prior to the year in which the claim is made and, in respect of a claim for benefit made from 1 July to 31 December (inclusive), one year prior to the year in which the claim is made.

39. The Policy Council proposed in the 2012 Report that the same rules should apply in respect of maternal health allowance and newborn care allowance.
40. In the case of a still birth after the 24<sup>th</sup> week of pregnancy or the death of a baby before the end of the two week compulsory maternity leave period, the Department considers that it would be insensitive to switch the benefit type from maternal health allowance to newborn care allowance two weeks after the birth of the baby as would normally be the case. It is, therefore, proposed that the maximum period of maternal health allowance be extended to 26 weeks in these circumstances.

#### ***Death of the claimant***

41. Section 28(3) of the Social Insurance (Guernsey) Law, 1978 provides that if a woman dies before the beginning of the period for which maternity allowance is payable, any entitlement ceases. It also stipulates that if such a woman dies while receiving the allowance, the allowance shall not be payable for any week subsequent to that in which she dies.
42. It is proposed that the principles of these rules pertaining to the death of a maternity allowance claimant are reflected in the new legislative provisions relating to the death of a maternal health allowance, newborn care allowance or parental allowance claimant. If a parent dies after the period for payment of newborn care allowance or parental allowance has commenced, but before the end of that period, entitlement will cease for any week subsequent to that in which the parent dies but without prejudice to the right of the surviving spouse/partner to claim payment for the balance of the period remaining.

#### ***Claimants over pensionable age***

43. Persons who have reached pensionable age are not entitled to receive short-term income replacement benefits such as unemployment benefit or sickness benefit. This is because, providing that they have paid sufficient contributions, pensioners receive a weekly old age pension. This disqualification does not apply in respect of maternity allowance, presumably because it is very unlikely that a woman of pensionable age would fall pregnant. However, as newborn care allowance and parental allowance may be claimed by men, there is an increased possibility that a claimant may have attained pensionable age.
44. The Department is of the view that persons who have attained pensionable age should not be entitled to receive maternal health allowance, newborn care allowance or parental allowance as they are income replacement benefits intended for persons of working age who have ceased work to care for a child. Persons over pensionable age would instead receive old age pension as their income replacement benefit.

45. However, the Department considers that pensioners should not be excluded from entitlement to a maternity grant (noting that this situation is highly unlikely to arise) or an adoption grant, provided that they meet the other eligibility criteria for the grants, as set out in paragraph 9 in respect of the maternity grant and paragraph 24 in respect of the adoption grant.

***Determination of disputes between separated parents in respect of newborn care allowance or parental allowance***

46. As the name of the benefit implies, newborn care allowance is intended for the primary care-giver of a newborn child. Parental allowance is the equivalent benefit for the primary care-giver of an adopted child.
47. The 2012 Report stated: *“If there were a dispute between the parents as to who should claim the newborn care allowance then it would be paid to the birth mother”*. Having given this matter further consideration, the Department is of the view that this may not always be appropriate (e.g. if a father has sole parental responsibility for his child) and recommends that where both parents make a claim for newborn care allowance or parental allowance, the parent responsible for providing the most care for the child should receive the benefit.

***Surrogacy***

48. Paragraph 11.4 of the 2012 Report made the following brief reference to surrogacy:

*“In drafting the legislation the Policy Council is mindful that it should be as flexible as possible to allow for same sex couples as well as surrogacy and adoption.”*

49. No further policy guidance was provided in respect of who should benefit from maternity leave or parental benefits in the context of surrogacy (i.e. just the birth mother or the birth mother and one commissioning individual).
50. This uncertainty has been overcome in Section 13 of the draft Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016 by providing for the Commerce and Employment Department to have the power to make regulations applying the statutory leave provisions to an employee and her partner who are the intended parents of a baby being born pursuant to a surrogacy arrangement as if the employee was the woman giving birth and to an employee who gives birth pursuant to a surrogacy arrangement, subject to any modifications specified in the regulations. The default position is that the statutory leave provisions do not apply to surrogacy (except for the two week compulsory maternity leave period at Section 3 which applies to any woman who has given birth), but with the Commerce and Employment Department having the power to make them so apply (with any specified modifications) by regulations.

51. The Department proposes that the same approach is taken in respect of applying the new parental benefits provisions to surrogacy. The default position would be that the provisions do not apply to the intended parents of a baby being born pursuant to a surrogacy arrangement or to a woman who gives birth pursuant to a surrogacy arrangement, except in respect of maternal health allowance which the 'birth mother' would be eligible to receive, provided that she was ordinarily resident and satisfied the relevant contribution conditions, but with the Department having the power to make them so apply (with any specified modifications) by regulations.
52. The Department undertakes to make such regulations prior to the implementation of the new parental benefits on 1<sup>st</sup> January 2017 in order to comply with the general intent set out in the 2012 Report. Further consideration needs to be given as to how the provisions should apply to surrogacy, but it is envisaged that one commissioning individual should be able to receive a grant and an allowance, subject to meeting the eligibility criteria, in respect of the adoption of the child through a surrogacy arrangement.
53. It is noted that this would mean that two people (i.e. the birth mother and one of the commissioning individuals) will receive benefit in respect of the same child and the total period of weekly allowances payable may exceed 26 weeks. In the worst case scenario, if the birth mother claimed maternal health allowance from the earliest possible start date 12 weeks prior to her expected date of confinement and the commissioning individual claimed newborn care allowance or parental allowance for the maximum period of 26 weeks, benefit would be payable for a total elapsed period of 38 weeks with overlapping entitlement for the two week period immediately following the birth of the child.

***Proposed conditions of entitlement for adoption grant and parental allowance***

54. The Department believes it is important that the provision of benefits for adoptive parents is aligned with the statutory leave provisions as far as possible.
55. The Department understands that the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016 ('the Ordinance') has been submitted to the Legislation Select Committee and, subject to the Committee's approval, is due to be considered by the States in January 2016. Subject to States approval, the Ordinance will enter into force on 1<sup>st</sup> April 2016.
56. The Department understands that the Ordinance provides that an employee will not be entitled to be absent from work on adoption leave if, at the time of the intended adoption, the employee already has parental responsibility (as defined in the Children (Guernsey and Alderney) Law, 2008) in respect of that child. An employee who is adopting a child other than through an adoption agency<sup>3</sup> (for

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<sup>3</sup> The term "adoption agency" is defined in the Ordinance as including the Health and Social Services Department and an adoption agency in Alderney, Jersey, the Isle of Man, the United Kingdom and the Republic of Ireland.



example, step parent adoptions and relative adoptions through a Private Law Adoption Arrangement) or where the child is the subject of an overseas adoption for the purposes of the Adoption (Designation of Overseas Adoptions) Ordinance, 1979, will also not be entitled to be absent from work on adoption leave. The Department proposes that where an adopter will not be entitled to be absent from work on adoption leave, they should not be eligible to receive an adoption grant and parental allowance.

57. In respect of self-employed persons, it is not possible to neatly align the eligibility criteria for the two adoption benefits with the eligibility criteria for basic adoption leave as the adoption leave provisions in the Ordinance will only apply to employees. This is because self-employed persons are free to take leave whenever and for whatever purpose they wish. However, a person classified for the purposes of the Social Insurance (Guernsey) Law, 1978 as a self-employed person will be liable to contribute towards the financing of the parental benefits; so, in the event of a self-employed person adopting a child(ren), that person should be eligible to receive parental allowance, provided that they satisfy the relevant contribution conditions.
58. Likewise, a person classified as a non-employed person at the time of claiming a parental allowance, who satisfies the relevant contribution conditions by virtue of having worked as an employed or self-employed person and having paid sufficient Class 1 or Class 2 contributions during the relevant contribution year, should be eligible to receive parental allowance. *[Note that non-employed persons would not be eligible to receive parental allowance (or indeed maternal health allowance or newborn care allowance) unless they had worked as an employed or self-employed person and had paid sufficient Class 1 or Class 2 contributions during the relevant contribution year.]*
59. It is not necessary to satisfy any contribution conditions to be eligible to receive a maternity grant. As adoption grant is the equivalent benefit for adoptive parents, the same rules must apply.
60. Taking the foregoing into account, the Department recommends that a person who is an insured person be entitled to an adoption grant if –
  - a. they are ordinarily resident in Guernsey, and
  - b. they are entitled to basic adoption leave under the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016; or, in the case of a person classified for the purposes of the Social Insurance (Guernsey) Law, 1978 as a self-employed person or a non-employed person, that person would be entitled to basic adoption leave if he/she were an employee for the purposes of that Ordinance (and disregarding for these purposes the requirements placed upon employees under the Ordinance to notify their employers).

61. The Department proposes that the above conditions also apply in respect of eligibility for parental allowance, with the additional requirement that the claimant must satisfy the relevant contribution conditions (see paragraphs 34, 35 and 37), which, it is proposed, will be the same as the conditions in respect of maternal health allowance and newborn care allowance.

***Date of commencement of parental allowance***

62. The Department understands that the draft Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016 provides that basic adoption leave must either start on the date on which the child is placed with the adopter for adoption, or a pre-determined date which must be no more than 14 days before his/her expected placement date. It is proposed that an adoptive parent be able to start receiving parental allowance from the date on which his/her basic adoption leave starts.

***Prescribed time for making a claim for adoption grant***

63. It is proposed that in accordance with Regulations, adoption grant should be payable any time within the period beginning with the date of adoption and ending 3 months after that date. The Department also proposes that Regulations should prescribe conditions subject to which the grant is payable. These are likely to include the need for formal confirmation of the adoption by the Health and Social Services Department or an adoption agency in Alderney, Jersey, the Isle of Man, the United Kingdom or the Republic of Ireland, or, where the child is the subject of an overseas adoption for the purposes of the Adoption (Designation of Overseas Adoptions) Ordinance, 1979, by the relevant adoption agency.

***Flexibility to switch beneficiary during period of parental allowance***

64. As noted in paragraph 19, the 2012 Report proposed that parents be able to elect to split the newborn care allowance into two or three periods divided between the parents. Parental allowance is essentially the equivalent benefit to newborn care allowance for adoptive parents. It is, therefore, proposed that adoptive parents also be given the flexibility to elect to split the parental allowance into two or three periods divided between the parents. The rate of benefit payable will be based on the contribution record of the claimant.

**Regulation making powers**

65. The Department recommends that the current regulation making powers in the Social Insurance (Guernsey) Law, 1978 in respect of the current maternity benefits be amended to apply in respect of the new parental benefits, where appropriate. A list of the current regulation making powers in respect of the current maternity benefits and their proposed future application is set out in Appendix 3.



66. As set out in paragraph 64 above, the intention is for parents to be given the flexibility to elect to split newborn care allowance and parental allowance into two or three periods divided between the parents. While the Department supports the introduction of flexibility for parents who wish to share the role of primary care-giver during the period of benefit entitlement, it wishes to control the administrative burden of making these switches. Therefore, it is recommended that the Department be given the power to prescribe by Regulation a maximum number of switches permissible between parents and the timing of those switches.

### **Transitional arrangements**

67. It is envisaged that the legislation necessary to introduce the new benefits will enter into force on 1<sup>st</sup> January 2017. Women (and men in respect of adoption rant and parental allowance) who start receiving benefit on or after 1<sup>st</sup> January 2017 will clearly be eligible for the new parental benefits.
68. The Department has given consideration to the circumstances in which a person who is receiving maternity allowance on 31<sup>st</sup> December 2016, being the day before the new rules are expected to come into force, should be permitted to switch onto the new benefits when the legislation enters into force on 1<sup>st</sup> January 2017. For the purpose of the following paragraphs, the term “the relevant day” means 31<sup>st</sup> December 2016.

### ***Women who expect to have their baby in 2017 and who give birth in 2017***

69. Women are able to claim maternity allowance from 11 weeks before the week in which the baby is expected. Therefore, there will be cases of women who expect to have their baby in 2017 and who give birth in 2017 but who start claiming maternity allowance during the last 11 weeks of 2016. As maternity allowance is payable for up to 18 weeks, unless a woman returns to work before the end of 2016, maternity allowance will be payable on the relevant day.
70. In this case, the woman’s expected date of confinement and actual date of confinement are both in 2017. Therefore, the woman may reasonably have planned her return to work based upon the assumption that she would be entitled to 26 weeks of benefit. However, if she had to cease work earlier than expected, prior to the introduction of the new parental benefits, perhaps through a pregnancy related medical condition, the Department believes that it would be unfair to penalise her by not allowing her to transfer her maternity allowance claim to a maternal health allowance claim on 1<sup>st</sup> January 2017.
71. The Department recommends that any woman who is claiming maternity allowance on the relevant day whose expected date of confinement is in 2017 and who gives birth in 2017, be transferred onto maternal health allowance on 1<sup>st</sup> January 2017 and that the new rules apply to her and her partner from that date. This would give an extra 8 weeks of benefit entitlement provided that the claimant did not return to work during this period.

***Women who expect to have their baby in 2016 and who give birth in 2017***

72. A relatively small number of claimants with an expected date of confinement in 2016 will give birth in 2017. If entitlement to the new parental benefits is based on the expected date of confinement, a woman whose expected date of confinement is in late 2016, would not be eligible to receive the new parental benefits even if her baby is born in 2017 following the introduction of the new parental benefits. Instead, she would receive maternity allowance for up to 18 weeks (i.e. under the old rules). In this scenario, she would lose out on entitlement to 8 weeks of additional benefit.
73. However, if entitlement to the new parental benefits was based on the actual date of confinement (i.e. the date of birth), the same expectant mother would be eligible to transfer from maternity allowance to maternal health allowance on 1<sup>st</sup> January 2017. Then, two weeks after the baby's birth, the benefit would switch to newborn care allowance which could be claimed by either parent. In this scenario, the combined maximum period of benefit available would be 26 weeks.
74. The Department wishes to avoid the situation where two women who give birth on the same day in early 2017 are entitled to different benefit packages because one woman's expected date of confinement is in 2016 and the other woman's expected date of confinement is in 2017.
75. Therefore, the Department recommends that any woman who is claiming maternity allowance on the relevant day, whose expected date of confinement is in 2016 but who gives birth in 2017, be transferred from maternity allowance onto maternal health allowance on 1<sup>st</sup> January 2017 and that the new rules apply to her and her partner from that date.

***Women who expect to have their baby in 2017 and who give birth in 2016***

76. Some women who expect to have their baby in 2017 will give birth in 2016. If entitlement to the new parental benefits is based on the expected date of confinement, a woman whose expected date of confinement is in 2017 but who gives birth in 2016 would be eligible to transfer from maternity allowance to maternal health allowance or newborn care allowance (depending on when the baby was born) on 1<sup>st</sup> January 2017.
77. However, if entitlement to the new parental benefits was based on the actual date of confinement (i.e. the date of birth), the same expectant mother would be entitled to receive benefit under the old (current) rules (i.e. she would be eligible for maternity allowance for up to 18 weeks). In this scenario, she would lose out on entitlement to 8 weeks of additional benefit.
78. A woman expecting a baby in 2017 is likely to plan her maternity leave, finances, childcare, etc based on the reasonable expectation that she will be entitled to the new parental benefits. As women have no control over when they will give birth,

the Department considers that it would be unfair to penalise a woman for having her baby earlier than expected, particularly as this scenario will apply to mothers who have a premature baby.

79. Therefore, the Department recommends that any woman who is claiming maternity allowance on the relevant day, whose expected date of confinement was in 2017, but who has given birth in 2016, be transferred from maternity allowance to newborn care allowance or maternal health allowance, as appropriate, on 1<sup>st</sup> January 2017, and that the new rules apply to her and her partner from that date.

***Women who expect to have their baby in 2016 and who give birth in 2016***

80. The Department has considered whether women who are claiming maternity allowance on the relevant day, whose expected date of confinement (i.e. due date) and whose actual date of confinement (i.e. date of birth) are both in 2016, should be entitled to be transferred onto maternal health allowance or newborn care allowance, as appropriate, on 1<sup>st</sup> January 2017, thereby being eligible for benefit for up to an additional 8 weeks. The cost of this transitional measure has been estimated to be in the order of £280,000
81. Given that transitional measures are complex to administer and result in increased benefit expenditure, the Department is of the view that the transitional arrangements should be limited to those women whose expected date of confinement or actual date of confinement is in 2017. Therefore, the Department does not recommend that women who are claiming maternity allowance on the relevant day, whose expected and actual dates of confinement are both in 2016 should be entitled to transfer onto maternal health allowance or newborn care allowance, as appropriate, on 1<sup>st</sup> January 2017. However, the Department does recommend that, with effect from 2<sup>nd</sup> January 2017<sup>4</sup>, their rate of maternity allowance (if still payable on that date) should be increased in line with the rates of newborn care allowance, maternal health allowance and parental allowance.

**Impact on supplementary benefit**

82. At present, the maternity grant is wholly disregarded for the purpose of calculating a claimant's eligibility to supplementary benefit. This is because the grant is intended to provide help with the costs of having a baby. If the grant were treated as a resource in the supplementary benefit means-test, the mother's supplementary benefit would be reduced by the amount of the grant during the week in which she received it and she would not benefit from the full value of the grant.
83. Resources which are to be wholly disregarded are listed in Paragraph 11 of the First Schedule to the Supplementary Benefit (Implementation) Ordinance, 1971 ("the Ordinance"). The maternity grant is not specifically listed in paragraph 11

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<sup>4</sup> Social Insurance benefits are uprated with effect from the first Monday in January, which, in 2017, will be 2 January.

at present and the Department recommends that this should be rectified. The Department further recommends that the new adoption grant, being the equivalent benefit to the maternity grant for adoptive parents, be added to the list of resources in Paragraph 11 of the First Schedule to the Ordinance which shall be wholly disregarded when calculating a person's entitlement to supplementary benefit.

### **Financial implications**

84. The cost of implementing the new parental benefits, including the transitional arrangements set out in paragraphs 69 to 81 will be met by increasing the Class 1 (employed) contribution rate by 0.2%, split equally between the employee and the employer, as approved by the States on 30<sup>th</sup> October 2015. This contribution rate rise will be effective from 1<sup>st</sup> January 2017.
85. It is anticipated that the necessary IT system development will be undertaken in-house. The Department does not anticipate the need for any additional staff resources to administer the new parental benefits.

### **Consultation**

86. The Law Officers have been consulted during the course of preparation of this Policy Letter. They have confirmed that the necessary amendments to the Social Insurance Law can be made by Ordinance and that the target implementation date of 1<sup>st</sup> January 2017 is achievable provided that the work of drafting is given appropriate prioritisation.

### **Conclusion**

87. These proposals to legislate for the introduction of parental benefits will provide enhanced benefit entitlement for mothers and will, for the first time in Guernsey, provide benefit entitlement for fathers who take on the role of primary care-giver for their child and also for adoptive parents. This is an important further step towards gender equality and will assist the Island to demonstrate compliance with the principles of CEDAW, which the States have previously prioritised for extension to Guernsey.

## Recommendations

88. The Department recommends:

- (i) that the Social Insurance (Guernsey) Law, 1978 be amended to:
  - a. replace maternity allowance with a maternal health allowance and a newborn care allowance, as set out in paragraphs 12 to 19;
  - b. create a new benefit to be known as adoption grant, as set out in paragraphs 22 to 25;
  - c. create a new benefit to be known as parental allowance, as set out in paragraph 26.
- (ii) that a woman who is entitled to a maternal health allowance or a newborn care allowance under the revised Law should also be entitled to a maternity grant in relation to the same pregnancy or confinement;
- (iii) that the Department be given the power to make regulations to provide for the application of the provisions relating to parental benefits (subject to any modifications specified in the regulations) to the intended parents of a baby being born pursuant to a surrogacy arrangement or to a woman who gives birth pursuant to a surrogacy arrangement.
- (iv) that the current regulation making powers in the Social Insurance (Guernsey) Law, 1978 in respect of the current maternity benefits be amended to apply in respect of the new parental benefits, where appropriate, as set out in Appendix 3;
- (v) that the Department be given the power to make regulations prescribing a maximum number of switches permissible between parents in respect of newborn care allowance and parental allowance and the timing of those switches and generally to ensure consistency and fairness as between all claimants for parental benefits under the Social Insurance (Guernsey) Law, 1978;
- (vi) that the transitional arrangements set out in paragraphs 69 to 81 apply with effect from 1<sup>st</sup> January 2017, except in the case of women who are claiming maternity allowance on 31<sup>st</sup> December 2016, whose expected date of confinement and whose actual date of confinement are both in 2016, whose rate of maternity allowance will increase in line with the rates of newborn care allowance, maternal health allowance and parental allowance on 2<sup>nd</sup> January 2017, provided that maternity allowance is still payable on that date;

(vii) that Paragraph 11 of the First Schedule to the Supplementary Benefit (Implementation) Ordinance, 1971 be amended in order that maternity grant and adoption grant payable under the provisions of the Social Insurance (Guernsey) Law, 1978 are disregarded for the purposes of establishing eligibility for a supplementary benefit;

(viii) that such legislation as may be necessary to give effect to the foregoing shall be prepared.

Yours faithfully

A H Langlois  
Minister

S A James  
Deputy Minister

J A B Gollop  
D A Inglis  
M K Le Clerc

M J Brown  
Non-States Member

## APPENDIX 1

### **EXTRACTS FROM THE POLICY COUNCIL’S REPORT ENTITLED ‘MATERNITY AND PATERNITY PROVISIONS AND THE UNITED NATION’S CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)’ (ARTICLE VI OF BILLET D’ÉTAT NO IV OF 2012)**

#### **“7. Enhanced Maternity Benefits Paid by Social Security Department**

7.1 There are already two maternity benefits paid by the Social Security Department

- Maternity grant, and
- Maternity allowance

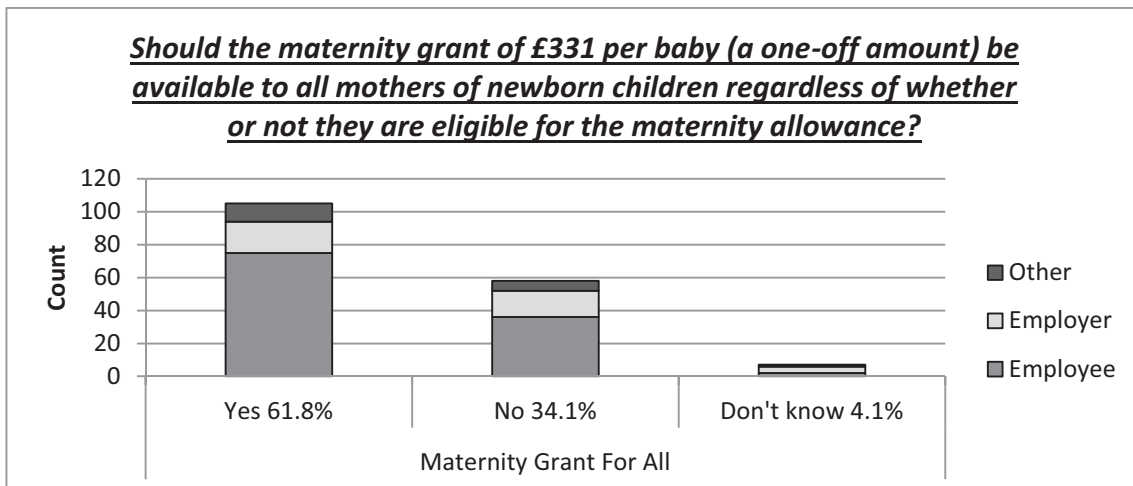
7.2 The proposal is to enhance the maternity grant with changes to current rules but to change maternity allowance to maternal health allowance and newborn care allowance.

#### **Maternity Grant**

7.3 Maternity grant is paid as a lump sum to help with the cost of having a baby. To receive the grant the woman must be insured under the Guernsey social insurance scheme and be ordinarily resident in the Bailiwick.

7.4 At present, only mothers who do not qualify for the maternity allowance can claim the maternity grant. However, this is not a means-tested benefit – it is payable to any mother who has not made social insurance contributions, whether she is unemployed or has sufficient other income to choose not to work.

7.5 The birth of a child involves considerable one-off and ongoing costs to any household. Recognising that all newborns have the same basic needs and associated costs, the Policy Council recommends that all mothers should be entitled to claim a maternity grant, regardless of any other maternity benefits she may be receiving. 62% of respondents to the consultation supported the universal maternity grant.



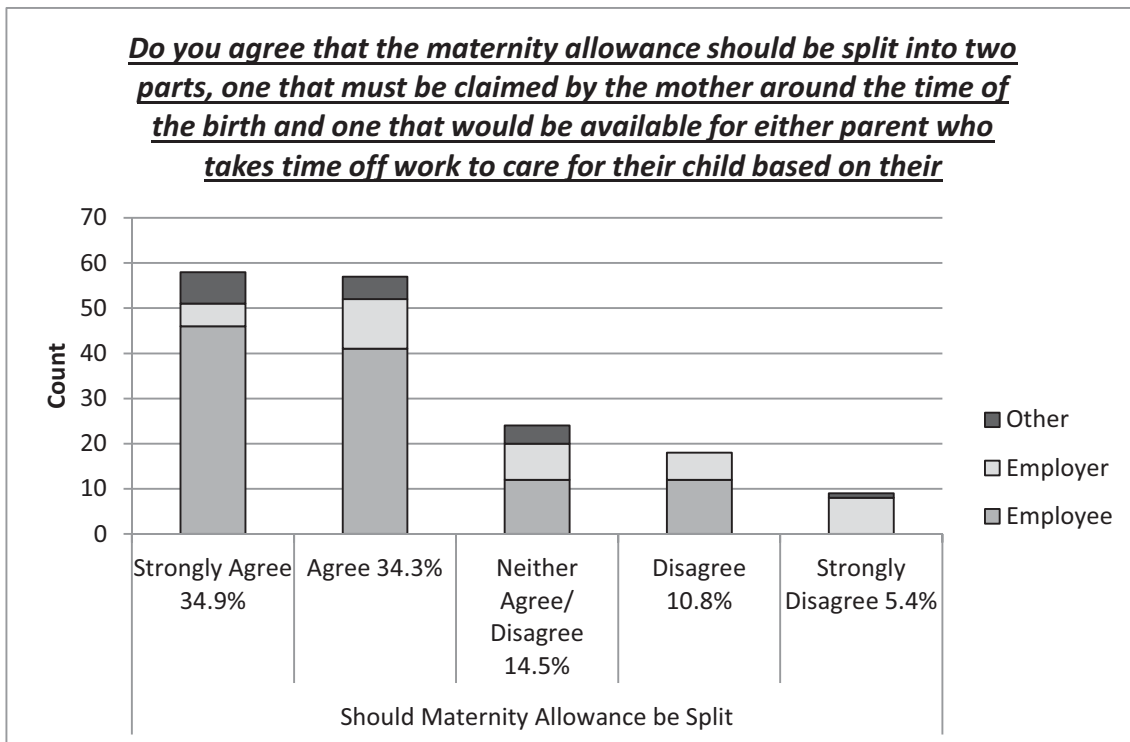
**Graph 6. Preference for whether the maternity grant should be paid as well as the maternity allowance.**

- 7.6 43% of respondents said the current maternity grant of £331 was adequate with a further 31% neither agreeing or disagreeing with the statement. The Policy Council therefore recommends maintaining the current value of the maternity grant (£331 per baby in 2011).

### **Maternity Allowance**

- 7.7 Maternity allowance is the current allowance for pregnant women and new mothers. It is normally paid for a flexible 18 week period. It starts no earlier than 11 weeks before the week in which the baby is expected and ends no later than 18 weeks after the baby is born. Before maternity allowance can be paid, the woman must satisfy certain Social Security contribution conditions. Currently you must choose either to claim the allowance or the maternity grant.
- 7.8 It is recognised that all birth mothers need a certain amount of leave for health reasons. However, the mother may not necessarily be the primary care-giver for the baby, and her partner should not be prevented from taking that role because of a lack of financial support. It is therefore proposed that maternity allowance be replaced by two new benefits: maternal health allowance and newborn care allowance.





**Graph 7. Preference for whether the current maternity allowance should be split**

7.9 From the consultation there was strong support for a split to be made. 89% of employees and 63% of employers who responded were either neutral or agreed that the maternity allowance should be split in two parts.

#### **Maternal Health Allowance**

7.10 The proposed maternal health allowance would only be able to be claimed by the mother, whilst off work in the initial pre- or post-birth period. It is proposed to be for a maximum of 14 weeks, but would finish at the end of the compulsory maternity leave, 2 weeks after the birth.

7.11 The combined maximum time off proposed for both maternal health allowance and newborn care allowance would be 26 weeks.

7.12 It is recommended that there would be flexibility to start the maternal health allowance up to 12 weeks prior to the due date, or on the birth of the baby if the baby is premature. Two weeks would have to be taken after the birth to coincide with the compulsory maternity leave period.

7.13 The maternal health allowance would only be payable to the birth mother and would be based on her contribution record. It is proposed that it would be paid at the same rate as the newborn care allowance and that the rate, in 2011 terms for both new benefits, would be £180.

- 7.14 In 2011, Guernsey's maternity allowance was a maximum of £132.23 and is paid for up to 18 weeks whilst on maternity leave. This is at the same rate as sickness and unemployment benefit rates. Comparisons that have been made between the current Guernsey maternity allowance and other benefits are shown in the following table.

	2011 Guernsey			Other	
	Maternity Allowance	Sickness and Unemployment Benefit Rate	Supplementary Requirement Rate (Single parent and baby – long term rate)	Jersey Maternity Allowance 2011	Isle of Man up-rated by difference in average earnings 2009/10
<b>Weekly payment</b>	£ 132.23	£ 132.23	£ 184.00	£ 179.97	£ 180.00

- 7.15 The current rate of maternity allowance (£132.23) is very low in comparison to women's average earnings (median weekly = £467.50). If it is to be an effective substitute for earnings, and if it is to help meet the costs of a newborn child as well as the needs of the benefit recipient herself (which is not a concern with sickness or unemployment benefits), a higher level of maternity benefit payment is considered necessary.
- 7.16 Currently maternity allowance or maternity grant would be payable anytime after the 24th week of pregnancy. If a pregnancy lasts less than 24 weeks the allowance or grant is only paid if a living child is born. It has been proposed that the same arrangement apply to maternal health allowance and newborn care allowance. However, sickness benefit could be claimed by anyone not fit to work due to an earlier miscarriage and an employer cannot fairly dismiss an employee on the grounds of pregnancy under existing legislation.
- 7.17 Maternal health allowance and newborn care allowance would be contributory benefits, and would therefore not be available to young people while they remain in full-time education as these allowances are intended to be a wage replacement based on contribution record. However, it is recommended that in such cases the maternity grant would be paid as these families would have the same needs regarding essential equipment for a newborn baby.

### **Newborn Care Allowance**

- 7.18 Whereas the proposed maternal health allowance is for the birth mother only, it is proposed that the newborn care allowance would be for either parent.

7.19 CEDAW states in the preamble

*“...that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women...”*

- 7.20 Many women choose to reduce their work commitment to look after children. However, traditional gender roles, along with the typically lower earnings of mothers, have created a strong incentive for women to take on the majority of child care responsibilities. In addition the benefits provided can encourage this behaviour. As a result, women take on a larger amount of child care responsibilities than men, which often affects their ability to progress their careers in the short to long-term.
- 7.21 If benefits were only provided to the mother this would mean that they would have no choice but to be the main carer if the family wants to receive the benefit. It would also mean that men are denied the same opportunity of actively participating in the care of their children. As a result many countries have moved from the traditional ‘male breadwinner model’ to a more gender-neutral model of parental benefits.
- 7.22 It is therefore proposed that newborn care allowance be payable to either parent and would be based on the social insurance contribution record of the parent who was taking the leave. To make the allowance fully flexible, it is recommended that parents be able to elect to split the newborn care allowance into two or three periods divided between the parents. It is proposed that it would be paid at the same rate as maternal health allowance being £180 at 2011 rates.
- 7.23 The maternal health allowance and newborn care allowance for one child/family would not overlap and would be payable for a maximum combined total of 26 weeks only. Maternal health allowance would be claimed up until the end of the 2 weeks compulsory maternity leave. The remainder of the 26 week period would then be the newborn care allowance. This allowance could be claimed by whichever parent assumed responsibility for the care of the child.
- 7.24 The maximum length of the newborn care allowance available would depend on how much maternal health allowance had been taken. The maximum would be if the maternal health allowance had only been claimed for the 2 weeks compulsory leave and the remaining 24 weeks would then be available to be taken as newborn care allowance.
- 7.25 The proposal of a maternal health allowance together with a newborn care allowance would have the dual benefit of protecting women’s health around the

time of birth as well as promoting equality between men and women. It would also enable the benefit system to be more flexible in assisting couples of the same-sex. If there were a dispute between the parents as to who should claim the newborn care allowance then it would be paid to the birth mother.

**Example 3**

From Example 1, Aimee started work for her current employer 10 months before her due date. She wanted to start her maternity leave 2 weeks before her baby was due. Aimee has worked for different employers in the past and would satisfy the relevant Social Security Department contribution conditions as would her husband Bob. She has her baby on the due date.

Under the proposals Aimee would receive £331 as a maternity grant. She would receive maternal health allowance at £180 per week for the 2 weeks basic maternity leave before the baby was born and for the 2 weeks of the compulsory maternity leave at the time of the birth.

Aimee or Bob would then be entitled to newborn care allowance. As Aimee's employer does not offer any maternity leave above the statutory leave she goes back to work after a further 8 weeks of basic maternity leave during which time she will be paid newborn care allowance at £180 per week. Bob's employer allows him to take unpaid leave when Aimee goes back to work and he claims newborn care allowance at £180 for 14 weeks, before returning to work.

The total number of weeks for maternal health allowance and newborn care allowance claimed by Aimee and Bob is the maximum of 26 weeks."

## APPENDIX 2

### **MATERNITY AND PATERNITY PROVISIONS AND THE UNITED NATIONS CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)**

**On 21 February 2012, the States resolved as follows concerning Article VI of Billet d'État No IV dated 13th January 2012**

VI.- After consideration of the Report dated 7th December 2011, of the Policy Council:-

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

- d) it would be the employer's responsibility to confirm the maternity leave and agreed return to work date. This should be done within two weeks of receiving the initial request and within two weeks after being notified of the birth or when a change to the return to work date was requested.
7. To agree the introduction of a 2 week period of statutory maternity support leave for the partner of an expectant woman provided the person taking the leave has worked for his or her current employer for at least fifteen consecutive months.
  8. To agree the introduction of similar statutory leave provisions for parents who adopt children as would be available for parents of a new born, that is:
    - a) statutory leave be available as provided to parents of newborn children, dependant on whether qualifying periods had been met; and
    - b) a period of two weeks mandatory leave in order to encourage bonding between the parent and the adopted child, immediately after adoption.
  9. To direct that such legislation as may be necessary to give effect to the foregoing shall be prepared.
  10. To direct the Social Security Department to report back to the States, at the same time it reports on the funding of other benefits, with proposals for funding and requesting the preparation of the necessary legislation to provide for:
    - a) Changes to the maternity grant to make it available to all new mothers.
    - b) Changes to maternity allowance to split it into a maternal health allowance and a new born care allowance with the rate of both being £180 per week (2011 rate) and the conditions as set out in paragraphs 7.10 to 7.25 [see extract below].
    - c) A new adoption grant at same rate as a maternity grant in the case of adoption for a child under 18.
    - d) a new benefit of parental allowance of £180 per week (2011 rate) which can be claimed by either parent immediately following the adoption of a child under 18 years of age.
  11. To direct the Treasury and Resources Department to report back to the States, at the same time as the Social Security Department reports back on proposition 10 above, with proposals to fund any consequential expenditure incurred by the States as an employer or in the grant from General Revenue.

## APPENDIX 3

## CURRENT REGULATION MAKING POWERS IN THE SOCIAL INSURANCE (GUERNSEY) LAW, 1978 IN RESPECT OF THE CURRENT MATERNITY BENEFITS AND THEIR PROPOSED FUTURE APPLICATION

Section of the Law	Current regulation making power	Proposed future application
23(2)	<p><b>Determination of days for which unemployment benefit, sickness benefit and invalidity benefit are payable.</b></p> <p>23. (2) Subject to subsection (1) of this section, regulations may make provision as to the days which are or are not to be treated for the purposes of... a maternity allowance as days of... incapacity for work.</p>	It is proposed that this regulation making power should apply in respect of maternal health allowance, newborn care allowance and parental allowance.
27(2)(a)	<p><b>Maternity grant.</b></p> <p>27. (2) Regulations may provide that</p> <p>(a) a woman confined of twins or a greater number of children shall, if the other conditions for the payment of a maternity grant are satisfied in respect of the confinement, be entitled to a maternity grant for each of them,</p>	It is proposed that this regulation making power should apply in respect of a person who is adopting more than one child so that, if the other conditions for the payment of an adoption grant are satisfied in respect of the adoption, they would be entitled to an adoption grant for each of the children.
28(4)	<p><b>Maternity allowance.</b></p> <p>28. (4) Regulations may provide that a woman who has become entitled to a maternity allowance shall cease to be entitled thereto if her pregnancy is terminated otherwise than by confinement.</p>	It is proposed that this regulation making power should apply in respect of maternal health allowance.
28(5)	<p><b>Maternity allowance.</b></p> <p>28. (5) Regulations may provide for disqualifying a woman from receiving a maternity allowance if, during the period for which the allowance is payable, she does any work as an employed or self-employed</p>	It is proposed that this regulation making power should apply in respect of maternal health allowance, newborn care allowance and parental allowance.

28(6)	<p>person.</p> <p><b>Maternity allowance.</b></p> <p>28. (6) Regulations may provide for the computation of a daily rate of maternity allowance in such manner (including, without limiting the generality of the same, a manner in which any day of the week is disregarded for the purposes of calculation) and subject to such exceptions and conditions as regulations may prescribe.</p>	<p>It is proposed that this regulation making power should apply in respect of maternal health allowance, newborn care allowance and parental allowance.</p>
39(1)	<p><b>Partial satisfaction of contribution conditions.</b></p> <p>39. (1) Subject to the provisions of this section, regulations may provide for entitling to... maternity allowance... persons who would be entitled thereto but for the fact –</p> <p>(a) ...</p> <p>(b) that the relevant contribution conditions, though satisfied as respects the twenty-six reckonable contributions required to have been paid, are not satisfied as respects the fifty reckonable contributions required to have been paid by or credited to the claimant.</p> <p>(2) The reference in subsection (1) of this section to the relevant contribution conditions includes a reference to those conditions as modified by regulations in relation to cases falling within subsection (7) of section twenty-eight of this Law.</p> <p>(3) Regulations under this section shall provide that benefit payable by virtue of any such regulations shall be payable at a rate, or shall be of an amount, less than that for the time being</p>	<p>It is proposed that this regulation making power should apply in respect of maternal health allowance, newborn care allowance and parental allowance.</p>



	<p>prescribed by the States by Ordinance under section nineteen of this Law, and the rate or amount prescribed by the regulations may vary with the extent to which the contribution conditions are satisfied.</p>	
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(N.B. In February 2012, following consideration of the Policy Council's States Report entitled ***"Maternity and Paternity Provisions and the United Nations Convention on the Elimination of all forms of discrimination against women (CEDAW)"***, the States directed the Treasury and Resources Department ***"to report back to the States, at the same time as the Social Security Department reports back on proposition 10 above, with proposals to fund any consequential expenditure incurred by the States as an employer or in the grant from General Revenue."***

It is estimated that the net additional expenditure by General Revenue will total approximately £100,000 per annum (the 0.1% increase in social insurance contribution rates the States will pay as employer as approved by the States in October 2015 offset by the benefits returned to the States under the contracts of employment of employees who would receive paid paternal benefits). It is expected that these costs which represent 0.03% of total Non-Formula Led budgets will be absorbed by Departments and Committees within existing resources.)

(N.B. The Policy Council welcomes these proposals to legislate for the payment of parental benefits as a specific additional step towards compliance with CEDAW and, more generally, in furthering the equality agenda.

The opportunity for either parent to claim these benefits will make it easier for households to adapt their response to a birth to suit their particular circumstances, and (although the numbers may not be large) to maximise a household's earnings capacity where, for example, the mother is the principal earner and not eligible to maternity pay.

The Policy Council is satisfied that these proposals comply with the Principles of Good Governance as defined in Billet d'État IV of 2011.)

The States are asked to decide:-

XVIII.- Whether, after consideration of the Policy Letter dated 30<sup>th</sup> November, 2015, of the Social Security Department, they are of the opinion:-

1. To agree that the Social Insurance (Guernsey) Law, 1978, be amended to:
  - a) replace maternity allowance with a maternal health allowance and a newborn care allowance, as set out in paragraphs 12 to 19 of that Policy Letter;
  - b) create a new benefit to be known as adoption grant, as set out in paragraphs 22 to 25 of that Policy Letter;

- c) create a new benefit to be known as parental allowance, as set out in paragraph 26 of that Policy Letter.
2. To agree that a woman who is entitled to a maternal health allowance or a newborn care allowance under the revised Social Insurance (Guernsey) Law, 1978, should also be entitled to a maternity grant in relation to the same pregnancy or confinement.
3. To agree that the Social Security Department (and its successor) be given the power to make regulations to provide for the application of the provisions relating to parental benefits (subject to any modifications specified in the regulations) to the intended parents of a baby being born pursuant to a surrogacy arrangement or to a woman who gives birth pursuant to a surrogacy arrangement.
4. To agree that the current regulation making powers in the Social Insurance (Guernsey) Law, 1978, in respect of the current maternity benefits, be amended to apply in respect of the new parental benefits, where appropriate, as set out in Appendix 3 of that Policy Letter.
5. To agree that the Social Security Department (and its successor) be given the power to make regulations prescribing a maximum number of switches permissible between parents in respect of newborn care allowance and parental allowance and the timing of those switches and generally to ensure consistency and fairness as between all claimants for parental benefits under the Social Insurance (Guernsey) Law, 1978.
6. To agree that the transitional arrangements set out in paragraphs 69 to 81 of that Policy Letter apply with effect from 1<sup>st</sup> January 2017, except in the case of women who are claiming maternity allowance on 31<sup>st</sup> December 2016, whose expected date of confinement and whose actual date of confinement are both in 2016, whose rate of maternity allowance will increase in line with the rates of newborn care allowance, maternal health allowance and parental allowance on 2<sup>nd</sup> January 2017, provided that maternity allowance is still payable on that date.
7. To agree that Paragraph 11 of the First Schedule to the Supplementary Benefit (Implementation) Ordinance, 1971 be amended in order that maternity grant and adoption grant payable under the provisions of the Social Insurance (Guernsey) Law, 1978 are disregarded for the purposes of establishing eligibility for a supplementary benefit.
8. To direct preparation of such legislation as may be necessary to give effect to the above decisions.

## COMMERCE AND EMPLOYMENT DEPARTMENT

### TRADING STANDARDS LEGISLATION

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

3<sup>rd</sup> December 2015

Dear Sir

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

- 1.1 This Policy Letter deals with proposals for the introduction of consumer rights legislation to Guernsey, Herm and Jethou. The legislation would be made by Ordinance under the provisions of The Trading Standards (Enabling Provisions) (Guernsey) Law 2009 and would not apply to Alderney and Sark. The proposals would add to existing consumer protection provision which is afforded by the regulation of weights and measures on the Island.
- 1.2 The existing Weights and Measures (Guernsey and Alderney) Law 1991 provides the legal basis for the Trading Standards Service's weights and measures work. However the Service's consumer advice and business guidance work does not have any statutory basis, with the advice given to consumers being based on the rules of contract law and best practice derived from relevant United Kingdom and European Union law.
- 1.3 This can lead to uncertainty, confusion and additional costs, for both business and consumers when trying to resolve problems. The Department has considered the statutory consumer protection provisions available in other jurisdictions, adapted them and brought together a package of proposals which deals with the most significant areas currently leading to consumer harm or financial loss.
- 1.4 Public consultation was undertaken between 5<sup>th</sup> and 31<sup>st</sup> October 2015. 83 responses were received from consumers, traders and organisations representing business and consumers. The overwhelming majority of all respondents were in agreement with the proposals described in the consultation document.
- 1.5 The Department strongly supports the enactment of legislation which introduces:
  - 1.5.1 statutory civil rights for consumers purchasing goods and services, including those in a digital format;

- 1.5.2 the prohibition of unfair trading practices, including misleading actions, misleading omissions and aggressive practices which inhibit the consumer's freedom of choice by the use of harassment, coercion or undue influence;
  - 1.5.3 the prohibition of unfair contract terms in consumer contracts;
  - 1.5.4 a General Safety Requirement for consumer products;
  - 1.5.5 a requirement to give a price indication for goods for sale at the retail level;
  - 1.5.6 enforcement duties and powers given to authorised officers of the Trading Standards Service; and
  - 1.5.7 corresponding offences and penalties.
- 1.6 The aim is to introduce consistency and clarity for traders and consumers, and to support businesses which are competing with other firms based outside the jurisdiction of Guernsey.

## **2. Background**

- 2.1 In 2014 the Trading Standards Service responded to over 380 consumer complaints concerned with problems arising from contracts for the supply of goods and services. In addition the Guernsey Citizens Advice Bureau ("CAB") reported that in 2014 they dealt with 887 enquiries categorised as 'Trading Standards,' covering subjects such as general problems with goods and services, purchasing, specific consumer goods and finance and insurance. The uncertainty around a consumer's rights and the trader's obligations generates many of these enquiries and often makes arriving at a satisfactory resolution difficult and time-consuming for the consumer and the trader. The States of Deliberation have debated Policy Letters proposing legislation dealing with trader to consumer transactions on the Island a number of times since 1995. A summary of the States' resolutions on this subject is given below.
- 2.2 In December 1995 having considered a Policy Letter entitled Fair Trading Practices in Billet XXII from the then Board of Industry which proposed a strategy for the development of Fair Trading Practices in Guernsey, the States resolved to introduce legislation relating to the sale and supply of goods and services, unfair contract terms and other fair trading matters.
- 2.3 In March 2000, Billet VIII contained a Policy Letter from the Board setting out proposals for Fair Trading Practices legislation relating to civil matters covering: Sale and supply of goods; Unfair contract terms; Disposal of uncollected goods and Misrepresentation. The Policy Letter also mentioned that other trading standards matters (e.g. consumer safety, trade descriptions etc.) would be the subject of a future report. The States resolved to support these proposals in full.
- 2.4 In July 2006, Billet XIII contained a States Report entitled "Promoting Competition and Preventing Market Abuse", which contained a section stating that Law Officers had advised that fair trading enabling provisions could be

incorporated in a combined competition and fair trading law. The States resolved to enact enabling legislation to give the States powers to introduce Ordinances which would incorporate measures to promote competition in the Island's economy in respect of abuse of a dominant market position, anti-competitive behaviour, mergers and acquisitions and Fair Trading.

- 2.5 In January 2007 the States considered the *Projet de Loi* entitled *Competition and Trading Standards (Enabling Provisions) (Guernsey) Law 2007*. The States resolved to support the proposals in full.
- 2.6 In February 2009, Billet VII contained a States Report entitled "Legislation – *Projets de Loi* ("Laws") Awaiting Royal Sanction". The report described concerns raised by the United Kingdom Ministry of Justice about the use of Laws to enable the States by Ordinance to legislate unrestrictedly in and for an entire area. Amongst this and other matters this report recommended that Competition and Trading Standards be dealt with as separate subjects. Alternative wording was recommended and revised *Projet(s)* were included in the Billet. Trading standards proposals were to be the subject of a future approach to the Assembly. The States resolved to support this approach in a resolution dated 25<sup>th</sup> February 2009.
- 2.7 In September 2009, Billet XXIV containing the *Trading Standards (Enabling Provisions) (Guernsey) Law, 2009* was considered by the States. The Law gave the States power to make provision by Ordinance for trading standards in relation to:
  - the protection of consumers;
  - the protection of undertakings in the carrying on of business;
  - the supply of goods and services; and
  - the standards to be observed by and enforceable against undertakings supplying or concerned in the supply of goods and/or services.
- 2.8 In July 2009 in anticipation of the *Projet* being granted Royal Assent the Commerce and Employment Department approved the following priority for sub-ordinate legislation on trading standards matters;
  - the Sale and Supply of goods and services;
  - Unfair Contract Terms;
  - Misrepresentation;
  - Safety of consumer products;
  - Display of prices;
  - Distance selling;
  - Unfair Trading; and
  - Consumer Credit.
- 2.9 The *Trading Standards ((Enabling Provisions) (Guernsey) Law 2009* was registered and became law on Guernsey, Herm and Jethou on 7<sup>th</sup> February 2011.

2.10 In November 2013 the Commerce and Employment Department was made aware of the United Kingdom Consumer Landscape Review which was taking place and the possible implications this might have for legislative developments in the United Kingdom, which might impact on the implementation of proposals meeting the priorities agreed in 2009. As a result, the Department agreed revised priorities for the development of trading standards Ordinances.

2.11 The new priorities were:

- the sale of safe consumer goods;
- the display of prices; and
- consumer credit.

2.12 However, due to the resources of the Trading Standards Service being directed to other priorities, no further progress was made to bring forward Ordinances to introduce legislation dealing with any of these priorities.

2.13 In June 2015 the Board reviewed its priorities for trading standards legislation again. The Board took into account the balance and subject matter of consumer complaints received by the Trading Standards Service and the developments in United Kingdom trading standards law which had come about from the Consumer Landscape Review. The Board agreed that the maximum benefit to the Bailiwick's economy would be achieved if resources were focussed on the development of legislation introducing:

- civil consumer rights addressing problems arising from the sale of goods and supply of services,
- criminal law to prohibit unfair trading practices, and associated enforcement duties and powers for the trading standards service;
- a general safety requirement for consumer products
- a requirement for price indications to be made
- consumer credit regulation

2.14 The Board further agreed to consult on these proposals seeking the views of the public, businesses, and other interested parties.

### **3. Consumer Protection legislation in other jurisdictions.**

3.1 The legal landscape for consumer protection in the neighbouring jurisdictions of Jersey, the United Kingdom and the European Union has seen significant developments within the last decade. Legislation has been enacted dealing with:

- consumers' civil rights;
- the prohibition of unfair commercial practices;
- the prohibition of unfair contract terms;

- the quality of information to be provided in consumer contracts, including information about the consumers' cancellation rights and any additional charges which may be payable under the contract;
- the introduction of a general product safety requirement for consumer products;
- price marking.

3.2 There are a number of European Union Directives dealing with consumer protection. These Directives are listed below:

- Directive 99/44/EC on certain aspects of the sale of consumer goods and associated guarantees;
- Directive 93/13/EEC on unfair terms in consumer contracts;
- Directive 2011/83/EU on consumer rights;
- Directive 2001/95/EC on general product safety;
- Directive 98/6/EC on consumer protection in the indication of prices etc.

3.3 The relevant United Kingdom legislation which has implemented all or part of the European Union Directives and which it is proposed to use as the source for the Guernsey law is:

- Consumer Rights Act 2015 (Chapter 15);
- The Consumer Protection from Unfair Trading Regulations 2008 (SI 2008 No. 1277);
- Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, (SI 2013 No.3134);
- General Product Safety Regulations 2005 (SI 2005 No.1803);
- The Price Marking Order 2004 (SI 2004 No.102).

3.4 These enactments provide source documents for Guernsey to consider and adapt, as appropriate, to meet the needs of consumers and businesses on the Island. The proposals, if agreed, would provide a legislative framework compatible with neighbouring jurisdictions and would bring consistency and equality in the marketplace for consumers and traders entering into contracts across boundaries.

3.5 The Commerce and Employment Department has recognised that the legal framework for trading standards and consumer protection in the Bailiwick is deficient compared to that which exists in other jurisdictions. This means that Bailiwick residents and businesses do not benefit from the protections taken for granted elsewhere such as sale of goods rights, the prohibition of unfair trading practices or the Trading Standards Service having the powers to prevent the sale of dangerous consumer goods.

#### **4. Consultation**

4.1 A period of public consultation took place between 5<sup>th</sup> and 31<sup>st</sup> October 2015. The results are given in Appendix 1.



- 4.2 The Department placed the consultation document on the gov.gg website, making printed copies available at Sir Charles Frossard House, Raymond Falla House and the CAB. In addition meetings were held with the Guernsey Chamber of Commerce retail subgroup, Channel Islands Competition and Regulatory Authorities (“CICRA”) and the CAB. Copies of the consultation document were sent to the governments of Alderney and Sark for their information and consideration. The Trading Standards Service issued media releases at the start of the consultation and in the final week to raise awareness of the consultation and encourage participation.
- 4.3 It should be noted that the consultation specifically and explicitly excluded consumer credit regulation. This was, as explained in the consultation paper, because Commerce and Employment Department Officers had begun discussions with the Guernsey Financial Services Commission about the possible future regulation of the consumer credit market. The Board decided that work on consumer credit regulation should be delayed until the outcome of those discussions was known.

## 5. Consultation Results

- 5.1 A total of 83 responses were received to the consultation. Of these, 77 were made on line through the States’ website and 6 were returns submitted on printed copies of the consultation document. Some respondents did not reply to all the questions in the questionnaire.

**Table 1 Responses by Responder type and Response Method.**

<b>Category of respondent</b>	<b>No.</b>	<b>% total respondents</b>	<b>No. of respondents answering all questions</b>	<b>% of respondents answering all questions</b>
On line – Consumer	67	81	43	64
Online trader (all categories)	8	10	4	50
Online Business Organisation	2	2	2	100
Hardcopy consumer	3	4	3	100
Hardcopy trader	1	1	1	100
Hardcopy Consumer Group	1	1	1	100
Hardcopy Other	1	1	1	100
Total	83	100	55	66

## **6. Consumer Views from the Consultation Process**

- 6.1 A total of 70 responses (84% of the total) were received from consumers. Consumers were strongly in favour of the proposals with all questions getting an aggregate 'Strongly Agree' or 'Agree' response of over 80%. 1% of consumers 'disagreed' that trading standards law covering a wider range of consumer and trader transactions should be introduced.
- 6.2 Over 90% of consumers 'strongly agreed' or 'agreed' that civil rights and associated remedies should be introduced for goods and services, while 87% of consumers 'agreed' that unfair contract terms should be prohibited.
- 6.3 There was strong agreement (94%) that unfair commercial practices should be prohibited and 98% of those responding 'agreed' that aggressive commercial practices should be prohibited.
- 6.4 The proposals dealing with information provision for consumers when entering into contracts were also well received with between 89% and 92% of respondents 'strongly agreeing' or 'agreeing' to the proposals.
- 6.5 Similarly, 90% of respondents 'strongly agreed' or 'agreed' that a General Safety Requirement should be introduced for consumer goods, while 83% 'agreed' that price marking requirements should be introduced.
- 6.6 Business Views
  - i) A total of 11 responses, 13% of the total, were received from traders and groups representing business. There was support for the extension of trading standards law to cover a wider range of consumer/trader transactions with 67% of respondents 'strongly agreeing' or 'agreeing' to this proposal.
  - ii) 100% of the traders responding were in favour of consumers having civil rights when buying goods, though 29% of those respondents then 'disagreed' that consumers should have access to remedies as described.
  - iii) 72% of trader respondents 'strongly agreed' or 'agreed' that consumers should have the civil rights proposed in relation to the supply of a service, and 66% were in favour of the proposed remedies. All trader respondents 'agreed' that unfair and aggressive commercial practices should be prohibited.
  - iv) 50% of traders 'agreed' with the proposals for information requirements for consumer contracts, while 67% 'agreed' with the proposals for consumer information in relation to contracts entered into over the telephone or internet.

- v) 50% of traders 'agreed' with the proposals in relation to repair and maintenance contracts and how cancellation of contracts and return of goods would be dealt with. The other 50% 'neither agreed nor disagreed', meaning no traders expressed disagreement with the proposals.
- vi) With regard to the introduction of a General Safety Requirement 17% of trader respondents 'disagreed' with this proposal, while 83% 'strongly agreed' or 'agreed'.
- vii) 67% of traders 'agreed' that a price marking requirement should be introduced, while the remaining 33% 'neither agreed nor disagreed', meaning no traders expressed disagreement with the proposals.

#### 6.7 Consumer Group

- i) A single response was received from a consumer group, the CAB. Based on evidence from their case files, the CAB 'strongly agreed' with the proposals to introduce civil rights and remedies. The CAB 'strongly agreed' with the proposals to prohibit unfair contract terms and unfair commercial practices. The CAB also 'strongly agreed' with the introduction of a general safety requirement, and also the requirement to give price indications. For the subject areas where they had no evidence from case files the CAB expressed 'no opinion'.

#### 6.8 Other respondents

- i) A written response was received from CICRA. CICRA expressed the view that Guernsey consumers should not be protected to any lesser degree than consumers in other jurisdictions, provided that the measures are relevant and proportionate. CICRA believes that consumer protection supports commerce in Guernsey as 'where it is weak or absent this presents the risk that Guernsey consumers will acquire more of their goods and services elsewhere where such protection is available to them'. CICRA is broadly supportive of the planned legislation.

### 7. Overview of Proposed Regulatory Framework

#### 7.1 The proposed regulatory framework would be based on:

- i) introducing statutory civil rights and obligations for both the consumer and the trader to contracts relating to the sale of goods and the supply of services;
- ii) taking account of the modern market place where more and more transactions are completed at a distance, and involve digital content such as computer software or music;

- iii) the requirement that traders would not act unfairly to consumers in a way that could affect the consumer's decision making and lead to consumer detriment;
- iv) ensuring the provision of enough information from the trader to the consumer to allow the consumer to make an informed decision, whether the transaction takes place face to face or at a distance, such as by telephone or over the internet;
- v) consumers having a reasonable time to consider their options when making a decision;
- vi) the prohibition of unfair contract terms;
- vii) introducing a general safety requirement for consumer products;
- viii) introducing a requirement for traders to indicate the price of products offered for sale;
- ix) introducing enforcement powers for the Trading Standards Service; and
- x) corresponding offences and penalties.

7.2 Generally, it is proposed that the scope of the Guernsey consumer protection legislation would be similar to that of consumer protection legislation in the United Kingdom subject to modification and adaptation appropriate for the Guernsey economy.

7.3 The majority of trader/consumer transactions will be regulated by the new legislation. However, as the rights and obligations of the consumer are regulated by sector specific legislation some aspects of the proposals will not apply to contracts dealing with particular types of goods and services, such as the sale of real property and contracts for the construction of new buildings, or contracts for financial services etc. For the avoidance of doubt the proposed provisions will apply to most if not all of the dealings of householders with companies and individuals providing services such as plumbing, the fitting of domestic appliances, electrical contracting, furnishings and the like. In other cases, such as a contract for the sale of goods by statutory authority (for example, by HM Sheriff in the course of his duties in executing a judgment) it would not be appropriate to apply the normal rules of consumer rights legislation regarding quality of goods and information to be provided and the proposed legislation will not apply in such circumstances.

#### 7.4 **i) Civil Rights relating to goods and services**

7.4.1 The proposed legislation will apply to a contract for a trader to supply goods and services to a consumer and will introduce into Guernsey law

terms which are already familiar to and recognised by many people. For instance the terms ‘fitness for purpose’, ‘satisfactory quality’ and ‘goods corresponding to description’ in relation to goods bought by consumers, will be made statutory consumer rights.

- 7.4.2 The consumer civil rights and remedies introduced will apply to digital content, for example software, music or computer games, supplied by a trader to a consumer.
- 7.4.3 Specific statutory remedies will also be introduced, such as the right, in certain circumstances, to reject goods within 30 days (short term right to reject), the right to a repair or replacement, or a price reduction or the final right to reject the goods.
- 7.4.4 For a contract dealing with the supply of services by a trader to a consumer, the consumer’s statutory rights will include the right that:
  - the service will be performed with reasonable care and skill within a reasonable time; and
  - that any information provided by the trader, either verbally or in writing, will form part of the contract if the information is taken into account by the consumer when deciding whether or not to enter into the contract.
- 7.4.5 It is proposed to strike a balance between consumer rights and consumer obligations by including provision requiring a consumer to pay a reasonable price for a service if no price is fixed in the contract.

## **Remedies**

- 7.4.6 Different remedies will be available to the consumer, depending on the circumstances. These remedies will be specified and will include, as appropriate:
  - the right to repeat performance;
  - the right to reject goods, partially or in full;
  - the right to repair or replacement;
  - the right to a price reduction; and
  - the right to claim damages or recover money paid.
- 7.4.7 The legislation will also include provisions which prohibit a term of a contract which seeks to exclude or limit a trader’s liability in circumstances where the contract is not performed in accordance with the consumer’s statutory rights e.g. with reasonable care and skill.

7.4.8 The legislation will include provisions for disputes arising from contracts to which it applies to be heard by the Royal Court or the Magistrates' Court depending on the size of the claim.

7.5 **ii) Prohibition of unfair commercial practices**

7.5.1 Legal developments described in paragraph 3.1 above have addressed in general non-specific terms, unfair commercial practices which cause consumer detriment. The range of circumstances in which a consumer might enter into a contract with a trader is very broad with each transaction having its own particular features and facts. This makes it virtually impossible to legislate specifically for all circumstances which may need to be dealt with under the law.

7.5.2 Trading Standards legislation can address this by defining what an unfair commercial practice is, and prohibiting it.

7.5.3 The Commerce and Employment Department proposes that a trading practice is unfair if it contravenes the requirements of professional diligence and it materially distorts, or is likely to materially distort, the economic behaviour of the average consumer with regards to the product.

7.5.4 More specifically a commercial practice will be regarded as unfair if it:

- is a misleading action, for example the trader states that a product is available when it is not, or that it will perform a particular function when it will not;
- is a misleading omission, for example the trader omits information about the price of a product or provides information in a manner which is unclear, unintelligible, ambiguous or untimely; or
- is aggressive, for example the trader refuses to leave the consumer's home when repeatedly asked to do so.

7.5.5 The Department also proposes the adoption of a list of actions which will be considered to be unfair in all circumstances, for example:

- claiming to be a signatory to a code of conduct when the trader is not;
- claiming that the trader is about to cease trading or move premises when he is not;
- including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that he has already ordered the marketed product when he has not.

7.5.6 It will be an offence to engage in an unfair commercial practice.

### 7.6    **iii)    Consumer contracts information**

7.6.1    A contract between a buyer and a seller could be a written agreement, or a verbal agreement where the buyer and the seller discuss a product and agree the sale but write nothing down. Also, a decision by a consumer to buy a product, for example a chocolate bar, is also a contract between the buyer and the seller. The Department proposes that new legislation is introduced dealing with the information which must be provided to a consumer before agreement is reached with the trader. The information to be provided will vary depending on the circumstances. If the information is not provided the consumer is not bound by the contract.

7.6.2    These proposals deal with contracts of the following types:

A) **“distance contract”** means a contract between a trader and a consumer which is arranged and concluded without the trader and the consumer physically meeting. For example:

a purchase of home or car insurance completed on the internet or over the telephone;  
a purchase of goods from an internet trader;  
a purchase of goods from a mail order catalogue.

B) **“off-premises contract”** means a contract not concluded on the trader’s premises and is illustrated by the examples below:

a contract signed in the consumer’s home;  
a contract where a consumer signs an order form during a visit to his home by the trader and the trader agrees the contract later;  
a situation where the consumer enters into a contract to buy membership of an organisation and the contract is concluded over the telephone after the consumer has been in discussion with a salesperson in the street;  
a contract concluded during a visit to a timeshare property, or similar, accompanied by the trader, who has the aim of promoting and selling the property.

C) **“on-premises contract”** means a contract between a trader and a consumer which is neither a distance contract nor an off-premises contract; e.g. a contract made in the trader’s shop or showroom.

7.6.3    Many consumer problems result from a lack of information at the time the consumer decides to buy a product or service. The Department proposes that the trader should provide certain information, for example:

- adequately describe the product on offer;
- identify the trader;



- indicate the price, including any taxes;
- give the consumer details of any cancellation rights; and
- explain how to go about cancelling the contract.

7.6.4 The exact scope and detail of the information to be provided, and when it must be given, would depend on the circumstances of the contract. For example a contract entered into at a trader's premises would require the trader to provide less information than a contract entered into in the consumer's home. The Department believes the requirement for consumer contracts to contain specific information will benefit both the consumer and the trader by providing increased certainty and minimising doubt about the contract.

7.6.5 A trader will be guilty of an offence if he enters into an off-premises contract without having provided the required information on cancellation rights unless this was due to the act or default of another or done in reliance on information given by another.

#### 7.7 **iv) Cancellation rights and 'cooling-off' periods**

7.7.1 In the case of distance and off-premises contracts it is proposed to introduce for consumers a general right to cancel, without giving any reason, and without incurring liability, within a normal cancellation period of 14 days from the date when the contract is made.

7.7.2 The consumer would have the responsibility to demonstrate that they have made the trader aware of their decision to cancel and various safeguards for the trader are proposed to ensure the consumer is not able to unreasonably cancel a contract and thus cause the trader unreasonable losses.

7.7.3 These safeguards will require that when the consumer does cancel the contract he must return any goods to the trader without undue delay and in any event within 14 days of the contract being cancelled. The consumer bears the cost of doing so (unless the trader has agreed to collect the goods or bear the costs of the consumer returning them).

7.7.4 The safeguards will also mean that any ancillary contract, for example a service contract linked to the supply of a washing machine, will be automatically terminated on cancellation of the main contract.

7.7.5 The right to cancel would be subject to restrictions in certain circumstances. For example the consumer cannot cancel without liability if:

- the consumer had requested the trader to attend to carry out urgent repairs or maintenance; or



- the contract related to the supply of goods made to the consumer's specification; or
- the goods are clearly personalised.

7.7.6 Similarly it is proposed that the trader would be required to reimburse any costs incurred by the consumer within 14 days of being notified of the cancellation using the same method as the consumer used to pay for the goods. The trader would not have to reimburse the consumer for any additional services requested by the consumer, for example if the consumer opted for a more expensive, enhanced delivery service. Also, the trader can reduce the amount reimbursed if the value of the goods is reduced by the consumer's handling of them.

## 7.8 v) **Prohibition of unfair contract terms**

7.8.1 To help ensure a balanced, fair relationship between the trader and the consumer, the Department is also proposing the prohibition of unfair contract terms or notices. A term is unfair if it puts the consumer at a disadvantage by limiting the consumer's rights or disproportionately increases the consumer's obligations as compared with the trader's right and obligations.

7.8.2 Examples of contract terms which would put the consumer at a disadvantage in comparison with the trader and which would be considered unfair are terms which:

- seek to exclude or restrict the liability of the trader when he is in breach of the contract; or
- entitle the trader to deliver a contract substantially different from that which was agreed; or
- require the consumer to pay the trader a disproportionately high sum in compensation if the consumer decides not to conclude or perform the contract; or
- allow the trader to change the terms of the contract without offering the consumer a corresponding right to change the terms of the consumer's obligations.

7.8.3 It is proposed that an unfair contract is not binding on the consumer. Similarly an unfair consumer notice, e.g. a notice in a shop stating "No Refunds" which purports to exclude or restrict a trader's liability to a consumer, is not binding on the consumer.

7.8.4 The existence of such terms, and others like them, make the relationship unbalanced and the contract fundamentally unfair.

## 7.9 vi) **General safety requirement**

- 7.9.1 It is fundamental to an efficient and effective market that products do not cause harm to their users. Other jurisdictions, for example Jersey and the countries of the European Union, have addressed this by introducing a general safety requirement into their law. The Department proposes that a similar legal framework is introduced for Guernsey to define what safe consumer products are and, if unsafe or dangerous goods are supplied, to provide the Trading Standards Service with effective powers to deal with them.
- 7.9.2 Examples of unsafe products supplied on the island in recent years are snap bands made from thin sheet steel which presented a cutting hazard, laser pens which presented a risk to the eyesight of humans and various electrical accessories and phone chargers which did not meet safety standards.
- 7.9.3 The general safety requirement would apply to any product put on the market for consumers or likely to be used by them, including all products that are provided in the course of delivering a service.
- 7.9.4 The safety provisions of the General Product Safety regulations will not apply to a second-hand product supplied as a product to be repaired or reconditioned prior to being used, provided the supplier clearly informs the person to whom he supplies the product to that effect.
- 7.9.5 A safe product is one which under normal conditions of use poses no risk or as little risk as possible while still functioning properly. Some products are intrinsically dangerous, but are accepted on the market provided safeguards are in place. For instance a chainsaw will always pose a significant risk, but if it is properly made, and supplied with appropriate instructions for safe use, this risk will be acceptably low and the chainsaw will be considered safe.
- 7.9.6 The most efficient and effective way to monitor consumer products is at the first point of entry into the Guernsey market, i.e. where the product is manufactured in Guernsey or when it is imported into Guernsey. It is proposed that responsibility for ensuring products are safe should rest with the 'producer' of the product.
- 7.9.7 The term 'Producer' in this context has a wide meaning and, as well as the Guernsey manufacturer, includes anyone who presents themselves as the manufacturer by putting their name or trademark on the product, or anyone who reconditions the product. If the manufacturer is not established in Guernsey the responsibility will lie with the manufacturer's representative in Guernsey, or any other importer of the goods. It is proposed that any other person carrying on a commercial

activity in the supply chain, which may affect the safety properties of the product, will also have responsibility.

- 7.9.8 Producers and other persons who are in breach of their obligations concerning product safety will be guilty of an offence and dangerous goods may be subject to forfeiture.

#### 7.10 **vii) Price indications**

- 7.10.1 Price and quality are the two most fundamental considerations when determining value for money and satisfaction in a consumer contract. Of these, price most often takes precedence. Therefore easy access to unambiguous price information is an essential requirement of an effective market.

- 7.10.2 In Guernsey, except for price lists in licensed premises, there is no legislation which controls the display of prices. CICRA has carried out a number of pricing investigations in recent years looking at grocery pricing in supermarkets, retail vehicle fuel and domestic oil pricing. CICRA concluded that, in the absence of regulation, consumers are not best served and a requirement to price mark would benefit consumers and businesses as an effective means of comparing the offers of different retailers, thus allowing consumers to make better informed choices and help drive competition.

- 7.10.3 The Department proposes that a requirement to price mark, or give an indication of the price of, goods on offer for sale at the retail level is introduced through the provisions which prohibit unfair trading. This would mean that giving false information about the price of a product, or how the price will be calculated, would be a misleading action, while failure to give material information, i.e. the price of a product, or how the price may be calculated, would be a misleading omission. Both would be prohibited.

- 7.10.4 Effective price marking can be achieved by ensuring that the selling price is given to the consumer in writing in a form which is clearly legible, unambiguous, easily identifiable, in sterling, and inclusive of any taxes which might apply. It is proposed that the price marking requirements would apply to shops, catalogues produced in Guernsey, and online market places based in Guernsey.

- 7.10.5 Contravention of the requirements of the price marking provisions will constitute an offence.

### 7.11 viii) **Enforcement powers for the Trading Standards Service**

7.11.1 It is proposed that the Commerce and Employment Department be expressly empowered to authorise officers within the Trading Standards Service to enforce the legislation. Authorised Officers should be given adequate statutory powers to enforce the relevant legislation. These would include powers of entry, inspection, and the seizure of documents, consumer products and other evidence. The powers will also include the power to issue compliance notices and emergency notices in certain circumstances, for example to prevent the supply of unsafe consumer goods. These powers should be subject to proper safeguards. For example, entering dwellings would require a warrant to be issued by the Bailiff on specified grounds.

### 7.12 ix) **Offences**

7.12.1 The legislation will create, where necessary, offences and associated penalties. For example, it will be necessary to create offences, inter alia, of obstructing an enforcement officer in the exercise of his duties, of making misleading statements and failing to comply with requirements properly imposed by enforcement officials. There will also be offences associated with product safety, failure to give necessary information and failure to comply with price marking requirements, some of which have been highlighted in this Policy Letter. In each case the penalties imposed will be proportionate and comparable as far as possible to those imposed by the equivalent United Kingdom provisions. Where appropriate, the court will be given powers to order the forfeiture and disposal of goods.

## 8. **Human Rights compliance**

8.1 In addition to the parties consulted as described in section 4, the Department can confirm that legal advice on the matters raised in the public consultation and the drafting of the Policy Letter itself has been obtained from the Law Officers Chambers. The Law Officers have also been consulted as to the Human Rights implications and have confirmed that the proposals are compatible with Convention requirements.

## 9. **Financial and Resource Implications**

9.1 The introduction of codified civil rights for consumers in their transactions with businesses is expected to benefit the management of consumer complaints received by the Trading Standards Service in the future, because the transactions would take place within a defined framework where the rights and obligations of each party are clearly stated. This would have the effect of making the Trading Standards Service's advice more definitive than is currently possible and thus lead to a decrease in the time spent on each complaint.

- 9.2 While it is anticipated that there will be additional requests for advice and information in the period immediately before and after introduction of the legislation, in the longer term it is expected that the impact of the legislation on staff resourcing requirements would be neutral.
- 9.3 The proposed legislation would significantly widen the scope of statutory duties undertaken by the Trading Standards Service, adding to the duties currently undertaken under the provisions of the Weights and Measures (Guernsey and Alderney) Law 1991. As a result it will be necessary to review the prioritisation of work undertaken and it may be necessary to redirect staff resources into enforcement action.
- 9.4 The deregulation of Sunday trading from December 2015 has released officer time within the Trading Standards team which can be redirected into dealing with any increase in consumer complaints and the delivery of consumer and business education programmes linked to introduction of the new consumer protection legislation described in this Letter.
- 9.5 The impact on the demand for Trading Standards resources will be kept under review and, if the new legislation led to increased demand on the Trading Standards Service, which could not be met by reprioritisation of work, then a business case would be prepared for increased staffing resources.

## **10. Environmental Issues**

- 10.1 No environmental impact is envisaged from the proposals in this Policy Letter.

## **11. Recommendations**

- 11.1 The Department recommends the States to agree:
  - 1. To the introduction of a wide framework of statutory consumer protection powers as described in this Policy Letter. Specifically it is proposed that legislation is introduced that will provide:
    - a) civil rights and associated remedies as described in paragraph 7.4 of this Policy Letter;
    - b) protection from unfair commercial practices as set out in paragraph 7.5 of this Policy Letter;
    - c) for specific information to be provided to consumers before they enter into a contract as described in paragraph 7.6 of this Policy Letter;
    - d) cancellation rights to consumers as described in paragraph 7.7 of this Policy Letter;
    - e) protection from unfair contract terms as described in paragraph 7.8 of this Policy Letter;
    - f) for a General Safety Requirement for consumer products as described in paragraph 7.9 of this Policy Letter;

- g) a price marking requirement as described in paragraph 7.10 of this Policy Letter;
- h) for enforcement powers as described in paragraph 7.11 of this Policy Letter; and
- i) for the creation of offences as described in paragraph 7.12 of this Policy Letter.

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

Yours faithfully

K A Stewart  
Minister

A H Brouard  
Deputy Minister

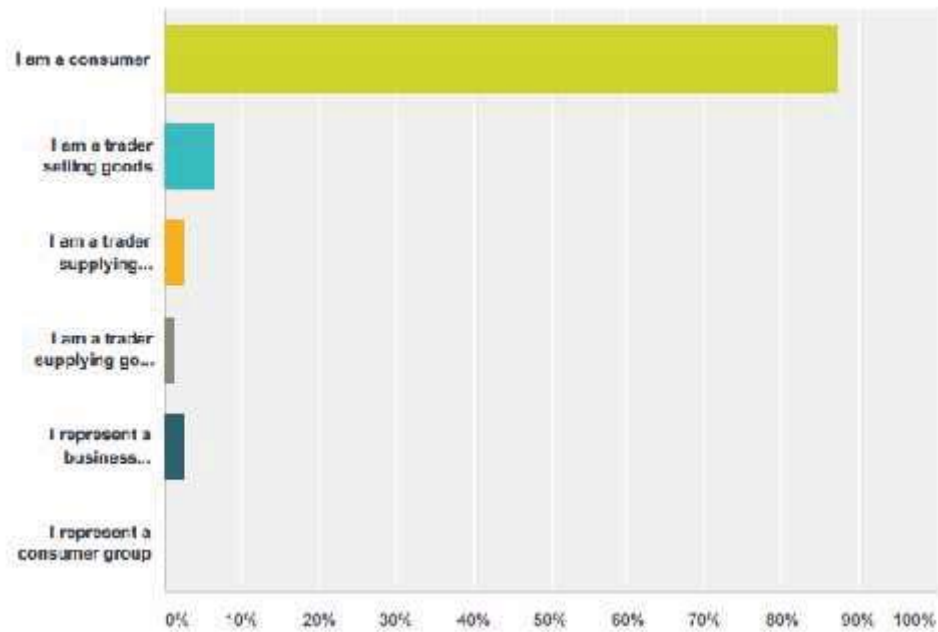
D de G De Lisle  
G M Collins  
L S Trott

Advocate T Carey  
(Non-States Member)

## APPENDIX 1

Q1 Please tick the box which best describes your interest in this consultation.

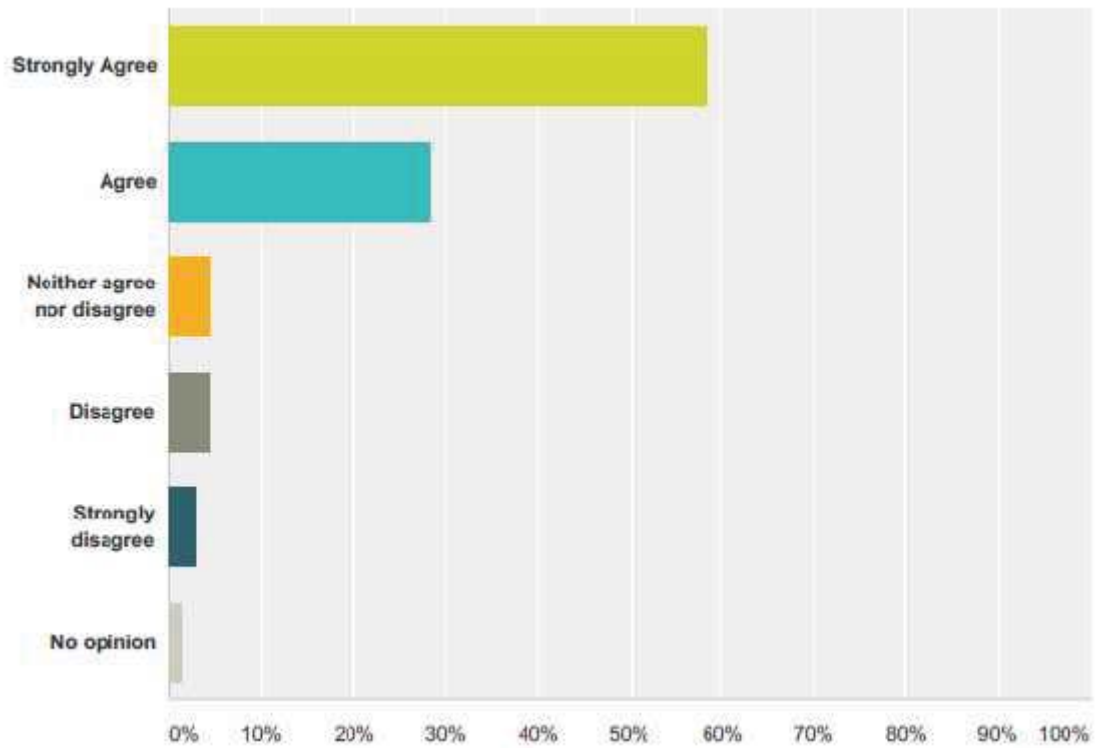
Answered: 77 Skipped: 2



Answer Choices	Responses	
I am a consumer	87.01%	67
I am a trader selling goods	6.49%	5
I am a trader supplying services	2.60%	2
I am a trader supplying goods and/or services via the internet	1.30%	1
I represent a business organisation	2.60%	2
I represent a consumer group	0.00%	0
Total		77

Q2 How strongly do you agree with the following statement? Trading Standards law covering a wider range of consumer and trader transactions should be introduced.

Answered: 67 Skipped: 12



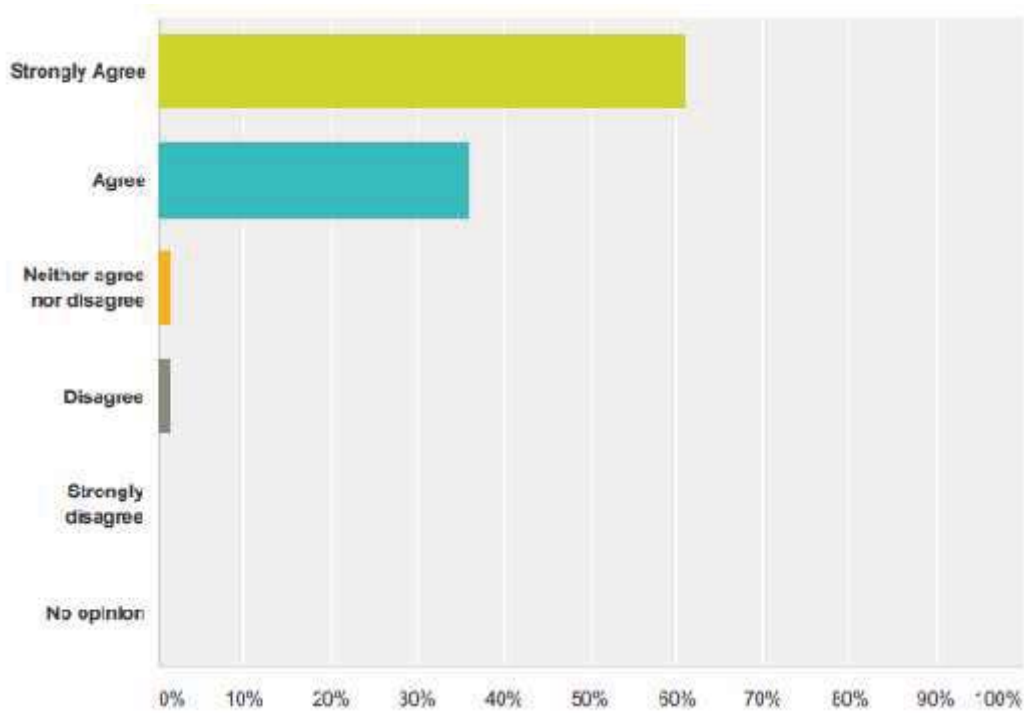
Answer Choices	Responses	
Strongly Agree	58.21%	39
Agree	28.36%	19
Neither agree nor disagree	4.48%	3
Disagree	4.48%	3
Strongly disagree	2.99%	2
No opinion	1.49%	1
Total	67	



Q3 How strongly do you agree with the following statement?

Consumers should have the civil rights, as described above, when they buy goods.

Answered: 64 Skipped: 15

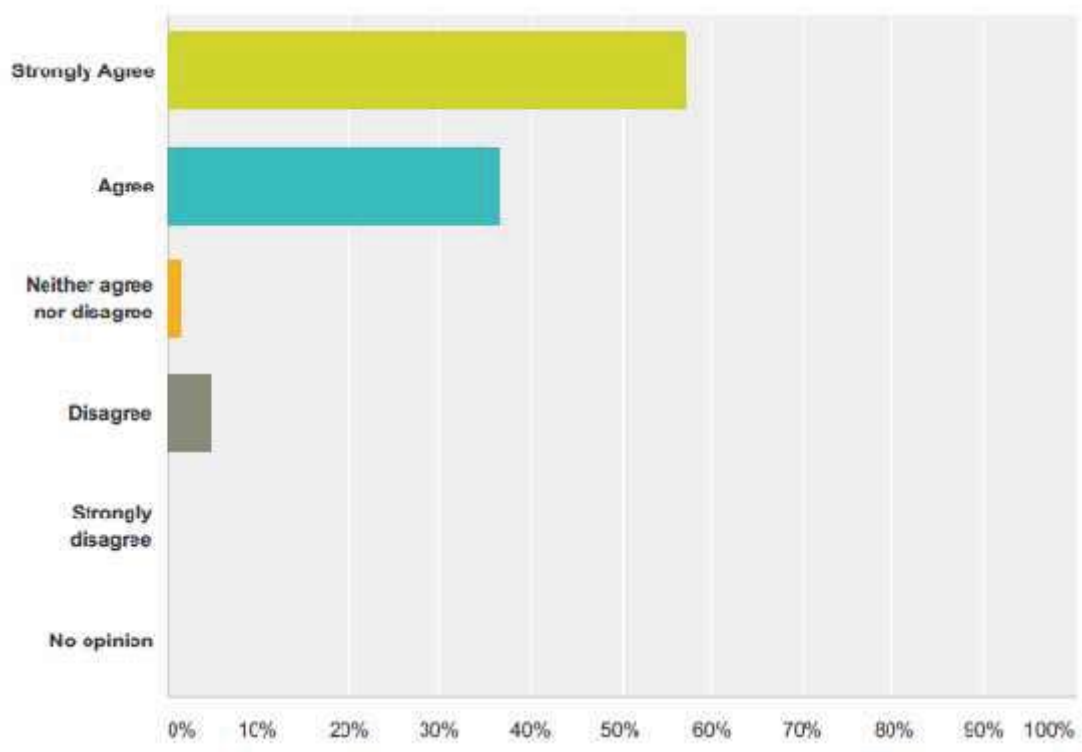


Answer Choices	Responses	
Strongly Agree	60.94%	39
Agree	35.94%	23
Neither agree nor disagree	1.56%	1
Disagree	1.56%	1
Strongly disagree	0.00%	0
No opinion	0.00%	0
Total		64

Q4 How strongly do you agree with the following statement?

Civil remedies, as described above, should be introduced for consumers when the goods they buy do not meet their civil rights.

Answered: 63 Skipped: 16

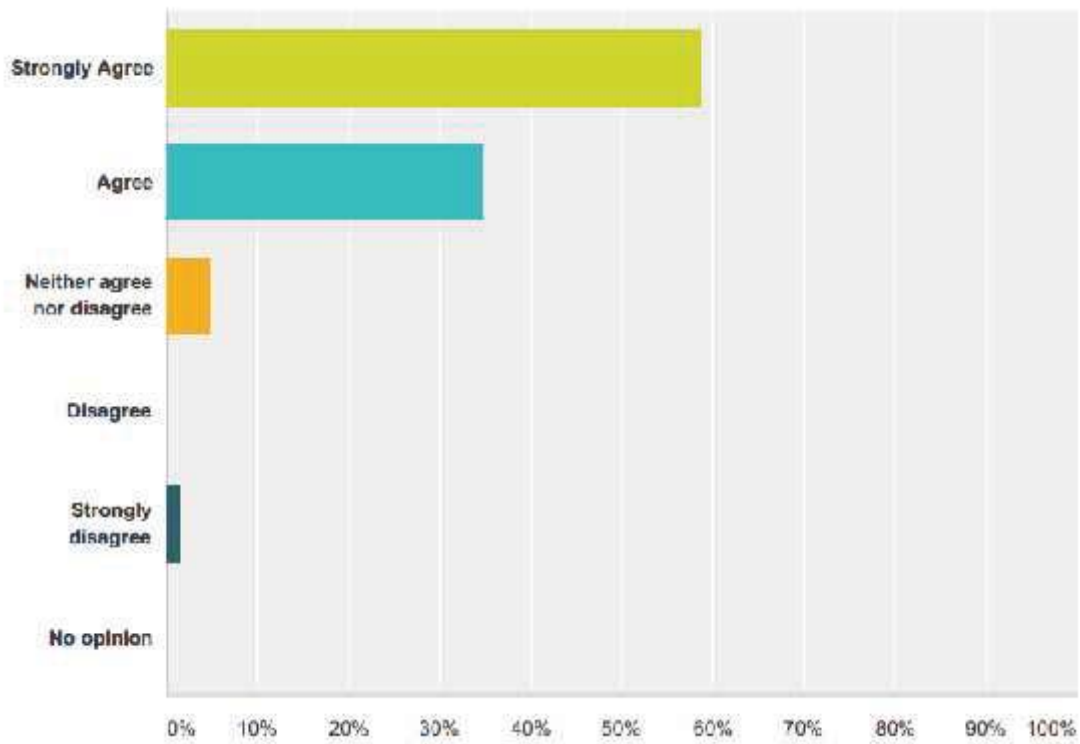


Answer Choices	Responses	
Strongly Agree	57.14%	36
Agree	36.51%	23
Neither agree nor disagree	1.59%	1
Disagree	4.76%	3
Strongly disagree	0.00%	0
No opinion	0.00%	0
Total		63

Q5 How strongly do you agree with the following statement?

A consumer should have rights, as described above, when entering into a contract with a trader for the supply of a service.

Answered: 63 Skipped: 16

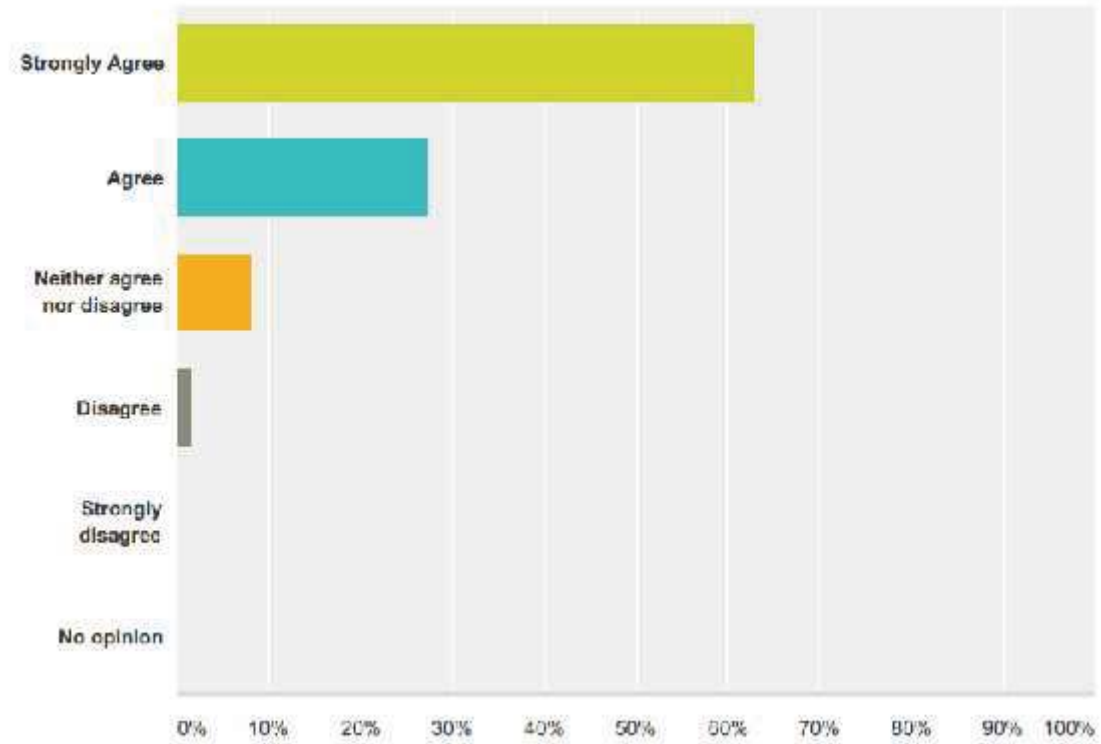


Answer Choices	Responses	
Strongly Agree	58.73%	37
Agree	34.92%	22
Neither agree nor disagree	4.76%	3
Disagree	0.00%	0
Strongly disagree	1.59%	1
No opinion	0.00%	0
Total		63

Q6 How strongly do you agree with the following statement?

Civil remedies, as described above, should be introduced for consumers who enter into a contract with a trader for the supply of a service.

Answered: 62 Skipped: 17

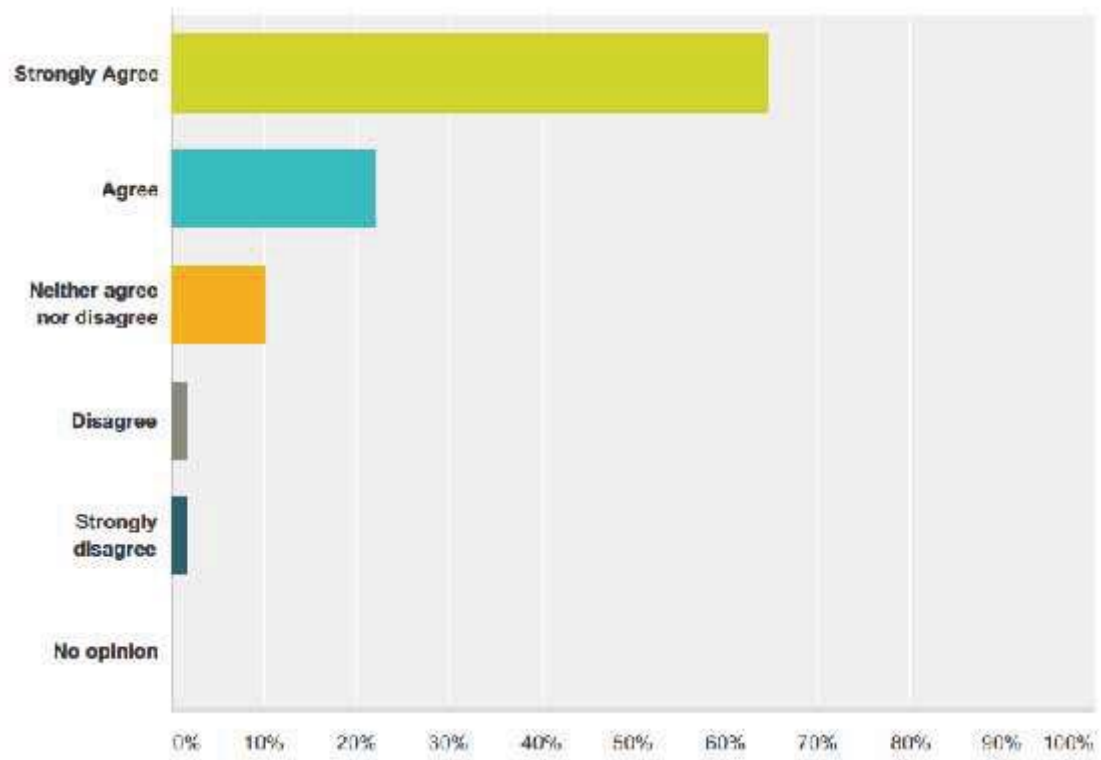


Answer Choices	Responses	
Strongly Agree	62.90%	39
Agree	27.42%	17
Neither agree nor disagree	8.06%	5
Disagree	1.61%	1
Strongly disagree	0.00%	0
No opinion	0.00%	0
Total		62

Q7 How strongly do you agree with the following statement?

Unfair contract terms, as described above, should be prohibited.

Answered: 59 Skipped: 20

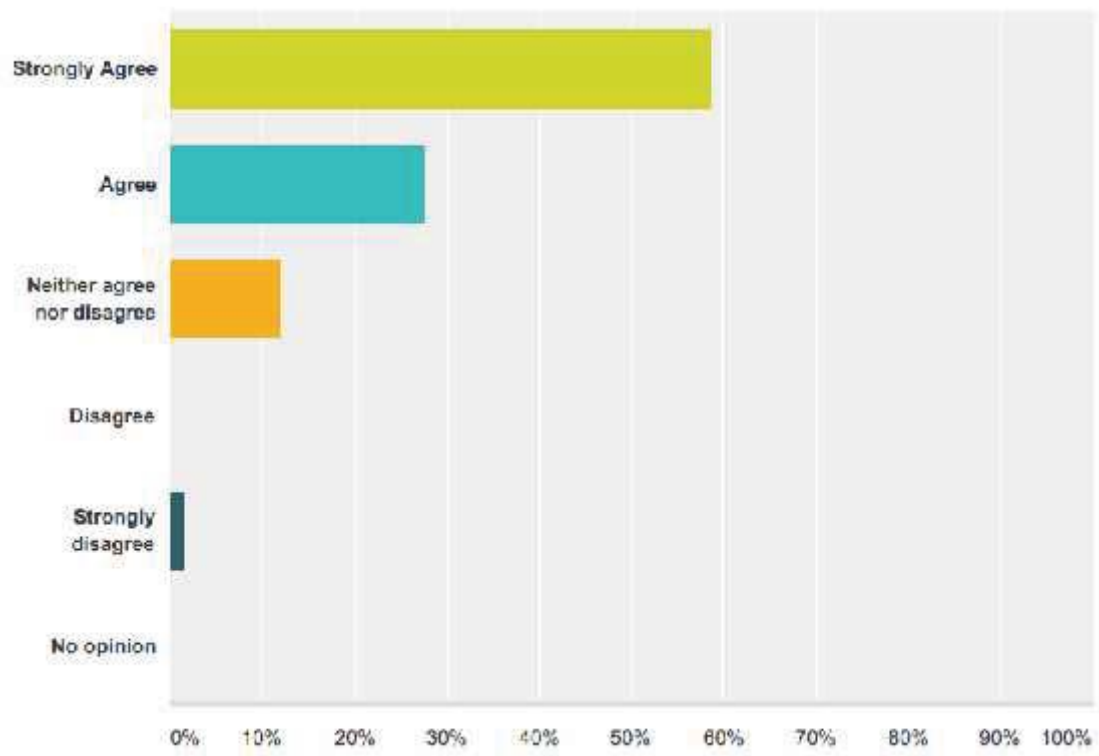


Answer Choices	Responses	
Strongly Agree	64.41%	38
Agree	22.03%	13
Neither agree nor disagree	10.17%	6
Disagree	1.69%	1
Strongly disagree	1.69%	1
No opinion	0.00%	0
Total		59

Q8 How strongly do you agree with the following statement?

A consumer should have the rights, as described above, when entering into a contract for the supply of digital content or for a service to deliver digital content.

Answered: 58 Skipped: 21

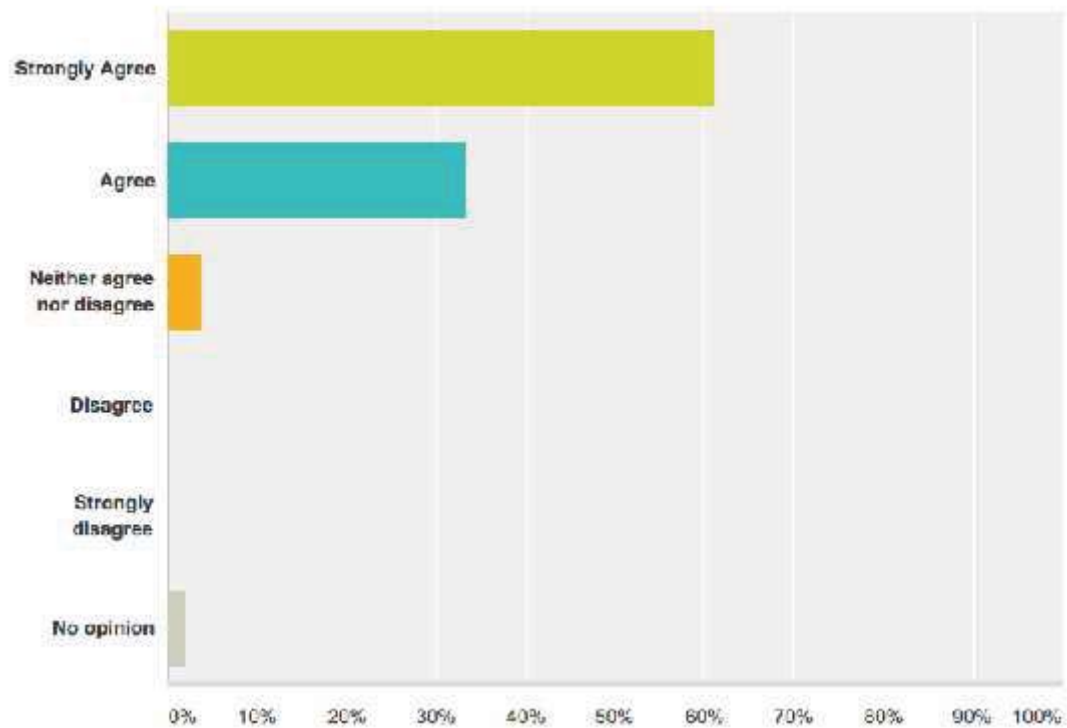


Answer Choices	Responses	
Strongly Agree	58.62%	34
Agree	27.59%	16
Neither agree nor disagree	12.07%	7
Disagree	0.00%	0
Strongly disagree	1.72%	1
No opinion	0.00%	0
Total		58

Q9 How strongly do you agree with the following statement?

Unfair commercial practices, as described above, should be prohibited

Answered: 54 Skipped: 25

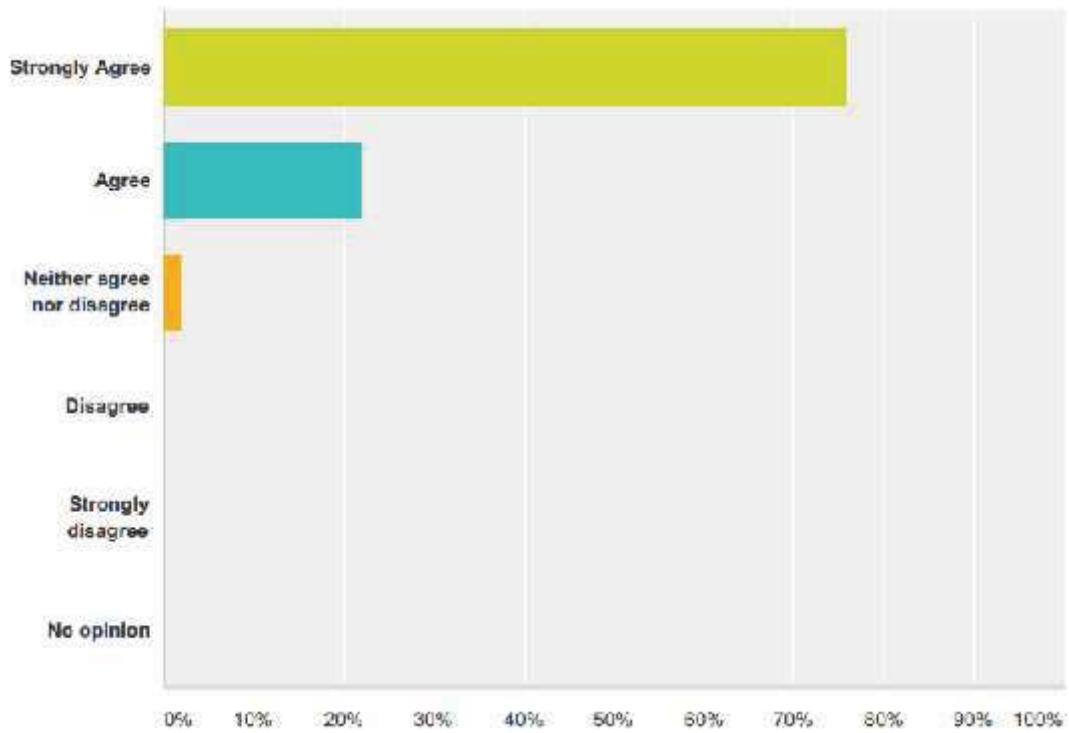


Answer Choices	Responses	
Strongly Agree	61.11%	33
Agree	33.33%	18
Neither agree nor disagree	3.70%	2
Disagree	0.00%	0
Strongly disagree	0.00%	0
No opinion	1.85%	1
Total	54	

Q10 How strongly do you agree with the following statement?

Aggressive commercial practices, described above, should be prohibited.

Answered: 54 Skipped: 25



Answer Choices	Responses	
Strongly Agree	75.93%	41
Agree	22.22%	12
Neither agree nor disagree	1.85%	1
Disagree	0.00%	0
Strongly disagree	0.00%	0
No opinion	0.00%	0
Total		54

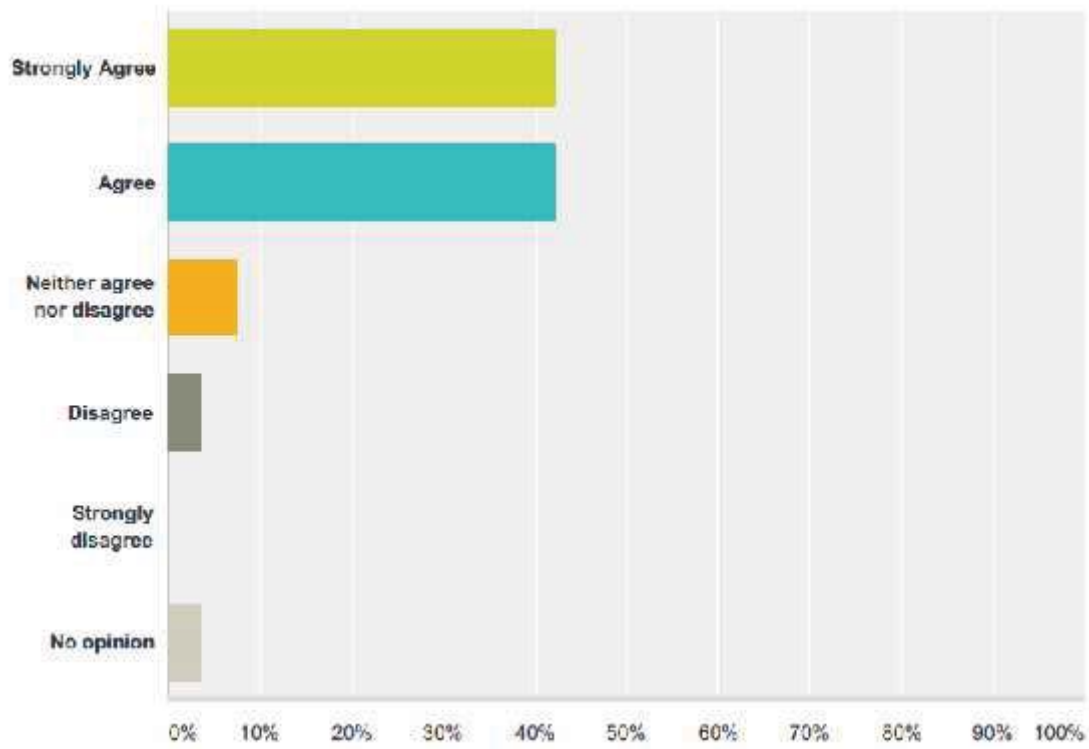


Q11 How strongly do you agree with the following statement?

Information requirements for 'on-premises', 'off-premises' and 'distance' contracts should be introduced, the exact requirements being dependent on the type of contract entered into.

Answered: 52

Skipped: 27

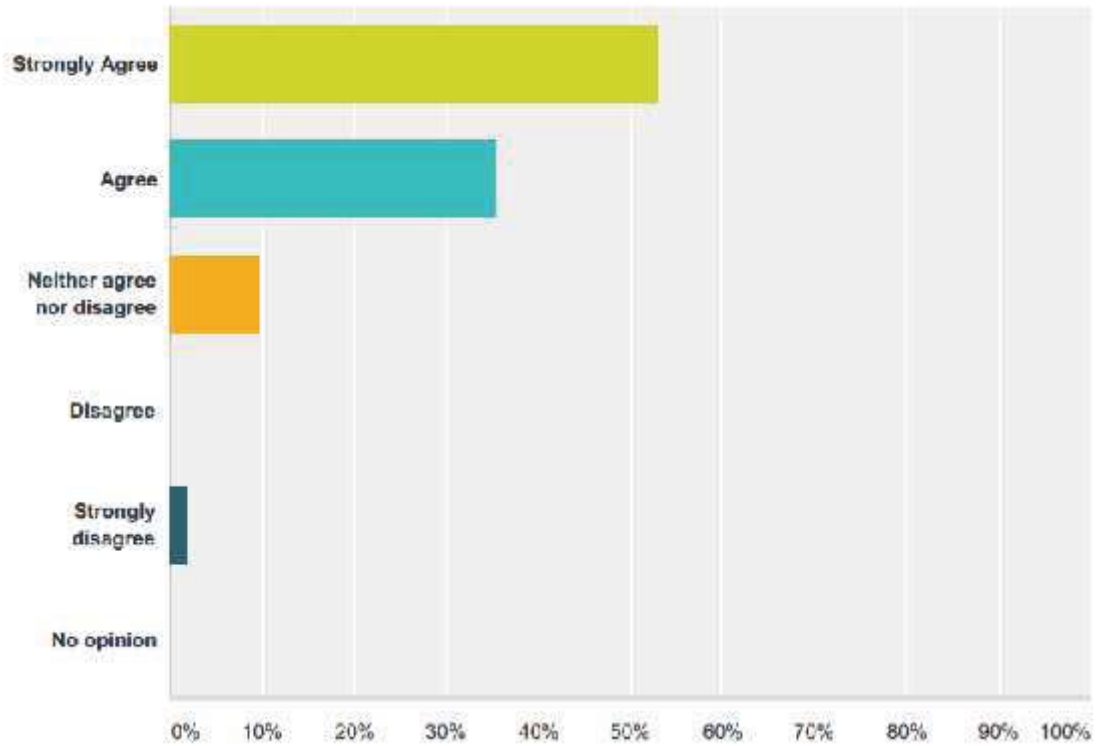


Answer Choices	Responses	
Strongly Agree	42.31%	22
Agree	42.31%	22
Neither agree nor disagree	7.69%	4
Disagree	3.85%	2
Strongly disagree	0.00%	0
No opinion	3.85%	2
Total	52	

Q12 How strongly do you agree with the following statement?

Information requirements for contracts concluded over the internet or by telephone should be introduced.

Answered: 51 Skipped: 28

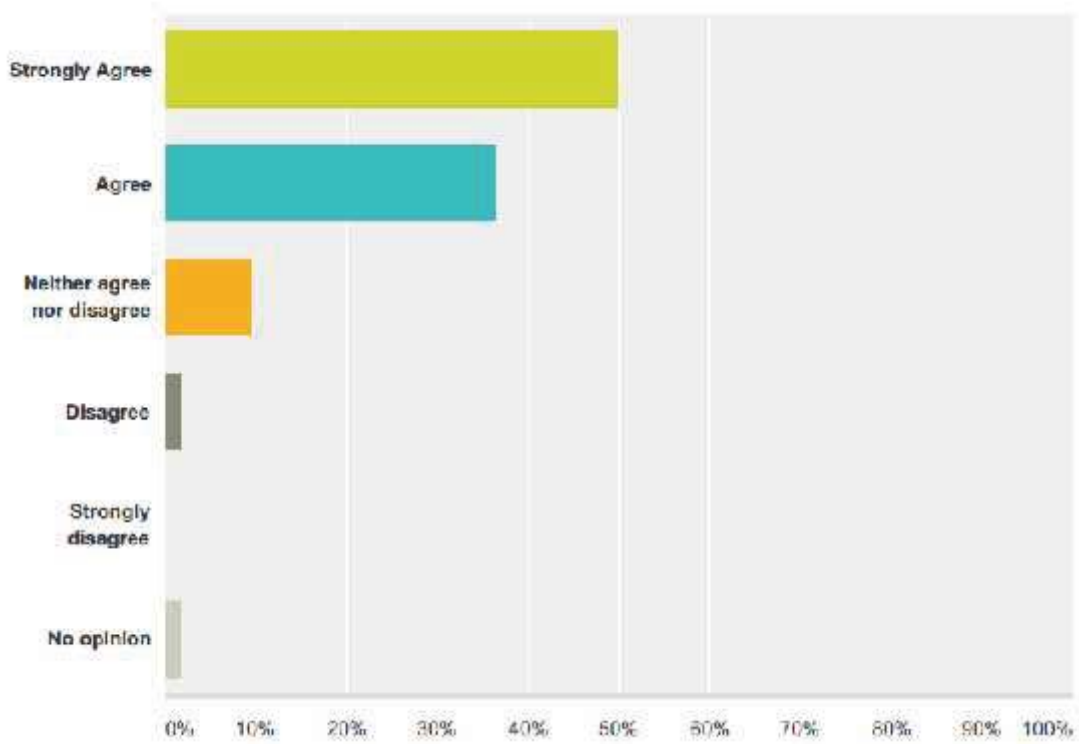


Answer Choices	Responses	
Strongly Agree	52.94%	27
Agree	35.29%	18
Neither agree nor disagree	9.80%	5
Disagree	0.00%	0
Strongly disagree	1.96%	1
No opinion	0.00%	0
Total	51	

Q13 How strongly do you agree with the following statement?

Information requirements for repair and maintenance contracts should be introduced.

Answered: 52 Skipped: 27

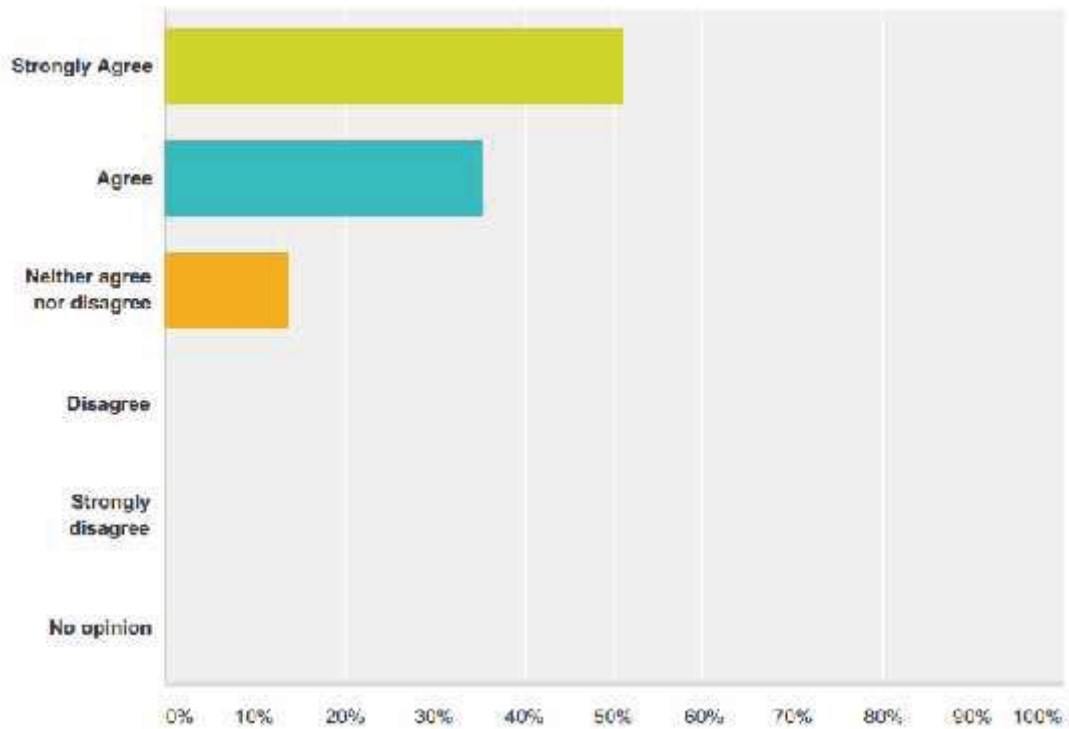


Answer Choices	Responses	
Strongly Agree	50.00%	26
Agree	36.54%	19
Neither agree nor disagree	9.62%	5
Disagree	1.92%	1
Strongly disagree	0.00%	0
No opinion	1.92%	1
Total		52

Q14 How strongly do you agree with the following statement?

Other provisions, as described above, in relation to consumer/trader transactions should be introduced.

Answered: 51 Skipped: 28

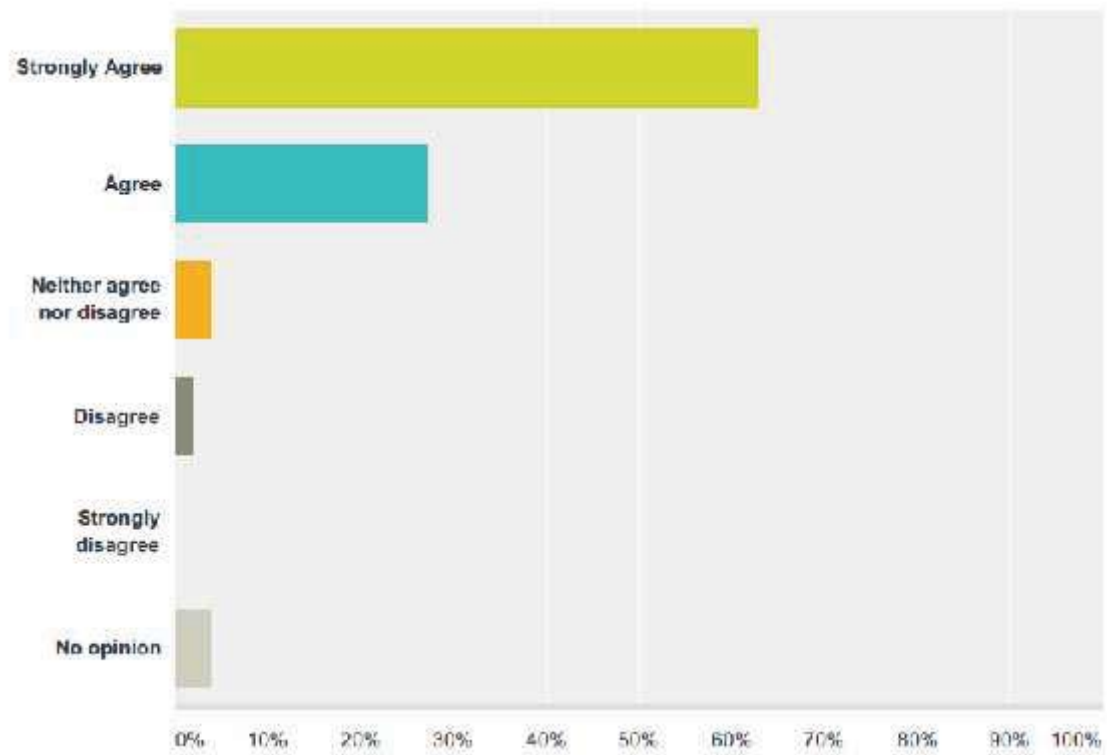


Answer Choices	Responses	
Strongly Agree	50.98%	26
Agree	35.29%	18
Neither agree nor disagree	13.73%	7
Disagree	0.00%	0
Strongly disagree	0.00%	0
No opinion	0.00%	0
Total	51	

Q15 How strongly do you agree with the following statement?

A General Safety Requirement for consumer products should be introduced.

Answered: 51 Skipped: 28

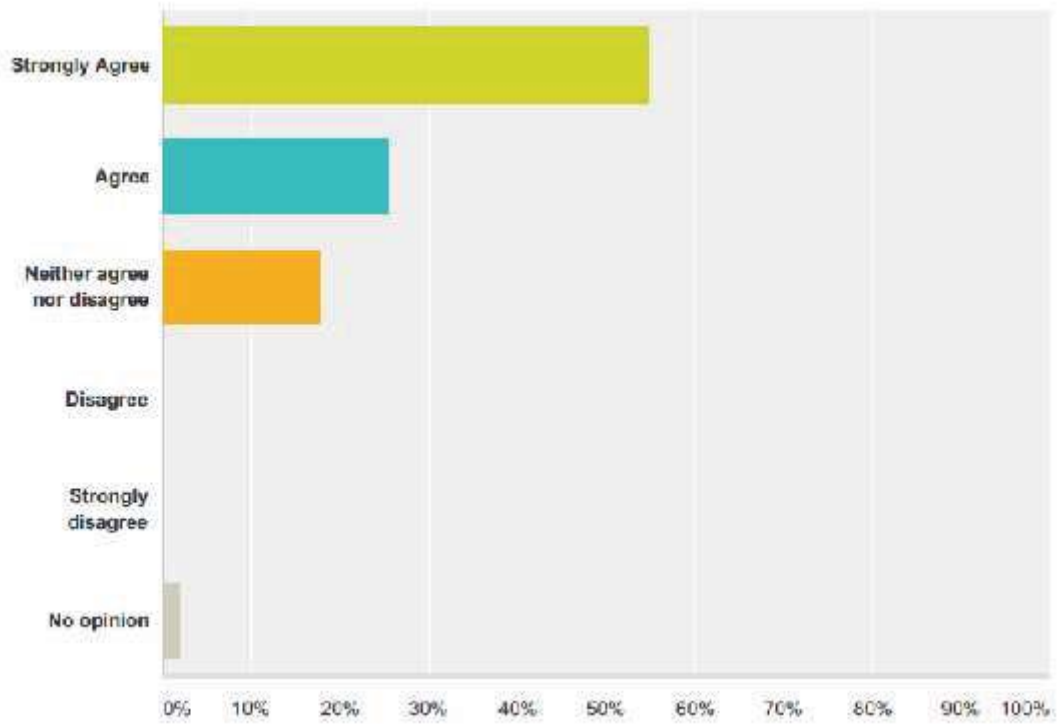


Answer Choices	Responses	
Strongly Agree	62.75%	32
Agree	27.45%	14
Neither agree nor disagree	3.92%	2
Disagree	1.96%	1
Strongly disagree	0.00%	0
No opinion	3.92%	2
Total		51

Q16 How strongly do you agree with the following statement?

The safety of consumer products should be monitored by the arrangements as described.

Answered: 51 Skipped: 28

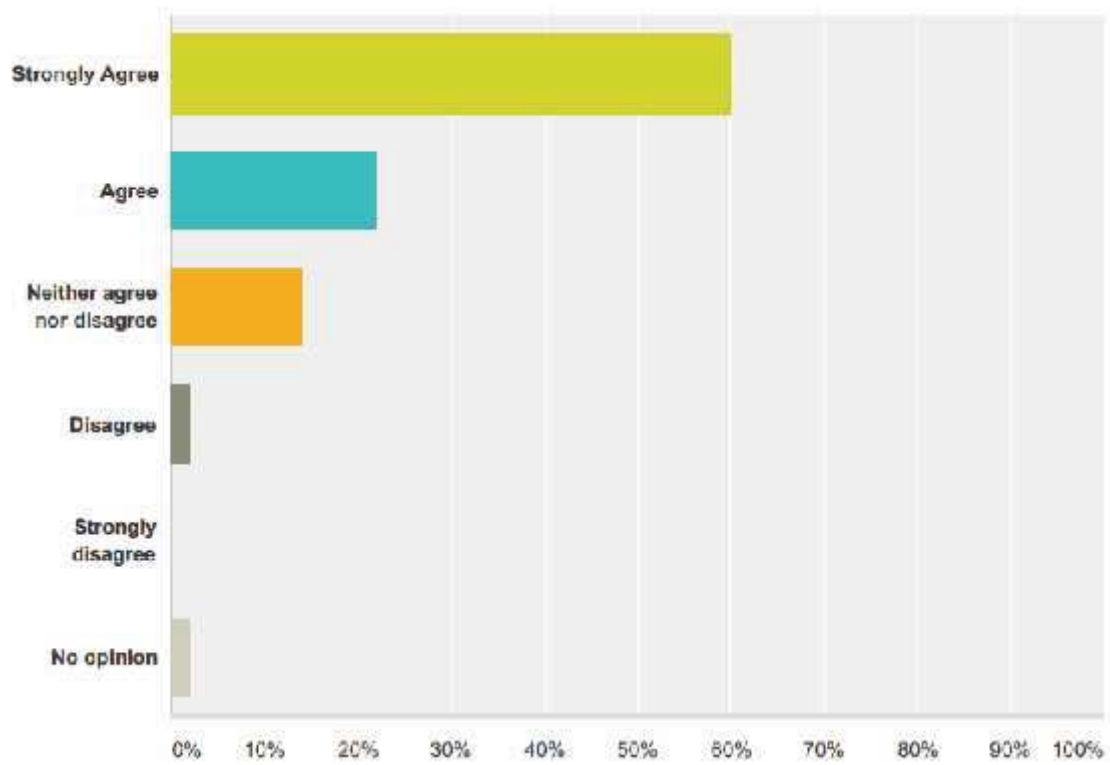


Answer Choices	Responses	
Strongly Agree	54.90%	28
Agree	25.49%	13
Neither agree nor disagree	17.65%	9
Disagree	0.00%	0
Strongly disagree	0.00%	0
No opinion	1.96%	1
Total		51

Q17 How strongly do you agree with the following statement?

A requirement for traders to price mark goods on retail sale should be introduced.

Answered: 50 Skipped: 29

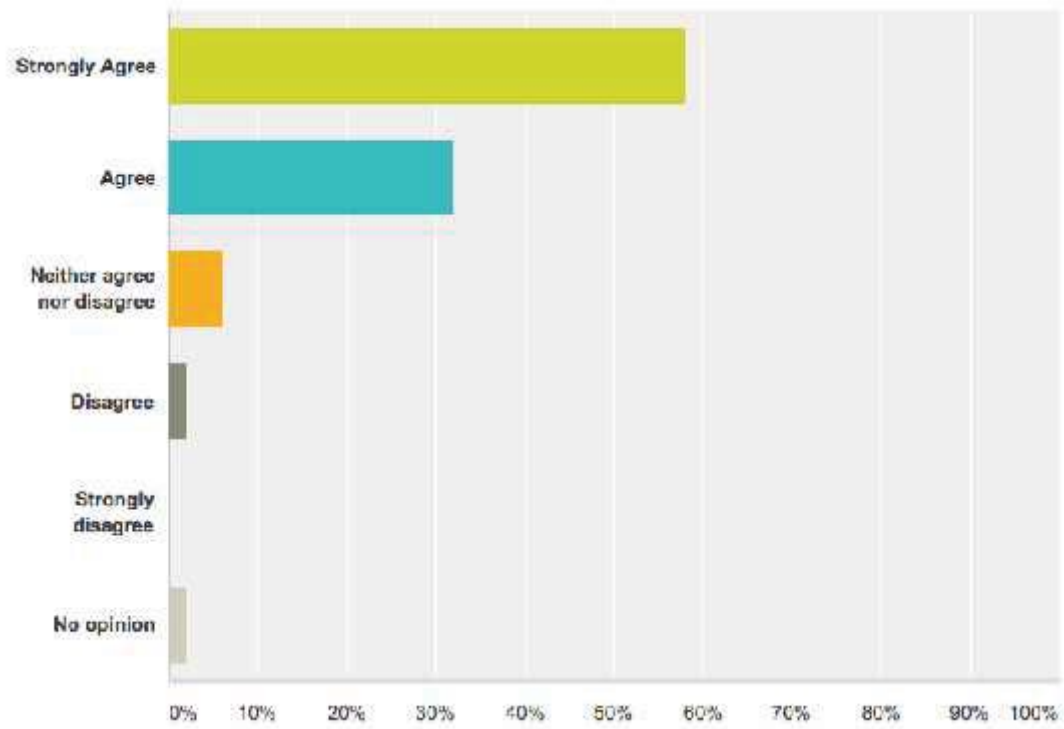


Answer Choices	Responses	
Strongly Agree	60.00%	30
Agree	22.00%	11
Neither agree nor disagree	14.00%	7
Disagree	2.00%	1
Strongly disagree	0.00%	0
No opinion	2.00%	1
Total		50

Q18 How strongly do you agree with the following statement?

Price information for goods should be provided by the methods or arrangements described.

Answered: 50 Skipped: 29



Answer Choices	Responses	
Strongly Agree	58.00%	29
Agree	32.00%	16
Neither agree nor disagree	6.00%	3
Disagree	2.00%	1
Strongly disagree	0.00%	0
No opinion	2.00%	1
Total		50

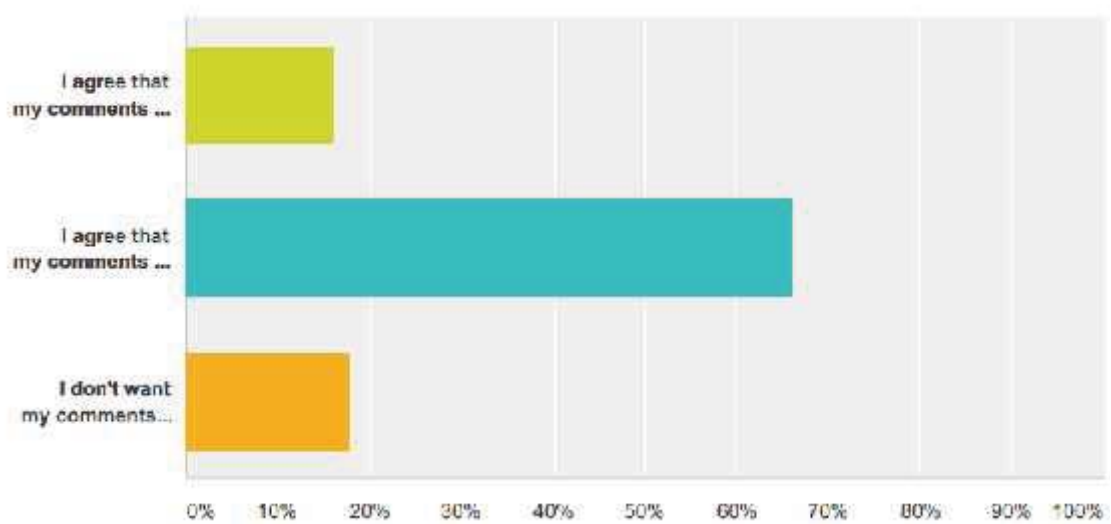


## Q19 Comments

Answered: 20 Skipped: 59

## Q20 Please indicate how the Department should treat your response.

Answered: 50 Skipped: 29



Answer Choices	Responses	
I agree that my comments may be made public and attributed to me	16.00%	8
I agree that my comments may be made public but not attributed (i.e. anonymous)	66.00%	33
I don't want my comments made public	18.00%	9
Total		50

- (N.B. The Treasury and Resources Department notes that the Commerce and Employment Department expects there to be no additional resource requirements resulting from the implementation of the trading standards framework, with overall requirements being “neutral” and managed through a reprioritisation of activities. However, should any resource implications arise in the future it is expected that these will be funded through a reallocation of existing resources (i.e. by reducing some current services which are considered to be of lower priority) or prioritised for additional budget generated through realisation of a reform dividend.)
- (N.B. The Policy Council is of the view that the proposals put forward by the Commerce and Employment Department are both a relevant and a proportionate starting point in terms of coverage and costs of enforcement. The new legislation will ensure that consumer rights are appropriately recognised in Guernsey in line with other jurisdictions where robust consumer protection exists. However, it will be important that once this long-awaited legislation is in place, its effectiveness is kept under review, so that any modifications or enhancements necessary can be identified and appropriately addressed.)

The States are asked to decide:-

XIX.- Whether, after consideration of the Policy Letter dated 3<sup>rd</sup> December, 2015, of the Commerce and Employment Department, they are of the opinion:-

1. To agree the introduction of a wide framework of statutory consumer protection powers as described in that Policy Letter. Specifically it is proposed that legislation is introduced that will provide:
  - a) civil rights and associated remedies as described in paragraph 7.4 of that Policy Letter;
  - b) protection from unfair commercial practices as set out in paragraph 7.5 of that Policy Letter;
  - c) for specific information to be provided to consumers before they enter into a contract as described in paragraph 7.6 of that Policy Letter;
  - d) cancellation rights to consumers as described in paragraph 7.7 of that Policy Letter;
  - e) protection from unfair contract terms as described in paragraph 7.8 of that Policy Letter;
  - f) for a General Safety Requirement for consumer products as described in paragraph 7.9 of that Policy Letter;

- g) a price marking requirement as described in paragraph 7.10 of that Policy Letter;
  - h) for enforcement powers as described in paragraph 7.11 of that Policy Letter; and
  - i) for the creation of offences as described in paragraph 7.12 of that Policy Letter.
2. To direct preparation of such legislation as may be necessary to give effect to the above decisions.

## ENVIRONMENT DEPARTMENT

### COASTAL DEFENCE FLOOD PREVENTION MEASURES

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

1<sup>st</sup> December 2015

Dear Sir

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

- 1.1 This Policy Letter seeks the approval of the States of Deliberation for adjustments to a programme of strategic coastal defence enhancement which has previously been the subject of a States debate (Coastal Defence Flood Studies, Billet d'État XV, July 2013). This report sets out the background, current issues, status and proposed direction for the programme and explains why further States approval is required in order to make progress.
- 1.2 Because of practical difficulties and cost implications, it is necessary to revisit the States' approval in July 2013 to use the one in one hundred years risk assessment base for the *Strategic Coastal Defences Programme* for The Bridge/St Sampson's area. This Policy Letter sets out the reasons for the request, including the proposed introduction of interim measures in The Bridge/St Sampson's Harbour area with a view to securing flood protection for the current epoch (approximately twenty to twenty-five years).
- 1.3 The States is asked to note that, given the extended time taken to formulate a solution for the situation in respect of The Bridge/St Sampson's Harbour, the Department will consider proceeding with measures to address the second priority area, Belle Greve Bay, in the interim.

#### 2. **Background**

- 2.1 In July 2013 (Billet d'État XV, 2013) the States agreed:

1. To approve the strategy of:

- the use of the 1:100 year return period as the risk assessment base;

- the adoption of epoch 1 (20 years to 2031) for climate change forecasts;
- the use of the 1:50 year return period parameter for sea defence construction projects;
- using the weighting and analysis methodology for assessing priorities as set out in this Report;
- the intention to progress projects 1 and 2 in the priority listings (respectively, St Sampson Harbour and Belle Greve Bay) subject to Capital funding being made available.

2. To endorse, subject to capital funding being made available, the proposal for the introduction of a data collection/monitoring system to enable improved source information to guide future coastal defence works.'

The States approval in 2013 set the methodology for the further development of the proposal. To continue this development, in particular the development of an Outline Business Case, the 1:100 methodology needs to be changed in relation to The Bridge/St Sampson's Harbour.

- 2.2 In September 2013 (Billet d'État XIX, 2013) the States approved the recommendation of the Treasury and Resources Department that the *Strategic Improvement of Coastal Defences* should be included in the States Capital Investment Portfolio 2014–2017 as a Category B pipeline project, and '*that further work be undertaken by Departments to develop each project's specifications, following an option appraisal and refine their costs.* In order further to develop the project specifications in the form of an Outline Business Case, approval of the methodology change in respect of The Bridge/St Sampson's Harbour is required.
- 2.3 Two key elements of the States approval for the Department's proposals were to make the area of The Bridge/St Sampson's Harbour the first priority for attention and to meet the challenge of a one in one hundred years risk assessment base, (in essence to plan for a 1 in 100 year storm where it might be expected that a following surge would exacerbate overtopping), as identified by previous studies. Other priorities were established for six further areas under threat, the defences in the vicinity of Belle Greve Bay being considered the next priority.
- 2.4 In July 2014 (Billet d'État XVI, 2014), having complied with the requirements of the States Capital Investment Portfolio ("SCIP") process for assurance reviews, the Treasury and Resources Department requested the States to accept all pipeline projects to be included in the portfolio subject to the recommendations arising from the project assurance reviews then being addressed. This recommendation was duly accepted.

- 2.5 During the last year the Department has taken forward its investigations into this first priority project of the Programme; these investigations have revealed issues which necessitate a review of the previous decisions of the States.

### 3. **Developing a Strategy for The Bridge/St Sampson's Harbour**

- 3.1 The attention of States Members is drawn to the report titled Coastal Defence Flood Studies, which was debated by the States in July 2013. This earlier report, which was produced by the Coastal Defence Project Group ("CDPG"), asked States Members to consider the flood risk studies that had been carried out by Royal Haskoning Limited ("Haskoning") on behalf of the Department and to give approval for a number of recommendations on the methods and means and priorities for addressing the issues that Haskoning had identified.
- 3.2 In the event, the States gave approval for the Department to bring forward proposals for mitigating the risk of inundation from the sea at various points around the Island. In particular, approval was given for the priority order<sup>1</sup> in which the identified points of vulnerability should be addressed and, consequently, it was resolved that initial efforts should be directed towards mitigating the flood risk that prevails in the vicinity of The Bridge and St Sampson's Harbour.
- 3.3 In September 2014, having secured acceptance to proceed as a pipeline project, the CDPG set about planning the most appropriate means for meeting the requirement to secure the area of The Bridge/St Sampson's Harbour against the risk of inundation from the sea. In order to do so the CDPG had to take account of the range of projections that Haskoning had employed in forecasting changes in sea level and storm incidence. Following on from the recommendations of the States, plans were assembled to protect against what was identified as a one in one hundred years risk assessment base and, following a tender process, URS Infrastructure and Environment UK Limited ("URS") was commissioned to produce plans for meeting this contingency. The report produced by URS was presented in December 2014 and set out five broad options for consideration. Further information regarding these factors is given below, but it is instructive, in the first place, to describe how the efforts of the Coastal Defence Project Group to address the issues of inundation from the sea at this point of the Island have been frustrated.
- 3.4 From the very earliest days of the CDPG (established in June 2012) it was widely believed that the flood risk posed to The Bridge/St Sampson's Harbour would best be addressed by establishing some form of barrier at the entrance to the outer harbour. This, it was suggested, would be an operational barrier that could be opened and closed as circumstances required. By placing it at the entrance to the harbour it would be unobtrusive, self-contained and would not impinge unduly upon the activities of the area as a working and leisure facility.

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<sup>1</sup> See Table 5, Coastal Defence flood Studies, Billet d'État XV, July 2013.

- 3.5 While the possibilities for this solution were fully examined, it became clear as URS completed the first stage of their investigations (in late October 2014) that it would not be a practical option for the time being. Chief among the difficulties that such a barrier presents is the fact that the commercial harbour, which primarily functions for the on/off loading of aggregates and hydrocarbons, will have to remain operational for some years to come. There are nascent plans for an alternative system for the importation of hydrocarbons (which would allow a wider variety of vessels to deliver to the Island), but these are only in the developmental stage and there is no prospect that a replacement operation will be commissioned within the next few years. Should a barrier system be put into place under present circumstances (and no engineering report exists to confirm that this is feasible), then the harbour entrance would have to be closed for an extended period of time during the construction period and the flow of hydrocarbons into the Island would be disrupted to an unacceptable degree.
- 3.6 With the prospect of an outer barrier put aside indefinitely, the CDPG turned its attentions to the five other options, each of which involves some form of construction along and across The Bridge itself, or on North Side and/or South Side. There is little doubt that all of these proposals would interrupt traffic and pedestrian flows, block views over the harbour and run counter to a range of suggestions and outline plans that have been put forward for the development of the area. There are also construction challenges about the feasibility of the various structures that have been put forward, principally on the grounds that the area is replete with underground services and ducting.
- 3.7 In the event none of the suggested solutions were found to be satisfactory on grounds of both the obtrusiveness of the build and the costs involved and it was decided that a Focus Group should be assembled in order to gauge the opinions of organisations and individuals concerned with the area. This duly took place in February 2015 and, following an extensive review of the findings of the URS report, it became clear that the alternatives did not present a clear way forward for the Focus Group either.
- 3.8 This situation left the CDPG and the Department with a problem for which there were several possible ways forward:

3.8.1 *Abandon the project.*

Given the clearly identified need for improved sea defences in the area and the risk that the Island runs while the threat of extensive flooding remains, it is not considered feasible to abandon the project altogether.

3.8.2 *Place a hold on the project until the outer harbour is freed from its critical role.*

This refers to the fact that there are plans in the making for moving the offloading of hydrocarbons to another, more amenable location.

However, these proposals are little more than ideas at present and will take some years to bring to fruition. Equally, there are no equivalent schemes that have been put forward for the handling of aggregates which also takes place in the outer harbour.

3.8.3 *Press on regardless with one of the proposed solutions.*

This may be possible but would not be likely to succeed. The Environment Department Board is not presently able to approve any of the proposals and there was no extant support from local organisations with an interest in the area. This would make it impossible to present a case for capital funding. Further, the Department could find itself spending considerable resources on developing one of the solutions, but unable to endorse the final plans.

3.8.4 *Create an interim solution to deal with the current threat pending the removal of the hydrocarbons offloading berth from the outer harbour.*

This would require acceptance of a revised standard of protection for the next twenty years or so (Haskoning 2012 set out scenarios for “epoch 1” – up to the year 2031). It is believed that, should such a reduced scheme proceed then, in time, with more developed records and improved data collection, better informed decisions can be made about introducing additions/alterations to the revised defences to bring them up to the standards required to meet the one in one hundred years return period as the risk assessment base.

3.9 Given the choice of options the Department, at the instigation of the CDPG, decided to pursue the possibility of creating an interim solution by developing proposals for a defence that would be capable only of meeting the current situation for a one in twenty/twenty five year event.

3.10 Accordingly, the Department revisited the flood problem and re-commissioned URS<sup>2</sup> to report on the possibility of introducing a lesser solution designed just to meet the risk identified up to 2031. This would, of course, keep open the possibility of introducing a barrier to the outer harbour at some later date if the situation described in paragraph 3.5 above should change.

#### 4. **Revised Proposals**

4.1 For its latest report, URS has put forward a proposal for a low key defence that, essentially, involves the erection of a barrier along the length of The Bridge. Because this proposal is much less obtrusive than those put forward in the first URS report, it can be more easily assimilated into the environment and, with architectural input, may also provide some additional amenity value.

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<sup>2</sup> In late 2014 URS was taken over by AECOM, a Los Angeles based infrastructure management organisation. It presently trades under the name of AECOM.



- 4.2 In order to ensure that the further development of the proposal for upgrading of the Island's coastal defences does not stall, States Members are asked to reconsider their previous decision and give approval for the Environment Department to pursue the alternative proposal and bring forward, in the form of an Outline Business Case for States approval, a solution that will address the forecast needs of the area up to the year 2031. The alternative course of action would be simply to postpone works at The Bridge/St Sampson's Harbour, accept the risk of inundation in the intervening period, progress with priority two in the programme (Belle Greve Bay) and return to priority one once the Harbour strategy has been resolved. The Board cannot recommend this, "delay and hope" approach.
- 4.3 Further, it is the intention of the CDPG to advance other projects for improving early warning of high seas and potential flood events and the installation of tidal gauges.
- 4.4 Due to the challenges that the Department has encountered in arriving at a suitable solution for dealing with the situation in the vicinity of The Bridge/St Sampson's Harbour, there is potential for steps to be taken to proceed with investigations for mitigating the flood risk identified in the area listed as second in priority - Belle Greve Bay, either simultaneously or ahead of the first priority.

## 5. **Consultation**

- 5.1 As part of the Environment Department's endeavours to ensure that a sound decision is made in respect of the proposals for installing flood defences in the vicinity of St Sampson's Harbour, the Coastal Defence Project Group arranged for a Focus Group meeting to take place in February 2015. Invited to this meeting were representatives of:
- the St Sampson's Douzaine;
  - the Vale Douzaine;
  - the Chamber of Commerce;
  - Guernsey Water;
  - Private architectural practices;
  - the Harbour Authority;
  - the Public Services Department;
  - the Commerce and Employment Department
- 5.2 It is conceivable that the Focus Group will be reconvened to consider the revised proposals for the area.
- 5.3 There are no direct legal issues arising from the recommendations.

## 6. **Compliance with States Strategic Policy**

- 6.1 It is anticipated that improved flood defences will provide substantial protection for the environment of the coast lands.
- 6.2 The Department considers that these proposals conform to the overarching strategies of the States Strategic Plan in respect of the fiscal, economic, social and environmental infrastructure.

## 7. **Revenue Implications**

- 7.1 Should the proposals for improved sea defences in the area of The Bridge/St Sampson's Harbour proceed following States consideration of the detailed Outline Business Case and the project passing the Full Business Case ("FBC") gateway reviews after tender, then there will be additional infrastructure requiring a maintenance and upkeep budget. Some of these costs will simply replace those that are used for the upkeep and maintenance of the area at the present time, but the full costs will form part of the FBC, which will be prepared as part of the capital acquisition process.
- 7.2 Should the proposals in respect of the defences located in the area of Belle Greve Bay proceed, then there are no further revenue implications envisaged beyond those that exist presently for maintenance and upkeep of the existing defences. Again, this situation may change once detailed plans are available, but the full costs will form part of the FBC.
- 7.3 Revenue savings may be secured through the deployment of improved monitoring and early warning equipment which will serve to assist the Department in taking early measures to reduce the impact of future flood events.

## 8. **Recommendations**

- 8.1 The Department recommends the States to approve the requested exception, in relation to The Bridge/St Sampson's Harbour, to Resolution XI.1 of Billet d'État No XV of 2013, which approved the use of the 1:100 year return period as the risk assessment base. The exception will enable interim flood protection measures, with a view to securing flood protection for the current epoch (approximately twenty to twenty five years), to be included as part of the forthcoming Outline Business Case, together with a re-profiling of the wider programme to address the second priority area, Belle Greve Bay, on a revised timetable as part of its proposal.

Yours faithfully

Y Burford  
Minister

B L Brehaut  
Deputy Minister

P A Harwood  
J A B Gollop  
E G Bebb

**(N.B. The Treasury and Resources Department notes that, in accordance with the States' process, the Environment Department will develop an Outline Business Case and, subject to States approval, a Full Business Case for the projects within the Strategic Improvement of Coastal Defences programme. It is expected that the Environment Department will work closely with the Public Services Department during the development of the Outline Business Case to ensure that the opportunities for efficiencies through joint working in respect of the Deep Water Berth (Hydrocarbons) project are fully explored in order to maximise the impact of the financial investment across both projects. It is also expected that any resource implications arising from the Strategic Improvement of Coastal Defences projects, including those relating to routine capital and revenue expenditure, will be funded through a reallocation of existing resources (i.e. by reducing some current services which are considered to be of lower priority) or prioritised for additional budget generated through realisation of a reform dividend.)**

**(N.B. The Policy Council notes that the Environment Department has not been able to identify an acceptable option to strengthen the sea defences at the Bridge/St Sampson's Harbour area to meet the risk of a one in one hundred year event and, instead, is suggesting approving interim flood protection measures in this area for the current epoch (20 years). This appears to be a pragmatic, interim solution that addresses the current risks and provides time for the department to review options for the optimum (1:100 year) solution, which will require more significant physical intervention.**

**The Policy Council supports the proposals in this Policy Letter and confirms that it complies with the Principles of Good Governance as defined in Billet d'État IV of 2011.)**

The States are asked to decide:-

XX.- Whether, after consideration of the Policy Letter dated 1<sup>st</sup> December, 2015, of the Environment Department, they are of the opinion:-

1. To approve the requested exception, in relation to The Bridge/St Sampson's Harbour, to Resolution XI.1 of Billet d'État No XV of 2013, which approved the use of the 1:100 year return period as the risk assessment base.
2. To note that the requested exception will enable interim flood protection measures, with a view to securing flood protection for the current epoch (approximately twenty to twenty five years), to be included as part of the forthcoming Outline Business Case, together with a re-profiling of the wider programme to address the second priority area, Belle Greve Bay, on a revised timetable as part of its proposal.

**COMMERCE AND EMPLOYMENT DEPARTMENT**  
**PROPOSAL FOR A NEW ARBITRATION LAW**

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

3<sup>rd</sup> December 2015

Dear Sir

**1. Executive Summary**

- 1.1 In 2004, having considered a Policy Letter from the former Advisory and Finance Committee (Billet d'État II of 2004, Article 8), the States resolved to direct the preparation of a new Arbitration Law.
- 1.2 Arbitration is a form of dispute resolution in which two or more parties can agree that a dispute will be submitted to one or more arbitrators for a legally binding decision on the dispute, as an alternative to resolution through the Courts. Arbitration differs from other forms of dispute resolution such as mediation, in that it results in a legally binding award which will be recognised and enforced by the Courts. The ability of Courts to intervene in an arbitration is limited. Arbitration clauses are often incorporated into contractual agreements and are particularly common in some commercial sectors, for example insurance and construction. Key advantages of arbitration when compared to litigation are that the parties have more control over the process, it can be quicker than litigation and it is confidential unless the parties otherwise agree.
- 1.3 The new Arbitration Law was not determined to be a legislative priority until recently, reflecting industry and political demand and the relative priority of other pieces of commercial and finance sector legislation (amounting to thousands of pages of legislation for the benefit of industry and the reputation of the Bailiwick as a well-regulated jurisdiction).
- 1.4 Notwithstanding this, work to prepare legislation in accordance with the resolution has been undertaken since the States resolution. Finalisation of this work stream was prioritised earlier this year. The policy proposals have been reviewed, and a technical consultation on draft legislation was carried out to enable the legislation to be finalised and presented to the States.
- 1.5 One issue in particular has been subject to further consideration by the Commerce and Employment Department (the Department) and the Law Officers as a result of consultation feedback that is the issue of whether Guernsey should adopt a single

or dual track approach to arbitration. Some jurisdictions choose to have one legal system for domestic arbitration and a separate system for international arbitration. Following careful consideration, the Department is proposing that at the present time Guernsey adopts a single track approach where the same system applies to both domestic and international arbitration. This issue is considered in more detail in Section 3 of this Policy Letter.

- 1.6 Given the time that has elapsed since the original resolution, the Department considers it appropriate for this States to be given an opportunity to reconsider and endorse the policy approach adopted, before the legislation is presented for consideration.
- 1.7 This Policy Letter therefore updates the States, summarises the main issue arising from the review of the policy and the technical consultation responses, and makes recommendations to the States.

## **2. Policy Review**

- 2.1 It has always been recognised that it is important for an arbitration law to follow internationally recognised best practice in order to provide comfort to users of the law (potentially both domestic and international parties) and certainty to the arbitral process. From Guernsey's perspective this best practice is encapsulated in two potential models; (i) the English Arbitration Act 1996 and (ii) the UNCITRAL (United Nations Commission on International Trade Law) Model Law on Arbitration. (Although in fact the English Act is based on and contains many of the same principles as are found in the UNCITRAL Model Law).
- 2.2 The 2004 Policy Letter (a copy of which is appended to this Policy Letter) and the extant States Resolution recommend updating Guernsey Law to reflect the principles and procedures set out in the English Act. This recommendation has been reviewed and seems entirely appropriate for the following reasons:
  - from a jurisprudential perspective, cases determined under the English Act are of persuasive authority to the Guernsey Court, whereas the UNICTRAL Model cases, being reported across a wide range of civil and common law jurisdictions would not necessarily have the same weight before the Guernsey Court, leading to more uncertain application of the latter,
  - the UNCITRAL model, whilst fairly comprehensive is not a complete solution and does have some gaps which would need to be filled with supplementary provisions,
  - as all Guernsey Advocates are qualified to practice in England and Wales, adoption of the English model will provide the local Bar with a model with which they are likely to be familiar and which they are well qualified to understand and apply.

- 2.3 Expert advisors were appointed to consider an early draft Law based on the English model, and provided comments on that draft. Those comments have been taken into account in the draft that went out to consultation earlier this year. There were three responses to the consultation, and the feedback that was received was broadly supportive of the approach that the legislation had taken, save that there were two comments calling for a 'dual track', not 'single track', arbitration system with a separate international arbitration law based on the UNCITRAL Model Law. These comments were essentially on the basis that this could increase the appeal of Guernsey as a place for international commercial arbitration and would provide a model that would be familiar to those from civil law jurisdictions or who are already familiar with the UNCITRAL Model Law. This particular issue has therefore been the subject of careful further consideration and is discussed below.

### **3. Arbitration – dual track or single track?**

- 3.1 'Dual track' or 'dualist' are terms used to describe legal systems that have two different systems of law for arbitration; commonly one system is reserved for domestic arbitration and the other for 'international arbitration'. In such cases, the law most often adopted for the 'international arbitration law' is the UNCITRAL Model Law on Arbitration. 'Single track' or 'monistic' are terms used to describe a legal system that has one arbitration law applicable to all arbitrations conducted under the law of that legal system.
- 3.2 From the Department's research, it seems that the success of a jurisdiction as a venue for international arbitration is not primarily determined by whether a dual or single track system is adopted. Other factors such as the availability of a large number of qualified arbitrators, lawyers, specialist venues and administrators play a key role as does the geographic location and international repute of the relevant jurisdiction. This is why London (single track) is one of the most successful centres for arbitration in the world, along with New York (single track<sup>1</sup>), Paris (single track<sup>2</sup>), Hong Kong (single track) and Singapore (dual track). Thus it seems that the choice of single or dual track system is not in itself determinative of the success of a jurisdiction as a venue for international arbitration.
- 3.3 Detailed consideration has been given as to whether it would be better for Guernsey to have a single track or dual track system for arbitration. The consultation draft was released earlier this year on the basis of a single track system. Expert advice taken previously by the Department, and the view of the Department's legal advisers, is that a single track system is most suitable for Guernsey at present, in order to provide certainty as to the law applicable to arbitration in Guernsey and to avoid over-complicating the law.

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<sup>1</sup> The Federal Arbitration Act, not based on the UNCITRAL Model Law, applies to domestic US (interstate) and international commercial arbitration, albeit New York State Law applies to purely local arbitration.

<sup>2</sup> A single book of the French Code of Civil Procedure, Livre IV, not based on the UNCITRAL Model Law, covers arbitration, albeit separate provision is made in respect of domestic and international arbitration.

- 3.4 On this basis, it seems that the choice as to the type of system can properly be made according to which will provide the clearest law, namely, a single track system. That is not to say that introduction of a dual track system should, or could, not be reconsidered in due course should matters change.

#### **4. Consultation**

- 4.1 A public consultation on draft legislation was conducted between 24<sup>th</sup> July and 18<sup>th</sup> September 2015. The consultation and draft legislation were published on the States of Guernsey website and a link was sent to industry associations and interested parties.
- 4.2 The Law Officers have advised the Department on the proposals contained in this Policy Letter.

#### **5. Finance Implications**

- 5.1 There are no finance implications for the States of the proposals contained in this Policy Letter.

#### **6. Legislative Drafting Implications**

- 6.1 Legislation has already been drafted in accordance with the extant States Resolution of 25<sup>th</sup> February 2004 and the proposals in this report.

#### **7. Recommendations**

- 7.1 The Department recommends the States resolve:
- (i) to confirm the States Resolution of VIII of 25<sup>th</sup> February 2004 (Billet d'État II of 2004), and
  - (ii) to agree that a single track Arbitration Law should be introduced, based primarily on the principles of the English Arbitration Act, 1996, updated where appropriate to provide a modern and comprehensive Arbitration Law.

Yours faithfully

K A Stewart  
Minister

A H Brouard  
Deputy Minister

D de G De Lisle  
G M Collins  
L S Trott

Advocate T Carey  
(Non-States Member)



## APPENDIX

## STATES ADVISORY AND FINANCE COMMITTEE

## PROPOSAL FOR A NEW ARBITRATION (GUERNSEY) LAW

The President  
 States of Guernsey  
 Royal Court House  
 St Peter Port  
 GUERNSEY  
 GY1 2PB

22<sup>nd</sup> January 2004

Dear Sir,

**PROPOSAL FOR NEW ARBITRATION (GUERNSEY) LAW**

The Guernsey Members of the Channel Islands Branch of the Chartered Institute of Arbitrators have written to the Advisory and Finance Committee in the following terms:

*“The law relating to arbitration in the Islands of Guernsey, Herm and Jethou (“Guernsey”) is governed by the provisions of the Arbitration (Guernsey) Laws, 1982 and 1986, and certain international conventions which have been registered by the Royal Court. These Laws were modeled on the United Kingdom Arbitration Acts 1950 to 1979 (“the U.K. Acts”), which governed the law of arbitration in England, Wales and Northern Ireland at the time. As the Arbitration Laws in Guernsey were based on the U.K. Acts arbitrators in Guernsey have in the past been able to look for guidance from the arbitration institutions in England as well as decisions of the English courts interpreting the U.K. Acts. These arrangements have served the island well. However, in 1995 the U.K. Acts were replaced by a new Act, namely, the Arbitration Act 1995 (“the new Act”) governing arbitration in England, Wales and Northern Ireland. The Guernsey members of the Channel Islands Branch of the Chartered Institute of Arbitrators wish to propose to the States the enactment of a new Arbitration Law based on the new Act.*

*The new Act takes account of international concepts of arbitration law adopted by the United Nations Commission on International Trade Law (UNCITRAL). In 1985 UNCITRAL published a draft uniform law (“the Model Law”) on arbitration procedure to seek to standardise arbitration law and practice around the globe. Whilst the United Kingdom took a full part in the discussions at UNCITRAL which led to the Model Law, it was finally decided that it should not be adopted (except in Scotland) but that a new Act would be enacted which would embody many of the principles of*



*the Model Law and should be largely compatible with it but yet retain the many elements of arbitration law which served England well in the past.*

*The decision was based on a number of considerations. Whilst the Model Law was seen as being possibly suitable for states with no developed law or practice of arbitration, for those with a reasonably modern law but not much practice and for those with outdated or inaccessible laws, it was not thought suitable for a country such as England, where the law of arbitration was up-to-date and where there was extensive current practice.*

*The new Act was designed to bring the practice of arbitration into the modern age by giving increased powers to arbitrators and laying upon them new obligations to adopt suitable procedures for each case, to avoid unnecessary delay and expense, plus immunity and the promise of reduced judicial intervention. The idea was that arbitrators would need to be more pro-active, imaginative and innovative than previously and abandon the idea that arbitration should be modelled on adversarial court procedures. The new Act was a fresh attempt to lay down a clear, flexible, fair, efficient, modern, accessible and intelligible set of rules to govern the conduct of arbitration in England, Wales and Northern Ireland.*

*The new Act has retained what was best in the previous law of arbitration while making changes to bring the practice of arbitration closer to the older and simpler ideals by which it was once practised. So the emphasis of the new Act is on the speedy and cost-effective resolution of disputes by an impartial tribunal, in accordance with procedures very largely determined by the parties, and with no, or minimal, intervention by the courts.*

*The new Act introduces a radical new approach designed to keep arbitration in England, Wales and Northern Ireland in the forefront of choice for international parties, and new powers for arbitrators to permit them to redefine arbitration as a dispute resolution process with unique qualities. It was drafted with the following features in mind:*

*(1) It should comprise a statement in statutory form of the more important principles of the English law of arbitration.*

*(2) It should be limited to those principles whose existence and effect are uncontroversial.*

*(3) It should be set out in logical order, and expressed in user-friendly language, which was sufficiently clear and free from technicalities to be readily comprehensible to the layman.*

*(4) It should in general apply to domestic and international arbitrations alike, although there could be exceptions to take account of treaty obligations.*

(5) *It should not be limited to the subject-matter of the Model Law.*

(6) *It should, so far as possible, have the same structure and language as the Model Law, so as to enhance its accessibility to those who were familiar with the Model Law internationally.*

*The new Act was enacted with these characteristics and has governed arbitrations commenced on and after 31 January 1997.*

*Just as the United Kingdom has seen the importance of amending its arbitration law to align it to an increasingly international clientele, it is equally important, and probably even more so, for Guernsey to do the same, particularly as Guernsey is an international financial centre where disputes are likely to arise between parties from many different parts of the world.*

*It is therefore proposed that the States enact a new Arbitration Law which would reflect the principles and procedures set out in the new Act in the United Kingdom. The changes introduced by the new Act, which it is proposed be reflected in a new Guernsey Projet de Loi are as follows:*

1. **Immunity.** *An arbitrator has been given immunity from liability for anything done or omitted in the discharge or purported discharge of his functions as arbitrator in the absence of bad faith and that similar, although more limited, immunity has been given to arbitration institutions. For years before the passing of the new Act there was debate as to whether arbitrators in fact had any such immunity, and as to whether indeed they should have it. Neither the legal nor the moral positions were thought to be clear. In the new Act Parliament has, and without any subsequent difficulty being experienced in the intervening six years, given protection to arbitrators and institutions.*

2. **Interest.** *Arbitrators may now award either simple or compound interest.*

3. **Arbitrators' powers.** *Subject to any contrary agreement by the parties, arbitrators now have very wide-ranging powers over the way in which proceedings are to be conducted, including whether to hold an oral hearing or not, and if so for what purposes.*

4. **Costs.** *The new Act contains a power (which the parties may overrule by agreement) enabling arbitrators to direct that the recoverable costs of an arbitration shall be limited to a specified amount. In other words they may 'cap' recoverable costs, leaving parties free to spend whatever they like but in the knowledge that any recovery they make at the end of the day will be limited to the previously agreed sum. An arbitrator*

wanting to exercise the power to cap costs must ask himself whether so doing might hinder the fair resolution of the case, whether he is acting impartially, whether he is helping the parties to avoid unnecessary expense and whether capping the costs might prevent either party from having a reasonable opportunity to put his case and deal with that of his opponent.

5. **Overriding principle of arbitration.** The new Act sets out the overriding objectives of arbitration, and the principles as to how arbitrations must be run, which are as follows:

(a) The object of arbitration is defined as being “to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense”.

(b) The parties “should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest”.

(c) Arbitrators have a duty to act “fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent”.

(d) Arbitrators are required to “adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of disputes”.

(e) The parties have a duty to “do all things necessary for the proper and expeditious conduct” of the proceedings.

6. **Freedom to determine procedure.** So far as is consistent with the requirements of public policy, parties to arbitration agreements should have the maximum possible freedom to choose how their arbitral tribunals are to be structured, how their cases are to be run, what their awards are to contain, and so on.

7. **Court intervention.** Court intervention should be available to support arbitration, not to interfere with it.

8. **Governing law.** The new Act introduces the concept of ‘the seat of the arbitration’ for the first time into English law, that is to say, the jurisdiction to which the arbitration is subject.

9. **Institutions.** The new Act recognises the part that arbitral institutions have to play in many arbitrations. One of the provisions of the Act is that if the rules of any relevant institution provide for some process which the courts might otherwise exercise, that process must be exhausted before the courts can be approached.

10. **Separability.** *The separability of an arbitration agreement from a main contract is confirmed by the new Act. Although the concept of separability was one to which English common law had finally come, this only happened shortly before the Act was passed.*

11. **Staying court proceedings.** *Under the new Act there is no distinction between domestic and non-domestic arbitrations inasmuch as there is no discretion given to the court to hold that there are sufficient grounds for not holding parties to an arbitration agreement.*

12. **Time limits.** *The new Act has abolished the concept of 'undue hardship' in relation to the extension of time by the court for the commencement of arbitration proceedings which has been replaced by a requirement that the court shall only extend time if the circumstances were such as were outside the reasonable contemplation of the parties when they agreed the time limit, and that it would be just to extend the time; or where one party's conduct makes it unjust to hold the other to the strict terms of the time limit provisions.*

13. **No majority decision.** *In a three-man tribunal if there is no majority decision the view of the chairman will prevail.*

14. **Removal of arbitrators.** *The courts retain their power to remove an arbitrator albeit on restricted grounds. If an arbitrator resigns his appointment he may apply to the court for relief from any liability thereby incurred and for an appropriate order in respect of his fees and expenses.*

15. **Repayment of excessive fees.** *The court can now order the repayment by an arbitrator of his fees and expenses where they can be shown to be excessive. Previously, at least where an award had been made and paid for without protest or the costs being paid into court, no such possibility existed.*

16. **Jurisdiction.** *There is now an express power given to arbitral tribunals to rule on their own jurisdiction, that is to say, as to the existence of a valid arbitration agreement, the proper constitution of the tribunal and what matters have been submitted to arbitration. Any party objecting to the substantive jurisdiction of an arbitral tribunal must do so at the outset of the proceedings, and any objection as to excessive jurisdiction must be made as soon as possible after the matter giving rise to the objection occurs. The new Act states how arbitrators and the courts may deal with questions as to substantive jurisdiction, and for the possible loss of the right to object if objections are not raised within a reasonable time.*

17. **Arbitrators' powers.** *The new Act lists some of the procedural and evidential matters which arbitrators may decide, subject to any contrary*

agreement between the parties. These include where to hold proceedings, the language in which the proceedings are to be conducted, the form of statements of case (if any), disclosure of documents, evidence, and even the possibility of the tribunal itself taking the initiative to ascertain the facts or law.

18. **Security for costs.** Under the new Act arbitrators may order the provision of security for the costs of an arbitration, subject to any agreement between the parties. However, they may not exercise this power on the ground that the claimant party is either an individual or a corporation or similar body essentially outside the United Kingdom.

19. **Provisional orders.** Whilst arbitrators have always had the power to make interim awards dealing with parts of a reference to arbitration, under the new Act they have power to make provisional orders, if the parties so agree, which may be subject to final adjudication at a later stage.

20. **Peremptory orders.** The new Act gives the courts the power to make orders requiring the parties to comply with arbitrators' peremptory orders, such as an order to attend a hearing, to take evidence and to preserve evidence and property.

21. **Equity clauses.** The Act provides that the parties may agree that arbitrators may decide cases other than in accordance with strict law, for example, on a fair and equitable basis, and obliges arbitrators then so to act.

22. **Reasoned awards.** Whatever the basis on which the arbitrator has made his award, it must contain reasons unless the parties have agreed otherwise or unless it is an agreed award.

23. **Supplementary awards.** If it should happen that an arbitrator omits to deal with a claim inadvertently, he is able to make an additional award in respect of that claim.

24. **Costs.** Arbitrators have always been bound to follow the practice of the courts in awarding costs on the general principle that they should follow the event. This concept is now encapsulated in the new Act but with the saving that an arbitrator may decline to follow that principle where it appears that in the circumstances it would not be appropriate to do so.

25. **Misconduct.** Under the new Act the concept of an arbitrator's 'misconduct', whether technical or otherwise, has now been replaced by the concept of 'serious irregularity'. The new Act sets out the grounds on which the courts are able to set aside or remit awards, such as the failure by arbitrators to comply with their duties.



26. **Appeals.** *As previously, the new Act provides that the intervention of the court may also be sought in relation to appeals on points of law.*

27. **Waiver.** *A new section of the new Act provides for parties to lose the right to object to matters relating to substantive jurisdiction, the conduct of an arbitration, compliance with the arbitration agreement or the new Act or, indeed, any other irregularity affecting the tribunal or the proceedings, unless that objection is taken promptly.*

28. **Technical matters.** *Certain new matters of a technical nature are dealt with in the new Act such as the service of documents and how periods of time are to be calculated under the new Act. Some new definitions are included, such as the definition of 'dispute' which now includes any difference between the parties.*

**Conclusion.** *Guernsey, as a major international financial centre, needs to remain in the mainstream of non-litigious dispute resolution in order to service the needs of both international and local clientele. The Guernsey members of the Channel Islands Branch of the Chartered Institute of Arbitrators commend to the States this proposal to update the Arbitration (Guernsey) Laws 1982 and 1986 in order to bring arbitration law in Guernsey up to the current norms of modern international law and practice.”.*

H. M. Procureur has advised the Committee in the following terms:

*“I have perused the letter from the Channel Islands' Branch of the Chartered Institute of Arbitrators to the President of the Advisory and Finance Committee, and have no substantive comments thereon. In my opinion, it fairly and succinctly summarises what is intended to be achieved by the new legislation, and is sufficient to enable this matter to be taken forward with due despatch.*

*I confirm that I support the enactment of legislation along the lines proposed, i.e. that the 1996 legislation be enacted locally, with such exceptions, modifications and adaptations as make it suitable for Guernsey, and I also propose that the legislation contains the power to amend by Ordinance, to enable the States to respond swiftly to enact necessary or desirable amendments.”.*

The Advisory and Finance Committee concurs with the views expressed by the Guernsey Members of the Channel Islands Branch of the Chartered Institute of Arbitrators and H. M. Procureur and recommends that legislation be enacted on the lines set out in this report.

I should be grateful if you would lay this matter before the States with appropriate propositions including one directing the preparation of the necessary legislation.

Yours faithfully,

L. C. MORGAN

President  
Advisory and Finance Committee

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The States are asked to decide:-

VIII.- Whether, after consideration of the Report dated the 22<sup>nd</sup> January, 2004, of the States Advisory and Finance Committee, they are of opinion:-

1. That legislation be enacted on the lines set out in that Report with respect to a new Arbitration Law.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

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

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

The States are asked to decide:-

XXI.- Whether, after consideration of the Policy Letter dated 3<sup>rd</sup> December, 2015, of the Commerce and Employment Department, they are of the opinion:-

1. To confirm the States Resolution VIII of 25<sup>th</sup> February 2004 (Billet d'État II of 2004).
2. To agree that a single track Arbitration Law should be introduced, based primarily on the principles of the English Arbitration Act, 1996, updated where appropriate to provide a modern and comprehensive Arbitration Law.



## REQUÊTE

### ISLAND WIDE VOTING REFERENDUM

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

1. Elections are the means through which People's Deputies are democratically elected and the source of the States of Deliberation's authority. Well run elections with strong voter turnout promote public confidence and the legitimacy of the elected body.
2. Voter turnout in Guernsey, when assessed in terms of the entire eligible population as opposed to a percentage of those registered on the Electoral Roll, is comparatively low. Your Petitioners believe that this may be partially attributed to a perception that the current district system means that islanders believe that their votes only have a marginal effect on the overall composition of the States of Deliberation and therefore in turn the decisions made.
3. Public consultation during 2010 conducted by the States Assembly and Constitution Committee indicated that many members of the general public believed that island wide voting should be introduced. During the consultation 3,676 forms were returned showing the views of 6,837 individuals, which equates to 14% of the population aged 16 and over. This still is the largest ever response to a States of Guernsey consultation.
4. Notwithstanding this evidence of popular support, the States of Deliberation has rejected island wide voting on numerous occasions. Within these debates, much emphasis has been placed on the practical concerns associated with island wide voting including the number of manifestos, the voting requirements such as the size of the ballot paper, the holding of hustings meetings and the counting of votes. Members have also raised concerns about how an "island wide Deputy" would be regarded compared with a Deputy elected on a district basis.
5. Your Petitioners are concerned that such arguments, whilst clearly legitimate and important considerations, have detracted from the conceptual and ideological arguments of island wide voting. Your Petitioners are also concerned that the States in focusing on these arguments may have unduly focussed on concerns which may not be shared by the electorate as a whole.
6. Your Petitioners are of the opinion that a form of partial island wide voting should be introduced, with a minority of States Members being elected on an island basis with the remainder elected under the current district system. It is felt that an appropriate balance of island wide and district voting would be achieved by electing seven or twelve Members on an island wide basis, with the remaining 38 or 26 elected through the districts.

7. Your Petitioners note that the States of Deliberation have directed<sup>1</sup>:-

*“a) that starting in May 2016 the States’ Assembly & Constitution Committee shall:*

- i. consider and investigate a range of workable methods of electing Peoples’ Deputies, including the possibility of all or some Deputies being elected in a single electoral district; the possibility of all Deputies being elected in fewer districts than at present; and the option of single transferable votes for Guernsey elections;*
- ii. present that range of workable models to the States of Deliberation by no later than their meeting in June 2018, together with the Committee’s recommendations;*
- iii. examine the merits and implications of any Resolutions made by the States after consideration of those recommendations being subject to endorsement in a public referendum; and, if thought appropriate, to include in the same policy letter further recommendations for the holding of such a referendum;*

*b) that the Committee shall consult with, and take evidence from, the widest possible range of persons from among the membership of the States, of Parliaments in other jurisdictions, those with expertise and experience of electoral processes in other jurisdictions, and the general public in Guernsey.”*

8. Your Petitioners concur with the spirit behind this resolution, believing that the mechanism in place for the election of People’s Deputies is fundamentally constitutional and that if the States of Deliberation is to be responsive to the wishes of the electorate, then it should recognise that in matters such as this, it is appropriate to give the whole population greater involvement in the decision making process.

On the 27<sup>th</sup> April 2006 the States resolved as follows:

*“To direct the House Committee to undertake a comprehensive review of all practicable methods of introducing Island-wide voting for the office of People’s Deputy, and to report back to the States in sufficient time to enable the introduction of such a system with effect from the General Election to be held in 2012.”.*

This resolution led to three comprehensive reports by SACC that analyse in detail various options for island wide voting. Your petitioners believe sufficient information exists to progress a referendum on Island Wide Voting without expending time and resources on a further report.

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<sup>1</sup> Article 17 of Billet d’État XVI of 2014.

9. Referendums are used in other jurisdictions in relation to matters of constitutional importance. Referendums have been used in parts or all of the UK on 12 occasions since 1973 on matters of constitutional importance, in particular devolution. Your Petitioners believe that a referendum in relation to the introduction of a partial form of island wide voting is appropriate locally.
10. Your Petitioners note that in July 2014 the States of Deliberation, in considering a Requête proposing island wide voting (Billet d'Etat No V, Article 6, sursis'd from the March 2014 Meeting), approved an amendment from Deputy L B Queripel and Deputy A R Le Lièvre to make that proposal subject to a referendum. Despite support for the amendment, the amended proposition was lost when the substantive vote was taken.
11. Referendums are generally not legally determinative but their result carries great political weight by virtue of their democratic legitimacy. Your Petitioners believe that in order to ensure the legitimacy of the referendum, the States should first agree the introduction of partial island wide voting subject to the support of the electorate within a referendum.
12. Your Petitioners believe that not only would a referendum enable the States of Deliberation to respond to the evidenced wishes of the electorate, it may provide opportunity for the revitalisation of local politics. In September 2014, a referendum was held in Scotland in relation to whether Scotland should be an independent country. Turnout for the referendum was 84.59% - the highest recorded for an election or referendum in the United Kingdom since the introduction of universal suffrage. Of the 32 geographical voting areas in Scotland, East Dunbartonshire had the highest turnout of 91% and Glasgow the lowest at 75%.
13. Equally significant as the result on the referendum itself is the subsequent impact on the electoral arena in Scotland. Not only did the Scottish Nationalist Party see a significant rise in the seats held, but also turnout in the 2015 General Election in Scotland was particularly high at 71.1%, with two constituencies, Dunbartonshire East and Renfrewshire East, having turnouts of over 80%.
14. The Scottish Referendum also highlights the importance of a simple binary choice, clearly articulated in a simple question, in that case "Should Scotland be an independent country?". Your Petitioners believe that it is vital that any question presented to the electorate should be drafted with the clear intention of obtaining a majority view.
15. Your Petitioners note that during the 2013 referendum in Jersey, the electorate was asked to decide between two options for change and a third option to retain the status quo. Voters were asked to rank their preference, with the two options for changes, A and B, receiving broadly similar support in the first round 39.59% and 40.93% respectively, moving to 45.02% and 54.98% after the second round of votes were considered. Voter turnout for the referendum was particularly low at 26.24%. That low turn out bears little comparison with the response to the binary choice placed before the Jersey electorate in 2014 surrounding the Constables' automatic right to be members of the States where

a far clearer majority was maintained (15060 in favour of their automatic right, 9061 against). Turnout was higher at 38.84%.

16. Your Petitioners note that Alderney participated in the Conseillers' elections in 1994 and 1997. Turnout in these elections however was significantly lower than that in Guernsey. Your Petitioners believe that it would not be necessary for Alderney to be included in the island wide ballots and instead the needs of Alderney's population continues to be best served through the two Alderney representatives.
17. Your Petitioners note that it has previously been suggested that the Chief Minister should be elected on an island wide basis. After consideration, Your Petitioners are of the opinion that once elected to the States, all Members whether elected on a district or island wide basis should be eligible to hold any political office. Your Petitioners believe that it is important that the States are able to elect any Members who they feel are able to discharge the functions of particular offices, irrespective of their method of election to the Assembly.

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

- 1) That, subject to the enactment of the necessary legislation and approval in a public referendum, with effect from the General Election to be held in June 2020 38 People's Deputies shall be elected in 8 electoral districts, one of which shall comprise the entire Island (including Herm and Jethou) and shall return 7 of those People's Deputies.
- 2) To direct the States Assembly and Constitution Committee to lay before the States detailed proposals concerning the conduct of such a public referendum, to be held not later than 2018.
- 3) To direct the States Assembly and Constitution Committee to lay before the States detailed proposals of General Elections including an electoral district comprising the entire Island.

AND YOUR PETITIONERS WILL EVER PRAY  
GUERNSEY

This 17<sup>th</sup> day of November, 2015

Deputy A M Wilkie  
Deputy L S Trott  
Deputy G M Collins  
Deputy P R Le Pelley  
Deputy R A Jones  
Deputy J Kuttelwascher  
Deputy R A Perrot

**(N.B. In accordance with Rule 17(2) of the States Rules of Procedure of the States of Deliberation, the Policy Council has sought the views of all Departments and Committees appearing to have a particular interest in the subject matter of the Requête, in this case the Home Department, the Treasury and Resources Department, the States Review Committee and the States' Assembly and Constitution Committee. The subject matter of the Requête has also necessitated consultation with all ten of the Douzaines.**

**The Douzaines have responded as follow:**

### **St. Andrew**

At our recent Douzaine meeting on Monday 23<sup>rd</sup> November, the contents of the Requête was discussed and the Douzaine came to the following conclusions: -

1. Referendum - NO
2. Eight electoral districts, one of which shall comprise the entire Island - NO
3. Island Wide Voting - NO

St. Andrew's Constable and Douzaine

### **St. Peter Port**

Following a recent Douzaine meeting, the majority of St. Peter Port Douzaine agree with the proposals in the Requête.

Constables of St. Peter Port

### **St. Pierre du Bois**

The St. Pierre du Bois Douzaine discussed the Requête, Island Wide Voting Referendum, on 23<sup>rd</sup> November 2015 and, by majority, were NOT in favour of the proposal by Deputy Wilkie.

Constables of St. Pierre du Bois

### **St. Sampson**

The majority of the Douzaine were totally opposed to the proposals.

Only one Douzenier was in favour of the principle, but not at the same time as the General Election.

Constables of St. Sampson

**St. Saviour**

Thank you for your letter dated 12<sup>th</sup> November 2015 seeking the opinion of the St. Saviour's Douzaine concerning the matter of Island Wide Voting.

We wrote to you on this subject in January 2014 and the views of the Douzaine have not changed substantially since then.

It is fair to say that the Douzaine can see that there is a degree of compromise in the suggestions for a 'form of' Island Wide Voting as suggested by the Requêteants. However, as identified by the Requêteants, the issues concerning how hustings could be arranged and how the electorate could quiz candidates are still relevant and no nearer a solution.

There is some suggestion that the idea of an eighth electoral district is in essence going back to the old 'Conseiller System' – which is perhaps not such a bad idea in itself. The old system of Island Wide election of Conseillers, whilst including the population of Alderney as part of the electorate, was not held at the same time as that for Peoples' Deputy.

There is significant concern that the proposals to introduce the extra electoral district will prove unattractive to many candidates if the elections for parishes and 'the island wide parish' are held at the same time. It is quite conceivable that the island will not be able to benefit from having good candidates elected to the States by making the candidates choose whether to stand (successfully) for election in a parish or (unsuccessfully) in the 'island parish'. An unsuccessful candidate for the 'island parish' election might well have been successfully elected if standing in their own local parish.

If the elections to the 'island parish' were held before the elections for actual parishes it might be that those seeking election to the States would have two bites of the cherry, but this arrangement might be preferable to making candidates choose which might be their better option for electoral success. Some consider that making candidates choose whether to stand in an 'island parish' or an actual parish will have a negative influence on prospective candidates. No one has suggested what the benefit is to individual candidates from the introduction of an 'island parish' and it could be that if introduced very few choose to stand for that electoral district.

There is also a view that this might be the precursor to full Island Wide Voting, something that the Douzaine is strongly opposed to. We are firmly of the view that it is essential that a sense of belonging is required and the electorate must have the opportunity to identify with locally elected deputies.

On balance the Requête seems to pose more questions than answers, we are not keen on the eighth parish idea, and on balance would prefer that there are workable solutions found to address the problem areas associated with Island Wide Voting before there is any further discussion and waste of States Member's time debating the matter.

Senior Constable of St. Saviour

**Castel**

The Douzaine discussed the matter on Monday.

They are of the view that the whole subject needs to be debated but now is not considered to be the appropriate time.

Castel Douzaine

**The Departments and Committees have responded as follow:****Home Department**

At a meeting on 23<sup>rd</sup> November 2015, the Home Department discussed the Requête laid by Deputy Wilkie and six other Members. The following comments are largely limited to the potential impact on the Electoral Roll and do not reflect the individual views of members regarding the merit of Island-wide voting or otherwise.

The mandate of the Home Department requires it to *“be responsible for....the Electoral Roll.”* Part IV of the Reform (Guernsey) Law 1948, as amended (“the Law”) places a statutory duty upon the Registrar General of Electors (the States Chief Executive) to compile the Electoral Roll in accordance with its provisions. The Registrar General of Electors has transferred his responsibility under the Law to the Chief Officer of the Home Department.

Firstly, the Department acknowledges and supports the emphasis placed by the petitioners on the importance of broad public engagement within the electoral process. The Registrar General’s ongoing “My Vote, My Voice” campaign has been designed to ensure that as many islanders recognise the importance of the forthcoming Election and are able to participate. The Department would support and encourage any initiative which would lead to more islanders being more engaged in island politics; however whether or not Island Wide Voting is such an initiative is clearly subject of much debate.

In respect of the proposed referendum, the Department would caution that, assuming registration on the Electoral Roll is a pre-requisite for voting in the referendum, such a vote should be held as early as possible within the 2016-2020 political term in order to ensure that the Electoral Roll currently being compiled is as accurate and comprehensive as possible therefore avoiding the costly and resource-intensive compilation of a new Roll. An early referendum date would also be beneficial in terms of enable sufficient planning opportunity for the 2020 election. Even with an early referendum there will be a need to incur expenses advertising and updating the Roll since it is possible some member of the public may not have registered for the district based General Election but would wish to do so for a referendum.

The Department would caution that the level of resources necessary to support a successful Election should not be underestimated and it should be assumed that similar resources would be necessary to support any referendum.



In relation to the resources required to administer an election including an eighth island wide electoral district, the Registrar-General of Electors has advised the Department in the following terms:-

*“At this stage, it is not possible to accurately calculate the costs of the election model proposed within the Requête. Such a calculation would only be possible once the States’ Assembly and Constitution Committee have considered the detailed proposals associated with an island wide electoral district, however a broad estimate at this stage based on the assumptions made below would be additional costs in the region of £30,000 to £35,000.*

- *The costs of compiling the Roll itself should be relatively unchanged but it is likely that there would be a need for increased publicity early on in the registration campaign regarding the creation of the eighth island wide electoral district. The increased publicity is likely to be in the region of £10,000 accounting for additional adverts, information leaflets. Inevitably, there would be a number of questions from the public in regard to the practical arrangements and processes of an eighth electoral district, and a proactive communicative approach would be adopted in order to encourage comprehensive registration.*
- *In relation to the costs of the election itself, the practical concerns highlighted within paragraph 4 of the Requête would, once resolved, have an impact on the costs of the Election itself, for example the grants system in place, the format of hustings and the location and operation of polling stations etc. Such matters will clearly be for consideration of the States’ Assembly and Constitution Committee in their secondary Policy Letter, however possible costs may be:-*
  - *The current grant of £600 may be considered too low for candidates standing on an island wide basis and setting a revised grant would require political consideration from the States’ Assembly and Constitution Committee so to ensure that it was set at a level appropriate to enable the effective communication of an election platform to the island wide electorate whilst at the same time not so high as to represent poor value for money for the tax payer. Setting the level would require consideration of a wide range of factors and options available, however for the purposes of calculation at this stage, the upper limit for any possible grant, assuming the current basis is appropriate, would be £4,200, a sevenfold increase representing the seven current electoral districts that the individual would need to cover. The impact that this would have on overall expenditure is difficult to calculate as it is clearly dependent on the number of candidates choosing to stand in that particular electoral district, but assuming ten candidates, this could see an additional £36,000 spent on grants just for the eighth district. It is of course possible, that a far greater proportion of candidates would choose to stand on an island wide, rather than district platform, and this would be reflected in the costs accordingly. Of course, the States’ Assembly and Constitution Committee may consider there would be other options available such as the States funding the postage of consolidated packs of manifestos to all registered islanders. This option, if pursued, would cost in the region of £17,500 (not taking into account the necessary staff time collating the packs).*



- *Similarly, consideration would be needed as to the best format for, and number of, hustings. Each district currently holds one or more hustings, and were an eight electoral district to be established consideration would be needed as to how many hustings would be required to enable the electorate sufficient opportunity to the question the candidates. Whether this is three or four large hustings at prominent island venues, seven hustings at the traditional district venues, a day long pop in event, online facilities or a combination of these ideas would require consideration and exploration by the States' Assembly and Constitution Committee but may depending on the option adopted incur costs in the region of £10,000 taking into account room hire, publicity and any IT requirements.*
- *In relation to the eighth island wide electoral district, if the existing seven district polling stations are used and staffed accordingly by the parish representatives and volunteers, no additional room hire costs would be incurred however it is possible that some one off costs may be incurred purchasing additional ballot boxes, potentially of an alternative colour to avoid confusion between the two polls, and new explanatory signs. These costs would be in the region of £2,000. If it were felt additional polling stations were needed, additional costs would be incurred."*

P L Gillson  
Minister

### **Treasury and Resources Department**

The Treasury and Resources Department notes that, contrary to the provisions of Rule 15(2)(a) of the Rules of Procedure, this Requête does not include a reference of the financial implications to the States of carrying the proposal into effect. The Department understands that there are two elements to the costs; firstly one-off expenditure to carry out a referendum; and, secondly, quadrennial costs in respect of adding an island wide district to the General Election.

#### **One-off costs of carrying out a referendum**

The States Assembly and Constitution Committee has advised as follows:

*“Calculating the potential cost of holding a referendum with any accuracy at this stage is difficult as the precise costs would be dependent on a number of practical factors. The Committee needs to consider in detail and then report to the States with detailed proposals concerning the conduct of a referendum. As one has never been held in Guernsey before numerous issues would need to be considered and the States' view on them obtained.*

*The information below seeks to provide a broad indication of the possible costs. It assumes that, in order to ensure the most representative outcome, the referendum is treated as a General Election. That is ensuring:*

- *sufficient publicity is given so that everyone who wishes to enrol has,*
- *a new Roll is compiled or the current one is as up to date as possible,*
- *the electorate is fully informed of what they are being asked to vote upon,*
- *each side has a proper opportunity to put across its views through hustings meetings, etc.,*
- *voting day is well publicised,*
- *absent voting is available,*
- *there is a dedicated website,*
- *the costs of polling day are met,*
- *staffing the above,*
- *postage, printing and administration costs.*

*It may also be necessary to obtain advice from other jurisdictions which have held referenda and / or utilise the services of an organization such as the Electoral Reform Society. The precise wording of the question in a referendum is extremely important and often contentious – legal advice on that aspect may also therefore be needed.*

*Bearing in mind all of the above, on the basis of the budget for the 2016 General Election, the Committee estimates that a referendum cost could be between £250,000 and £400,000.”*

The Treasury and Resources Department is of the view that the one-off funding for carrying out a referendum would be made available from the Budget Reserve of the applicable year. However, this would represent a significant portion of the Budget Reserve that is allocated for unanticipated / contingency / ‘emergency’ expenditure where there is a clear business case; demand / cost pressures that cannot be met by reprioritising existing budgets; or variations in formula-led expenditure (totalling £2.25million in 2016).

#### Quadrennial costs for each General Election

In respect of the additional costs that would be incurred at each General Election, the Registrar General of Electors has advised:

*“Calculating the potential cost with any accuracy at this stage is difficult as the precise costs would be dependent on a number of practical factors, such as hustings format and grant limits etc, which would be determined by the States’ Assembly and Constitution Committee in their consequential Policy Letter should the Requête prove successful, but acknowledging these limitations, the below information seeks to provide a broad indication of the possible figures.*

*The costs of compiling the Roll itself should be relatively unchanged but it is likely that there would be a need for increased publicity early on in the registration campaign regarding the creation of the eighth island wide*

*electoral district. The increased publicity is likely to be in the region of £10,000 accounting for additional adverts, information leaflets etc.*

*In relation to the costs of the election itself, the practical concerns highlighted within paragraph 4 of the Requête would, once resolved, have an impact on the costs of the Election itself. For example, for those standing on an island wide basis, the current grant of £600 would, it is suggested, be too low in terms of those requiring the production and distribution of a manifesto to all islanders. Setting a revised grant would require political consideration from the States' Assembly and Constitution Committee so to ensure that it was set at a level appropriate to enable the effective communication of an election platform to the island wide electorate whilst at the same time not so high as to represent poor value for money for the tax payer. Setting the level would require consideration of a wide range of factors and options available, however for the purposes of calculation at this stage, the upper limit for any possible grant, assuming the current basis is appropriate, would be £4,200, a sevenfold increase representing the seven current electoral districts that the individual would need to cover. The impact that this would have on overall expenditure is difficult to calculate as it is clearly dependent on the number of candidates choosing to stand in that particular electoral district, but assuming an average of ten candidates, this could see an additional £36,000 spent on grants just for the eighth district. It is of course possible, that a far greater proportion of candidates would choose to stand on an island wide, rather than district platform, and this would be reflected in the costs accordingly. It is possible that an increase in the grants of this magnitude may be considered inappropriate and instead, it may be considered more effective for the States to simply fund the postage of consolidated packs of manifestos to all registered islanders. This alone though would cost in the region of £17,500 (not taking into account the necessary staff time collating the packs).*

*Similarly, consideration would be needed as to the best format for, and number of, hustings. Each district currently holds one or more hustings, and were an eight electoral district to be established consideration would be needed as to how many hustings would be required to enable the electorate sufficient opportunity to the question the candidates. Whether this is three or four large hustings at prominent island venues, seven hustings at the traditional district venues, a day long pop in event, online facilities or a combination of these ideas would require consideration and exploration. In any event, the costs incurred are likely to be in the region of £10,000 taking into account room hire, publicity and any IT requirements.*

*In relation to the eight island wide electoral district, it is assumed that the same existing polling stations would be used and staffed accordingly by the parish representatives and volunteers. Were this not to be the case, and additional polling stations were needed, again additional costs could be incurred. Given the use of the same polling stations, it is possible that some one off costs may be incurred purchasing additional ballot boxes,*

*potentially of an alternative colour to avoid confusion between the two polls, and new explanatory signs. These costs would be in the region of £2,000.*

*In conclusion, at this stage, it is not possible at this stage to adequately calculate the increased costs of the election model proposed by Deputy Wilkie et al. Such calculation would only be possible once the States' Assembly and Constitution Committee have considered the detailed proposal of an island wide electoral district, however a broad estimate at this stage based on the assumptions made above would be additional costs in the region of £30,000 to £35,000."*

When recommending Cash Limits, the Treasury and Resources Department takes account of cyclical items of expenditure, including the holding of a General Election. Therefore, the additional costs of including an island wide electoral district would, in each year of a General Election, reduce the funding available to other Departments / Committees or in the Budget Reserve.

Deputies Kuttelwascher and Perrot absented themselves from the Board's discussion on this Requête.

Gavin St. Pier  
Minister

### **States Review Committee**

Thank-you for your letter dated 12<sup>th</sup> November 2015 on the above subject. The Committee has reviewed the prayer of the Requête and makes the following observations.

In future, as a result of reforms to the structure of the States agreed in 2014 and 2015, there is to be one senior committee and six principal committees. The Requête proposes that in future there should be seven deputies elected with a jurisdiction-wide mandate. The Committee believes that there is a chance that, taken together, these two changes could soon create the expectation that the senior and principal committees should be led only by deputies with a jurisdiction-wide mandate and that deputies with a jurisdiction-wide mandate should invariably be elected to lead the senior and principal committees.

The Committee notes that this trend has not been observed in Jersey, but the circumstances there are quite different because they have had jurisdiction-wide senators since the 1940s.

If, however, this expectation did emerge and was maintained there would be implications if a president of a principal committee resigned or suffered a vote of no confidence.

It is also possible that an expectation may be created that the other four members of the Policy and Resources Committee should also be elected on a jurisdiction-wide mandate.

The Committee considers that when they debate the Requête the States should bear in mind these potential implications, which could change the character of general elections and leadership in the States quite significantly, when they debate the Requête.

The Committee wishes to comment on the arguments in the Requête concerning voter turnout. The Requête suggests that low voter turnout in Guernsey may partially be attributed to a perception that the current district-based voting system means that Islanders' votes have only a marginal effect on the overall composition of the States of Deliberation and therefore in turn the decisions made by the States. If this argument is correct, one would expect there to have been a greater turnout in St. Peter Port in the days when each person had 13 votes compared to the smaller parishes in the days when each person had one or two votes, but this was not the case. There would also have been more voters in the 1994 and 1997 jurisdiction-wide elections for the office of Conseiller than in parish/district elections but the opposite happened. Previous voting figures are presented below:

#### **Turnout in previous general elections:**

##### **1994**

The first jurisdiction-wide election for Conseillers: 17,080 voted  
Parish elections for Deputies: 16,619 voted

##### **1997**

Jurisdiction-wide election for six Conseillers: 11,521 voted  
Parish elections for Deputies: 14,655

##### **2000**

Parish elections for Deputies: 15,569 voted

##### **2004**

District elections for Deputies: 19,354 voted

##### **2008**

District elections for Deputies: 18, 576 voted

##### **2012**

District elections for Deputies: 20, 479 voted

The Committee observes that the Requête suggests that a referendum in relation to jurisdiction-wide voting may provide an opportunity for the revitalisation of local politics as the referendum in relation to Scottish independence did in Scotland in 2014. The Committee does not believe that voting for the independence of a country is comparable to voting for 17.5% of the members of the States on a jurisdiction-wide basis. Furthermore, as can be seen by the figures above, jurisdiction-wide voting cannot be said to have revitalised politics in Guernsey in the 1990's and it is not clear why it should be expected to do so twenty years later.

The Committee assumes that the prayer of the Requête envisages elections for jurisdiction-wide deputies and district deputies being held on the same day. The Committee doubts whether such an arrangement would necessarily result in the best

possible range of candidates – and would-be leaders of the States – choosing to stand in the jurisdiction-wide election. The Committee is fortified in putting this view in the light of experience in Jersey, which recently held elections for jurisdiction-wide seats and parish seats on the same day.

Matt Fallaize  
Vice-Chairman

### **States Assembly and Constitution Committee**

Thank you for your letter of the 12<sup>th</sup> inst. seeking the views of the States' Assembly & Constitution Committee on the Requête lodged by Deputy Wilkie and six other Members of the States proposing that, subject to approval in a referendum, seven Members of the States be elected in a new jurisdiction-wide district with effect from the 2020 General Election of People's Deputies.

In the very limited time available to the Committee to produce this letter of comment, which it is accepted is due to the present unsatisfactory rules and procedures relating to the submission of items to the States, it has not been able to give full consideration to the numerous aspects of the Requête which need proper reflection before any conclusions are reached. However, if approved, the prayer of the Requête obliges the Committee to return to the States with detailed proposals regarding how a jurisdiction-wide district would be implemented and for the conduct of the necessary referendum, and therefore it is accepted that further detailed study of the relevant issues would be undertaken at that time.

With regard to the proposal to hold a referendum, the Committee would need to give detailed consideration to how the referendum would be run, including, for example, ensuring that both points of view were fairly represented, whether there should be provision for the appointment of official 'yes' and 'no' campaign groups, whether there should be restrictions on expenditure by (or public funding made available to) any such campaign groups, etc. From experience in other jurisdictions, it may be that advice would need to be obtained on the holding of referenda generally and the precise wording of the question which is put to the electorate. The States will appreciate that it is not possible at this stage for the Committee to provide accurate information about the potential costs of the aforementioned factors.

The Committee has separately provided the Treasury & Resources Department with its estimate of the cost of holding a referendum which it expects will be included in that Department's letter of comment. This letter therefore deals with other aspects of the Requête.

In order to assist the States in their consideration of this matter, the Committee has decided to attach for publication with this letter of comment the Committee's 2011 policy letter regarding the possibility of turning the island into a single electoral constituency, the minority report which was attached to it and the Resolution thereon as they set out extensively the various options for jurisdiction-wide voting and the issues associated with each option (Article 7 of Billet d'État III of 2011). Although the proposals on this occasion are for some Deputies only to be elected on a jurisdiction-wide basis, the



Committee believes that the issues set out in the policy letter are relevant to the States' consideration of this Requête.

The Committee notes that paragraph two of the Requête asserts that the requérants believe that the low turnout in elections for People's Deputy can be partially attributed to a perception among voters that their votes have only a marginal effect on the overall composition of the States. If this belief is correct, in the years prior to 2004 there should have been a far greater turnout in St Peter Port when each person had up to 13 votes compared to the one vote available in Torteval, whereas the percentage turnout in Torteval was always one of the highest and in St Peter Port one of the lowest. Also, if this belief is correct, more people would have voted in the 1994 and 1997 jurisdiction-wide Conseiller elections than in the 2004 district-based election but that did not happen.

In 1994, in the first Conseillers' election, when 12 were elected, 17,080 voted; and in the Deputies' election one month later 16,619 people voted. However, in 1997, when six Conseillers were elected, 11,521 voted; but in the Deputies' election one month later 14,655 people voted. In the 2000 Deputies' election 15,569 people voted and in 2004 (with the current district system) 19,354 people voted. The number who vote is linked to a number of factors and not just those asserted by the requérants, including: the quality and number of candidates, current political issues and the number of people who have enrolled.

The Committee notes that the prayer of the Requête conflicts with current States' Resolutions. In July 2015 the States approved an amendment laid by Deputies C J Green and L B Queripel (Billet d'État XII of 2015, second policy letter of the States' Review Committee) which led to the following States' Resolution:

“38. *To direct:*

*a) that starting in May 2016 the States' Assembly & Constitution Committee shall:*

- i. consider and investigate a range of workable methods of electing Peoples' Deputies, including the possibility of all or some Deputies being elected in a single electoral district; the possibility of all Deputies being elected in fewer districts than at present; and the option of single transferable votes for Guernsey elections;*
- ii. present that range of workable models to the States of Deliberation by no later than their meeting in June 2018, together with the Committee's recommendations;*
- iii. examine the merits and implications of any Resolutions made by the States after consideration of those recommendations being subject to endorsement in a public referendum; and, if thought appropriate, to include in the same policy letter further recommendations for the holding of such a referendum;*

*b) that the Committee shall consult with, and take evidence from, the widest possible range of persons from among the membership of the States, of*

*Parliaments in other jurisdictions, those with expertise and experience of electoral processes in other jurisdictions, and the general public in Guernsey.”*

The Committee notes that the prayer of the Requête does not include a recommendation that this part of the States’ Resolutions on that Billet d’État be rescinded. If the States are minded to approve the prayer of the Requête, the Committee is of the opinion that they should at the same time rescind the aforementioned States’ Resolution. The Committee considers that it would be wholly unnecessary to require its successor Committee to undertake a review of the electoral system in 2016, 2017 and 2018 if the States have already determined what the electoral system should be at the 2020 General Election.

The Committee notes also that Deputies Gollop and Lowe laid an unsuccessful amendment to the States’ Review Committee’s second policy letter which would have meant that, with effect from May 2016, 12 Deputies were elected from a jurisdiction-wide district, i.e. a very similar arrangement to that proposed in the Requête, but that amendment was defeated by a substantial majority.

M. J. Fallaize  
Chairman

**(N.B. The States Assembly and Constitution Committee’s States Report Article 7 of Billet III of 2011 is appended overleaf.)**



## STATES ASSEMBLY AND CONSTITUTION COMMITTEE

### ISLAND-WIDE VOTING – 3<sup>rd</sup> REPORT

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

17<sup>th</sup> December 2010

Dear Sir

#### EXECUTIVE SUMMARY

1. In this report the States Assembly and Constitution Committee –
  - (a) sets out a detailed analysis of all the options for the introduction of Island-wide voting and ancillary issues as directed by the States on 1<sup>st</sup> July 2010;
  - (b) recommends the States to agree that 45 People’s Deputies shall be elected in a single Island-wide election with effect from the General Election to be held in 2012 and that the manifestos of candidates in Island-wide elections shall be distributed at the expense of the States by means of an election publication, the cost of which will be borne by the candidates.

#### INTRODUCTION

2. On the 27<sup>th</sup> April 2006 the States resolved<sup>1</sup> –

*“5B To direct the House Committee to undertake a comprehensive review of all practicable methods of introducing Island-wide voting for the office of People’s Deputy, and to report back to the States in sufficient time to enable the introduction of such a system with effect from the General Election to be held in 2012.”.*

3. On the 28<sup>th</sup> January 2009 the States considered the States Assembly and Constitution Committee’s first report<sup>2</sup> on Island-wide voting which had been submitted pursuant to Rule 12(4) of the Rules of Procedure, and resolved –

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<sup>1</sup> Billet d’État VII of 2006, p. 505

<sup>2</sup> Billet d’État I of 2009, p.1

- “1. To note the Report.
2. To direct the States Assembly and Constitution Committee to report further to the States with detailed proposals regarding the election and constitution of the States of Deliberation which will take effect from the General Election to be held in 2012.”.
4. On the 1<sup>st</sup> July 2010 the States, prior to considering the States Assembly and Constitution Committee’s second report<sup>3</sup> on Island-wide voting, resolved –

*“To sursis the Article, and direct the States Assembly and Constitution Committee to report back to the States of Deliberation as soon as practicable with a broader report containing –*

- (a) *detailed consideration of the options for reducing the number of People’s Deputies in the States of Deliberation from 45 to*
- (i) 40,
- (ii) 35, and
- (iii) *any other number of Deputies the Committee considers would be appropriate;*
- (b) *a detailed analysis of all the options for the introduction of Island-wide voting, to include not only the options set out in the Committee’s 2<sup>nd</sup> Report but also those that have been introduced through amendments to the Propositions thereon that have been circulated prior to this Meeting of the States of Deliberation and any variants thereon that the Committee considers should be covered, in each case taking into account the possible modifications of the number of People’s Deputies in accordance with paragraph (a); and*
- (c) *details of all the operational and logistical issues that would arise and require amendment in respect of every option under consideration in accordance with paragraphs (a) and (b) regarding the elections for, and constitution of, the States of Deliberation which will take effect from the General Election to be held in 2012 and, where applicable, in respect of any partial election of the Members of the States of Deliberation preceding or following that General Election.”.*

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<sup>3</sup> Billet d’État XV of 2010, p.928

## THE AMENDMENTS REFERRED TO IN THE SURSIS

5. Paragraph (a) of the sursis relates to two amendments, the effect of which would be to reduce the number of People's Deputies. An amendment proposed by Deputy L R Gallienne and seconded by Deputy J.Kuttelwascher sought a reduction from 45 to 35 whilst one proposed by Deputy B L Brehaut and seconded by Deputy C A Steere sought a reduction from 45 to 40.
6. The amendments referred to in paragraph (b) of the sursis are set out in the following paragraphs.
7. Proposed by Deputy R R Matthews and seconded by Deputy J A B Gollop –

*“That with effect from June 2011:*

- (a) *the Reform (Guernsey) Law, 1948, as amended, be further amended to provide:*
  - (i) *that there shall be 15 Deputies elected Island-wide, initially for a three-year term, and thereafter for successive four-year terms;*
  - (ii) *that these Island-wide Deputies shall be elected by the votes of the electors of the Islands of Guernsey and Alderney;*
  - (iii) *that a candidate for the office of Island-wide Deputy must be nominated by fourteen persons, being two persons on the Electoral Roll from each of the seven existing electoral districts in Guernsey; and*
  - (iv) *on a transitional basis, that the States of Deliberation shall, if necessary, include an increased number of People's Deputies so as to accommodate any Deputies elected in the June 2011 election who are not already sitting People's Deputies; and*
- (b) *the Rules of Procedure of the States of Deliberation and the States Resolutions governing the Constitution and Operation of States Departments and Committees be amended to provide:*
  - (i) *that eligibility to hold the office of Chief Minister shall be restricted to an Island-wide Deputy; and*
  - (ii) *that the Chief Minister and the Ministers of Departments in office immediately prior to the election in June 2011 shall be deemed to have tendered their resignations from*

*office to take effect from an appropriate date following the election of the 15 Island-wide Deputies.*

*To direct the States Assembly and Constitution Committee to report to the States as soon as practicable, and in any event before the end of 2010, setting out detailed proposals relating to the allocation of the 30 seats to be distributed across the electoral districts at the General Election to be held in 2012 and the procedure at, and conduct of, the elections to be held from June 2011.”.*

8. Proposed by Deputy J Kuttelwascher and seconded by Deputy S J McManus –

*“That the Reform (Guernsey) Law, 1948, as amended, be further amended to provide that, with effect from the General Election to be held in 2012, there be:*

- (i) a Chief Minister elected by Island-wide voting from persons eligible to hold the office of Chief Minister in accordance with rule 20(2A) of the Rules of Procedure of the States of Deliberation;*
- (ii) 10 Deputies elected on the same day by Island-wide voting; and*
- (iii) 34 Deputies elected on the same day by the votes of electors in each of the current electoral districts.*

*To direct the States Assembly and Constitution Committee to report to the States as soon as practicable, and in any event before the end of 2010, setting out detailed proposals relating to the allocation of the 34 seats to be distributed across the electoral districts and the procedure at, and conduct of, the elections comprising the General Election to be held with effect from 2012.”.*

9. Proposed by Deputy J Kuttelwascher and seconded by Deputy S J McManus –

*“That the Reform (Guernsey) Law, 1948, as amended, be further amended to provide that, with effect from the General Election to be held in 2012, there be 11 Island Deputies elected Island-wide for a four-year term and 34 Deputies elected on the same day by the votes of electors in each of the current electoral districts for a four-year term, provided that when elections for both offices occur on the same day candidates may seek election to one such office only.*

*To direct the States Assembly and Constitution Committee to report to the States as soon as practicable, and in any event before the end of 2010, setting out detailed proposals relating to the allocation of the 34 seats to be distributed across the electoral districts and the procedure at,*

*and conduct of, the elections comprising the General Election to be held with effect from 2012.”.*

10. Proposed by Deputy M P J Hadley and seconded by Deputy J A B Gollop –

*“To direct the States Assembly and Constitution Committee to report to the States as soon as practicable setting out detailed proposals for the introduction with effect from the 2012 General Election of voting by way of the Single Transferable Vote system.”.*

## **THE OPTIONS SET OUT IN THE COMMITTEE’S SECOND REPORT**

11. The propositions set out at the end of the Committee’s Second Report were as follows:

1. 45 Deputies elected Island-wide for a four-year term;

*or*

2. 45 Deputies elected Island-wide for a four-year term but with elections held every two years for half the number of seats and subject to transitional arrangements;

*or*

3. 10 Parish Deputies, one elected from each parish for a four-year term with 35 Island Deputies elected Island-wide for a four-year term, provided that when elections for both offices occur on the same day candidates may seek election to one such office only;

*and*

4. that in the Island-wide election each elector shall be entitled to vote for a maximum of 10 candidates only.

## **ISSUES RAISED SUBSEQUENT TO THE STATES DEBATE OF 1<sup>ST</sup> JULY 2010**

12. Subsequent to the debate of the 1<sup>st</sup> July, 2010 the Committee has identified a small number of further issues which it believes should be addressed in this report. Such matters are referred to in this report as *“further issues”*.

## **IDENTIFYING THE ISSUES**

13. This report will address the several issues in distinct parts as follows:

### **Part I - Number of Members in the States of Deliberation:**

- (i) Reduce from 45 to 35 *(Gallienne amendment)*

- (ii) Reduce from 45 to 40 *(Brehaut amendment)*
- (iii) Reduce from 45 to some other number *(Gillson sursis)*

**Part II - Election of Members of the States of Deliberation:**

- (i) 45 Deputies elected in seven electoral districts *(the status quo)*
- (ii) 45 Island-wide Deputies elected in a single election  
*(2<sup>nd</sup> Report propositions)*
- (iii) 45 Island-wide Deputies elected half every two years  
*(2<sup>nd</sup> Report propositions)*
- (iv) 35 Island-wide Deputies elected in a single election with 10  
Parish Deputies elected the same day *(2<sup>nd</sup> Report propositions)*
- (v) Restriction on the number of votes which electors may cast  
*(2<sup>nd</sup> Report propositions)*
- (vi) Chief Minister elected Island-wide, 10 Island-wide Deputies and  
34 District Deputies all elected the same day  
*(Kuttelwascher (1) amendment)*
- (vii) 11 Island-wide Deputies and 34 District Deputies elected the  
same day *(Kuttelwascher (2) amendment)*
- (viii) 15 Island-wide Deputies elected in June 2011 by the electorate of  
Guernsey and Alderney, having been nominated by 2 persons  
from each of the 7 Guernsey electoral districts and 30 District  
Deputies from the existing 7 electoral districts, with the following  
transitional arrangements:
  - Island-wide Deputies elected in June 2011 to serve 3 year  
term only, thereafter 4 year terms
  - Temporary increase in number of States Members from  
June 2011 until April 2012. *(Matthews amendment)*

**Part III - Other issues:**

- (i) Elections to be held by Single Transferable Vote system  
*(Hadley amendment)*
- (ii) Chief Minister to be elected from those elected as Island-wide  
Deputies *(Matthews amendment)*

(iii) Elections for the offices of Chief Minister and Ministers to be held immediately after the June 2011 election  
(*Matthews amendment*)

(iv) Party Politics (*further issues*)

(v) Elections of ministers, chairmen and members of departments and committees  
(*further issues*)

14. Whilst it is hoped that dividing the issues into the broad groupings set out above will be of assistance to Members of the States in digesting this report there are, nonetheless, certain issues which will require cross-referencing. By way of example, the sursis requires that the Part II items take into account Part I, i.e. the possible modifications of the number of People's Deputies.
15. The explanatory note to the sursis refers to "*detailed consideration of the pros and cons*", and indeed many Members used similar terminology in the course of the sursis debate. The States Assembly and Constitution Committee has desisted from using the terminology "*pros and cons*" in this report because what may be considered to be a positive argument by some is viewed as a negative argument by others.

#### **PART I - NUMBER OF MEMBERS IN THE STATES OF DELIBERATION**

16. In the Committee's previous report it was stated that some of the respondents to the public consultation had suggested that the overall number of States Members should be reduced. The Committee acknowledged that there may indeed be good reasons to reduce the number of States Members whilst at the same time holding the view that it would be inappropriate to associate such a reduction with a proposed change in the method of election. Reducing the number of Members simply to accommodate a system of voting is certainly not sufficient reason in itself for such a change. Indeed, the overall number of Members is related more to the machinery of government rather than to one particular electoral system.
17. The following table showing the number of members of parliament in other jurisdictions of similar area/population was included in the Committee's 1<sup>st</sup> Report. Whilst the jurisdictions may be similar in area/population it should be noted that in all of them (save for Jersey and the Isle of Man) there is an established party political culture.



	Land area km <sup>2</sup>	Population	N° of elected Members	Population per Member
Guernsey	65	62,274 <sup>4</sup>	45 <sup>5</sup>	1,384
Liechtenstein	160	33,987	25	1,359
Gibraltar	6.5	27,928	18	1,552
Jersey	116	90,800	53	1,713
Bermuda	53	65,773	36	1,827
Isle of Man	572	80,058	34	2,354
Andorra	468	71,201	28	2,543

18. If the number of Members of the States had relevance only with regard to elections then the matter would be more straightforward. Reducing the overall number of voting Members would not adversely affect any of the Island-wide voting options put forward. Indeed, the contrary is true: the implementation of all the options would probably be eased by a reduction in the number of persons elected. However, the issues are not so simple because in determining the number of members required there are factors which have to be taken into account which go well beyond those which are relevant solely for the purpose of selecting an electoral system.
19. Firstly, the States have directed the Public Accounts Committee –

*“to report to the States of Deliberation during 2010 with recommendations for improving the governance arrangements of the States of Guernsey within the existing structure of government by committees and consensus and using as a benchmark the six recognised principles of good government.”<sup>6</sup>*

At the time of writing this report it is not known whether the recommendations made by the Public Accounts Committee pursuant to that resolution will bear upon the constitution of the States.

20. Secondly, Guernsey has a system of government by committees and consensus: not a cabinet/ministerial system with party politics. The States of Deliberation, therefore, have parliamentary duties that include legislative and governmental functions and the distinction between the two functions is less clear under the current system than it might be under other systems. It might be argued that fewer than 47 Members are required to fulfil the governmental functions but it could equally be argued that 47 Members was appropriate for the proper

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<sup>4</sup> Latest available population of Guernsey, Herm and Jethou (source: Social Security Department).

N.B. as this figure is not provided on a parish-by-parish basis it has been necessary to use the population as recorded in the 2001 Census in subsequent tables where the precise parish/electoral district population is required.

<sup>5</sup> In addition to which are two members appointed by the States of Alderney.

<sup>6</sup> Resolution of the 28<sup>th</sup> January 2010 on Billet d'État III of 2010, p. 97



discharge of the parliamentary functions. A parliament must have sufficient members to ensure reasoned political argument and debate.

21. The Committee believes that any significant reduction in the number of States Members could adversely affect the balance between those who present matters for debate and those who provide the necessary element of scrutiny within the States Assembly. This balance is fluid and changes for each debate depending on the number of departments involved, either directly or indirectly, in any particular matter. Further, of the 13 States Members who are currently members of either or both the Scrutiny Committee and Public Accounts Committee, only four of them do not also have a seat on one of the States departments. This is indicative of the complexities of providing challenge and scrutiny in a non-party system.

## **PART II - ELECTION OF MEMBERS OF THE STATES OF DELIBERATION**

### **(i) 45 DEPUTIES ELECTED IN SEVEN ELECTORAL DISTRICTS**

#### **22. Overview**

- (a) The Island is divided into seven electoral districts broadly similar in size, with each district electing either six or seven members; a total of 45 People's Deputies being elected throughout the seven electoral districts. In 2004 there were 82 candidates for the 45 seats; in 2008 a total of 88 candidates sought election. Voters have as many votes as there are seats available (i.e. six or seven). Voters select individual candidates and may use as many, or as few, of their votes as they wish. The six or seven candidates, as the case may be, securing the highest number of votes are declared elected. The figures detailed in Appendix 1 show the average number of votes cast by each elector in the 2004 and 2008 General Elections of People's Deputies and also the 1994 and 1997 Conseillers' Elections.
- (b) Division of the Island into electoral districts was reintroduced<sup>7</sup> in 2004 and the district boundaries remained unchanged in 2008. The parishes of St. Sampson, the Vale and the Castel each form an electoral district, the parish of St. Peter Port is divided into two districts, the parishes of St. Saviour, St. Pierre du Bois, Torteval and the Forest together comprise one district with the remaining parishes of St. Martin and St. Andrew also forming one district.

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<sup>7</sup> The office of People's Deputy was created in 1899 when nine Deputies were elected in an Island-wide poll. In 1928 the number of Deputies was increased to 18 and the elections were held in six electoral districts. In 1949 the number of Deputies was further increased to 33 with each of the 10 parishes comprising a separate electoral district. Until 1949 the Rectors and Jurats were Members of the States of Deliberation and each parish was represented by a Constable or Douzenier until 2004. In 2000 the number of Deputies was again increased to 45 with elections continuing on a parochial basis.

- (c) The method of election and district boundaries are generally understood by the electorate. There is a degree of ‘parochial’ representation although in only three cases do the parish and electoral district boundaries actually coincide. Election by electoral districts is criticised by proponents of Island-wide voting who hold that electors are unfairly constrained by being prevented from voting for, or not voting for, candidates in other electoral districts.

## 23. **Candidates**

Whilst candidates themselves do not need to reside in the electoral district in which they seek election (although over 75% of People’s Deputies currently do so) they can be proposed and seconded only by persons inscribed on the district’s electoral roll. Many, but by no means all, candidates canvass from door-to-door. This is less easy in the geographically larger districts, for example West district which covers one-third of the Island. Candidates’ expenses must be contained within the limits prescribed by Ordinance<sup>8</sup> which currently provides that the maximum which may be expended by a candidate for the office of People’s Deputy is £1,400. Such expenses as may be incurred are borne by the candidates themselves. The only expense in this regard which is met by the States is the postage of manifestos.

## 24. **Electors**

In the present electoral districts the number of candidates in the 2008 General Election ranged from 11 (South-East district) to 14 (St. Peter Port South and St. Peter Port North districts). Electors may cast their votes at any polling station within the electoral district.

## 25. **Manifestos**

It has become an almost universal practice for election candidates in Guernsey to distribute a manifesto either to each elector, or alternatively, one to each household. The cost of printing and enveloping is borne wholly by the candidate. By resolution of the States,<sup>9</sup> 50% of the cost of postage of manifestos may be claimed from the States by the candidates. However, when the envelope contains the mailings of two or more candidates then the States will meet the full cost thereof. The cost of this facility in respect of the 2008 General Election was just over £30,000. On that occasion 40 candidates posted individually (and therefore paid 50% of the cost of postage), 38 candidates posted with one or more other candidates (and therefore received free postage) and 10 candidates did not use the scheme. Appendix 2 provides greater detail regarding the use of this facility in the 2008 General Election.

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<sup>8</sup> The Elections Ordinance, 2007

<sup>9</sup> Resolution of 29<sup>th</sup> October 2003 on Article 24 of Billet État XXI of 2003, p. 2103

## 26. **Hustings**

- (a) Whilst there is an established tradition of hustings being held prior to each election of People's Deputies there is no statutory obligation for such meetings to take place. The meetings are usually organised by the Constables and Douzaines of the parishes although in the multi-parish electoral districts the District Returning Officer now undertakes the task. The costs relating to the hire an appropriate hall and public address system and the placing of advertisements are met by the States.
- (b) The usual pattern is for an evening meeting to be held in a large hall at which each candidate is given the opportunity to deliver a set speech following which electors have the opportunity of asking questions to which each candidate is invited to reply. In the current seven electoral districts with a dozen or so candidates it is not possible to take a large number of questions. Nonetheless these meetings still attract a large number of electors. Indeed in the 2008 General Election of People's Deputies at least one electoral district held two hustings. In that election several districts also held one-to-one 'surgeries'.

## 27. **Polling Stations**

- (a) Polling stations are set up and run by the Constables and Douzeniers of the parishes.<sup>10</sup> There are two polling stations in each electoral district with the exception of West district which currently has five. Generally the parish officials act as scrutineers although in some parishes they are assisted to a greater or lesser extent by other helpers. The States meet the costs incurred in providing polling stations.
- (b) In the larger polling stations such as the Vale Douzaine Room eight polling booths are provided whereas in the smaller polling stations like Torteval only one booth is required. Some electors will take only a few seconds to mark their ballot paper whilst others may take a minute or more. At peak times small queues of voters will form but in general voters are processed in a relatively short period of time.

## 28. **Vote Count**

At the close of voting all the ballot boxes in each electoral district are taken to one venue where the votes for the entire district will be counted together. The votes are counted, in accordance with procedures set out by the Registrar-General of Electors, by parish officials and other helpers. The Committee wishes to record, on behalf of the States, its appreciation for the work relating to elections done by those officials and helpers. In the past two General Elections the results have been declared in most districts between 11.00 p.m. and 2.00 a.m.

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<sup>10</sup> Article 38 (1) of the Reform (Guernsey) Law, 1948, as amended

– that is some three to five hours after the close of the poll. Costs associated with the count are borne by the States.

## 29. **Estimated Cost<sup>11</sup>**

The cost of running the 2008 General Election of People's Deputies was £71,306. However, should it be decided to introduce electronic counting of votes, which would enable an earlier declaration of results, the cost of hiring the necessary equipment would increase by an estimated £25,000 making an approximate total cost in the region of £96,000.

## 30. **Effect of modification of numbers**

Reducing the number of People's Deputies would result in a reallocation of seats as follows: -

<b>District</b>	<b>Population<sup>12</sup></b>	<b>45 seats</b>	<b>40 seats</b>	<b>38 seats</b>	<b>35 seats</b>	<b>30 seats</b>
<b>St. Peter Port South</b>	7,843	6	5	5	5	4
<b>St. Peter Port North</b>	8,742	7	6	6	5	4
<b>St. Sampson</b>	8,592	6	6	5	5	4
<b>Vale</b>	9,573	7	6	6	6	5
<b>Castel</b>	8,975	7	6	6	5	5
<b>West</b>	7,406	6	5	5	4	4
<b>South-East</b>	8,676	6	6	5	5	4
	<b>59,807</b>	<b>45</b>	<b>40</b>	<b>38</b>	<b>35</b>	<b>30</b>

- (a) The practical effect of reducing the number of People's Deputies in each of the present electoral districts is minimal. Fewer seats will not necessarily mean fewer candidates. There would be a marginal reduction overall in the time spent by electors in the polling booths. The counting of votes may be completed a little quicker. The cost of running the election would not change significantly unless there was a corresponding reduction in the number of candidates.
- (b) Having regard to the present rates of Payments to States Members, and taking into account the basic allowance, the expense allowance and the

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<sup>11</sup> Throughout this report "Estimated Cost" includes the total cost associated with a General Election, but excluding the cost of establishing and maintaining an Electoral Roll which is the responsibility of the Home Department. However, the costs in that regard are unlikely to vary significantly between the various methods of electing People's Deputies other than those schemes which require elections at less than four-year intervals in which case the cost may be significantly higher.

<sup>12</sup> In this section the figures relating to the population of parishes are taken from the 2001 Census which is the most recent data available relating to parish population – see Appendix 3 for details.

States' contribution to the Pension Fund, the cost of payments to States Members would reduce as follows:

- reduction of 5 Members      £147,500 per annum
- reduction of 10 Members      £295,000 per annum
- reduction of 15 Members      £442,500 per annum

**(ii) 45 ISLAND-WIDE DEPUTIES ELECTED IN A SINGLE ELECTION**

**31. Overview**

- (a) All Members of the States would be Island-wide Deputies. This method of election would afford the widest choice possible – every elector, regardless of where he or she resides, would be free to choose from the entire list of candidates. Electors would be able to vote for up to 45 candidates although trends in previous elections indicate that most voters would probably use fewer votes than the maximum permitted.
- (b) The views of the Electoral Reform Society regarding this option are set out in paragraph (b) of Appendix 5.

**32. Candidates**

The average number of candidates in the 2004 and 2008 General Elections was 85. In the 1994 and 1997 Island-wide elections of Conseillers some candidates did carry out door-to-door canvassing. However, it was apparent that candidates targeted certain areas rather than attempting to visit every elector as some candidates do in the existing district elections. Candidates' expenses would continue to be limited by Ordinance. Even if it were possible for every candidate to visit every elector it is doubtful whether many electors would welcome a visit from so many candidates.

**33. Electors**

Island-wide voting would require electors to read numerous manifestos. Some electors may find this a daunting task; others will consider this perfectly acceptable in order to be able to vote for all Members of the States. Even if each candidate were to be restricted to only 700 words, that would be equivalent to reading approximately 85 pages of print<sup>13</sup>. Electors would be able to cast their votes at any polling station within the parish in which they reside, as was the case in the 1994 and 1997 Island-wide elections.

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<sup>13</sup> Based on 85 candidates. One standard A4 page printed in 12 point Times New Roman contains between 500 and 700 words depending on the margins set.

### 34. Manifestos

- (a) Manifestos are the primary means available to candidates to communicate their views to the electorate. Indeed they would assume an even greater importance in Island-wide elections where it would be almost impossible to visit each elector.
- (b) In respect of the Island-wide elections held in 1994 and 1997, candidates' manifestos were published in a free newspaper distributed as a supplement to the Guernsey Evening Press and Star. Each candidate was allocated one page. The cost of printing was borne by the States: candidates were required, at their own expense, to deliver camera-ready artwork to the printers. It was a condition in the 1994 and 1997 elections that candidates had to have served for at least 30 months as a Member of the States prior to the election.
- (c) Despite the use of a 'manifesto newspaper' in 1994 and 1997, the Committee does not feel able to recommend that method of distribution in respect of future Island-wide elections. The website of the Guernsey Press and Star states that the newspaper is "*read by 8 out of 10 of the population*". In terms of delivering manifestos this could mean that 20% of the electorate may not receive a copy. Additional copies of the newspaper could, of course, be made available throughout the Island (as was done in 1994 and 1997) but the Committee believes it to be unacceptable that a significant number of electors may not have sight of the manifestos.
- (d) The Committee therefore recommends that all manifestos should be delivered to each household occupied by at least one elector and that the cost of delivery be borne by the States.
- (e) As was the case in 1994 and 1997 candidates would be required to submit camera-ready artwork to a designated printer. Candidates would be required to share the cost of printing, packaging and labelling the collective manifesto document. This would be done on the basis of a fixed cost per page which would be determined prior to the opening of nominations. It would, however, be open to candidates not to participate in the scheme but they would still have to carry out their campaign within the spending limits prescribed by Ordinance.
- (f) The question as to whether candidates should bear none, or some, or all of the costs of issuing the Election newspaper was referred to in the Committee's Second Report. The Committee, by a majority, holds the view that it would not be unreasonable to require candidates who wished to be included in the 'manifesto' publication to meet the cost of printing, packaging and labelling. That being so candidates should be informed of the cost in advance of agreeing to take part in the publication. It is

envisaged that the cost of participating in the publication would be part of, and not in addition to, the maximum amount prescribed by Ordinance.

- (g) In the 2008 General Election the two candidates who subsequently asked voters not to vote for them spent nothing. In respect of the remaining 86 candidates the amount expended ranged from £12.60 to £1,397.92. The maximum allowable<sup>14</sup> was £1,400. The average spent by elected candidates was £833 and by candidates who were not elected was £580. This can be further analysed as follows:

<b>Amount Spent</b>	<b>Number of Candidates</b>
£0-£200	7
£201-£400	13
£401-£600	19
£601-£800	15
£801-£1000	13
£1001-£1200	7
£1201-£1400	14

The Committee does not believe that potential candidates would be deterred from standing by having to make a contribution towards the cost of the manifesto.

- (h) One alternative to the proposed single delivery of all candidates' manifestos would be to continue the present subsidised postage scheme described more fully in paragraph 25 and Appendix 2. Whereas in the current district elections manifestos are posted to approximately 80% of the households occupied by at least one elector, it is likely that an even higher percentage of postings would be made in an Island-wide election.
- (i) The advantage of candidates arranging their own postal distribution of manifestos is that they retain full control over the style and presentation of the document which might vary from a single sheet printed in black ink to a multi-page, full colour glossy booklet. The publication referred to in (e) above would require conformity to a greater or lesser degree with a standard size. The cost, however, of postal distribution would be considerable – both for the States and the candidates themselves. Candidates would also be constrained by time in that a distribution to each household occupied by at least one elector would require the preparation of over 18,000 envelopes. If a manifesto were to be addressed to each elector that would require the filling of over 33,000 envelopes.

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<sup>14</sup> Prescribed by the Elections Ordinance, 2007



- (j) Further details regarding the cost of distributing manifestos are set out in the section headed “Estimated Cost”.

### 35. **Hustings**

- (a) With a limited number of candidates, hustings provide a useful means of establishing two-way communication between the electorate and the candidates. Importantly the electorate is able to gauge the ability of the candidates to answer questions under pressure and to hear their opinion on various issues but it would clearly be impossible to hold traditional hustings with the anticipated number of candidates. In the 1994 election when there were 26 candidates, each candidate spoke for no more than five or six minutes at each of the seven hustings.
- (b) Whilst hundreds of electors attend hustings across the Island, other ways of conducting public interaction between the candidates and the electorate are required. The Committee noted that the one-to-one ‘surgeries’ held in several electoral districts in the 2008 General Election were successful. These comprised full-day or half-day events when all or most of the candidates assembled together. Electors were able to engage candidates on a one-to-one basis. This means of engagement appears to have been appreciated both by the candidates and the electors. This would be an appropriate means of providing for the public and candidates to interact in the context of an Island-wide election. Several such meetings could be held in large venues.
- (c) It is envisaged that future candidates are likely to use the internet increasingly and indeed a number of candidates in the 2008 General Election set up comprehensive websites. The Committee has considered whether candidates’ manifestos could be included in a dedicated section of the States’ website and believes that there is merit in the idea and that it should be pursued regardless of what method of election is finally agreed.
- (d) The media, both written and spoken, will have an even more important part in disseminating candidates’ views to the electorate.

### 36. **Polling Stations**

- (a) Electors will be handed a ballot paper containing the names of all the candidates. Even those who attend with a pre-prepared list will still take some time to vote, in particular when they use all or most of their votes. Under the current system some electors do not take long to vote whilst others take several minutes to choose up to seven names from perhaps 14 candidates.
- (b) This could result in logistical issues for the polling stations. At present the smaller polling stations have just one polling booth whilst some of



the larger polling stations have eight polling booths. This could mean that the smaller polling stations would need three or four polling booths with the larger polling stations needing perhaps 30 or more.

- (c) This would result in several of the existing polling stations being of inadequate size. A further consequence of electors taking longer to complete their voting papers is that more people means more cars – and car parking is already an issue at some polling stations under the present system.
- (d) Ballot papers would be substantially larger than present ballot papers. Existing ballot boxes would clearly not be sufficient but this factor is dealt with in greater detail in the following section relating to the counting of votes.
- (e) The Committee notes that at present polling stations are open from 8.00 a.m. to 8.00 p.m. in the two St. Peter Port electoral districts and from 10.00 a.m. to 8.00 p.m. in all other electoral districts. The Committee is not aware of any dissatisfaction with regard to the current polling hours. The States are heavily reliant on the goodwill of parish officials and their helpers in running the polling stations and (other than in St. Peter Port) there has always been resistance to opening the polls earlier. On balance the Committee does not see any need to vary the hours of polling but it would certainly be the case that extending the polling hours would help to mitigate some of the difficulties identified earlier in this section of the Report.
- (f) Previously consideration has been given as to whether there would be any merit in moving election day from Wednesday to Saturday.<sup>15</sup> At that time five Douzaines favoured, or raised no objection to, moving election day to Saturday; four preferred remaining with Wednesday and one Douzaine was equally divided. The Douzaines were thus fairly evenly divided as to whether elections should be held on Wednesdays or Saturdays.
- (g) Research conducted in other jurisdictions indicates that the pros and cons of weekday as opposed to weekend elections are broadly in balance. That being so, and having regard to the mixed views of the Douzaines, it was concluded in 2007 that as the arguments in favour of holding the General Election on a Saturday were inconclusive, the elections should continue to be held on a Wednesday for the time being.
- (h) The Committee would certainly not recommend any changes regarding either extended polling hours or weekend elections without first consulting all the Douzaines.

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<sup>15</sup> Billet d'État XVI of 2007, Article 14

### 37. **Vote Count**

- (a) 18,576 electors voted in the 2008 General Election. If, in an election for 45 Island-wide Deputies, the same number of voters used 70% of the maximum number of votes possible, that would amount to over 585,000 votes. In the 2008 General Election just over 91,000 votes were cast. These figures indicate that in an Island-wide election there could be a six-fold increase in the number of votes to be counted. More conservatively it can be assumed that there would at least be a quadrupling of the number of votes cast.
- (b) In all of the present electoral districts large teams of people work diligently in the counting of votes after the poll has closed. However, the present system is both labour-intensive and time-consuming. With a considerably larger number of candidates and votes to be counted the margin of error is likely to increase.
- (c) Whilst a manual count would not be impossible, it would take so long that the introduction of Island-wide voting effectively makes it essential to employ electronic equipment to count the votes. Electronic counting is used by some UK authorities but, because the machines are used relatively infrequently, they are hired rather than purchased. There are a number of UK companies that specialise in hiring out such equipment which may include peripheral items such as special ballot boxes which ensure that ballot papers are not folded (creased ballot papers are prone to being rejected by the machinery and as a consequence have to be processed manually).

### 38. **Estimated Cost**

- (a) General costs are estimated at £40,000, electronic counting at £25,000 and the full cost of delivering a 'manifesto' package to each household occupied by at least one elector would be in the region of £19,000. The overall cost, therefore, for a single Island-wide election held every four years with manifestos delivered as set out in paragraph 34 is estimated to be £84,000.
- (b) If, however, manifestos were to be delivered by post under the current scheme, (i.e. individual mailings by candidates) the cost to the States for postage alone would be in excess of £260,000 for a mailing to each household occupied by at least one elector and in excess of £480,000 if manifestos were posted to each elector individually. To those figures has to be added the general costs of £40,000 and electronic counting cost of £25,000. The overall cost, therefore, for a single Island-wide election held every four years with manifestos delivered by post would range from £325,000 to £545,000.

- (c) In addition to the figures estimated in (a) and (b) above, the provision of additional polling booths as identified in paragraph 36 could be in the region of £7,500, although this would be a one-off cost.

**39. Effect of modification of numbers**

A reduction in the number of Members of the States would have no adverse consequences on this method of election. Indeed the converse is true – reducing the number of seats would mitigate some of the difficulties set out in paragraphs 34, 36 and 37. However, a reduction in the number of seats does not necessarily mean a reduction in the number of candidates. The potential savings identified in paragraph 30 (b) would apply equally in this case.

**(iii) 45 ISLAND-WIDE DEPUTIES – HALF ELECTED EVERY TWO YEARS**

**40. Overview**

- (a) All Members would be elected as Island-wide Deputies but with one half of the Deputies being elected every two years for a four year term. If it is believed that the scheme set out in section (ii) places too great a burden on the electorate in having to consider manifestos from a large number of candidates then this scheme would require the voters to consider the manifestos of fewer candidates. Those who favour this option consider it to be more practicable. It also offers opportunities for mid-term elections for membership of departments and committees.
- (b) For many years the practice has been that the States of Deliberation do not meet (other than in an emergency) in the period between the opening of nominations and the 30<sup>th</sup> April in the year of a General Election. Thus the last meeting before a General Election takes place in mid-March. This minor hiatus to policy-making would take place every two years under this scheme.
- (c) This scheme would need to be implemented in stages, as follows. The 2012 election would be held in the current seven electoral districts. The top three successful candidates in each district would be elected to serve for four years to 2016. In one of the seven-seat districts the candidate placed fourth would also serve a four-year term (this is necessary to provide for an ongoing 22/23 split in subsequent years.) The remaining successful candidates in each district would be elected for only two years to 2014. In 2014 those vacated seats would be contested on an Island-wide basis. Similarly in 2016 when the term of office of those Members elected in 2012 for four years would expire, those seats would be contested on an Island-wide basis.

**41. Candidates**

- (a) Although the number of seats being contested would be only one half of the total, it does not necessarily follow that the number of candidates will

also be halved. It is expected that the number of candidates in an Island-wide election for half the seats every two years would be between 50 and 80. Candidates would need to be proposed and seconded by two people whose names were inscribed on the Electoral Roll.

- (b) In the 1994 and 1997 Island-wide elections of Conseillers some candidates did carry out door-to-door canvassing. However, it was apparent that candidates targeted certain areas rather than attempting to visit every elector as some candidates do in the existing district elections. Candidates' expenses would continue to be limited by Ordinance. Even if it was possible for every candidate to visit every elector it is doubtful whether many electors would welcome a visit from such a large number of candidates.

#### 42. **Electors**

This scheme would also result in electors having to read and digest literature from many candidates. Based on a possibility of 60 candidates, if each of them were to be restricted to only 700 words, that is equivalent to reading approximately 70 pages of a Billet d'État. Electors would be able to cast their votes at any polling station within the parish in which they reside, as was the case in the 1994 and 1997 Island-wide elections. A further issue is that electing one half of the Assembly every two years would mean that there would be no General Election in which the electorate could express its opinion on the States as a whole. In addition, requiring voters to turn out every two years may result in a degree of voter apathy.

#### 43. **Manifestos**

Paragraph 34 applies equally to this scheme.

#### 44. **Hustings**

Paragraph 35 applies equally to this scheme.

#### 45. **Polling Stations**

The details set out in paragraph 36 apply to this scheme, but not to the same extent. Electors will be required to select up to 22/23 candidates rather than the 45 in the single election scheme. That said, polling stations would still need increased capacity, particularly with regard to the provision of polling booths and, in some cases, car parking.

#### 46. **Vote Count**

- (a) 18,576 electors voted in the 2008 General Election. If, in an election for 22 Island-wide Deputies, that same number of voters used 70% of the

maximum number of votes possible that would amount to over 286,000 votes. In the 2008 General Election just over 91,000 votes were cast. Thus there could be a three-fold increase in the number of votes to be counted.

- (b) Sub-paragraphs (b) and (c) of paragraph 37 apply equally to this scheme.

**47. Estimated Cost**

- (a) The cost of this scheme would certainly be considerably more than any of the other schemes set out in this report as the electoral system would have to be set up every two years rather than every four years. The Home Department has also expressed strong reservations regarding electoral roll costs should this scheme be pursued: the Department's comments are attached as Appendix 4.
- (b) General costs for a four-year period (i.e. two elections) are estimated at £80,000, electronic counting at £50,000 and the full cost of delivering a 'manifesto' package to each household occupied by at least one elector would be in the region of £38,000. The overall cost, therefore, for two Island-wide elections in each four-year period with manifestos delivered as set out in paragraph 34 is estimated to be £168,000.
- (c) If, however, manifestos were to be delivered by post under the current scheme (i.e. individual mailings by candidates), the cost to the States for postage alone would be in excess of £340,000 for a mailing to each household occupied by at least one elector and in excess of £640,000 if manifestos were posted to each elector individually. To those figures has to be added the general costs of £80,000 and electronic counting cost of £50,000. The overall cost, therefore, for two Island-wide elections in each four-year period with manifestos delivered by post would range from £470,000 to £770,000.
- (d) In addition to the figures estimated in (b) and (c) above, the provision of additional polling booths as identified in paragraph 36 could be in the region of £7,500, although this would be a one-off cost.

**48. Effect of modification of numbers**

Paragraph 39 applies equally to this scheme.

- (iv) **35 ISLAND-WIDE DEPUTIES ELECTED IN A SINGLE ELECTION WITH 10 PARISH DEPUTIES ELECTED THE SAME DAY**

**49. Overview**

- (a) This scheme is a step towards full Island-wide voting: whilst it is not a full Island-wide voting system it does introduce an element of Island-

wide voting. This would not be a novel innovation in the constitution of the States.

- (b) Many Islanders regretted the end of direct parish representation when the office of Douzaine Representative was abolished in 2004. The principal objection to Douzaine Representatives was that although they were elected as Douzeniers they were not chosen by the electorate as Members of the States. This would not, however, be the case with the proposed Parish Deputies who would be elected by the people on the same day as the election of Island-wide Deputies.
- (c) This scheme addresses the criticism that a full or indeed a partial move to Island-wide voting is likely to diminish further the constituency links between the electors and the People's Deputies. In the present Assembly, for example, no Deputies reside in either St. Saviour's or Torteval. Under this scheme each parish would have one States Member mandated to have special regard to the particular interests of the parish. However, it is acknowledged that one of the disadvantages in single-seat systems is that they may, in certain circumstances, be perceived to be "safe seats" for the incumbent.
- (d) Under this scheme there would be some imbalance in favour of the smaller parishes as each parish would have one Parish Deputy. Many jurisdictions do, however, have such a representational imbalance in the constitutions of their parliaments for the very purpose of giving a fair voice to communities which are insignificant numerically.
- (e) Earlier, reference was made to the possibility that these positions could be perceived to be "safe seats". For that reason it is proposed, by a majority, that Parish Deputies be restricted to serve one term only in that office. If, at the end of the term, they wished to continue as a Members of the States they would be required to seek election as Island-wide Deputies.
- (f) The 35 Island-wide Deputies would be elected by Island-wide franchise. The election of Parish Deputies and Island-wide Deputies would be held on the same day. Candidates would not be able to compete in both elections – they would have to decide whether they wished to stand either for the parish seat or one of the Island seats.

## 50. **Candidates**

- (a) Candidates for the office of Parish Deputy would need to be proposed and seconded by two people whose names were inscribed on the Electoral Roll of the parish concerned. Insofar as the election of the Island-wide Deputies is concerned, the parish on whose Electoral Roll the names of the proposers and seconders are inscribed would be

irrelevant. Sub-paragraph (b) of paragraph 41 applies equally to the Island-wide elections part of this scheme.

- (b) A further point with regard to this scheme is that the 10 Parish Deputies would account for about 21% of the Assembly. Whilst it is correct that there would be 10 new Parish Deputies at each election it does not necessarily follow that the 10 Parish Deputies vacating that office would cease to be States Members. Indeed the Committee believes that the majority of them would seek election as Island-wide Deputies.

#### 51. **Electors**

Paragraph 42 applies equally to this scheme. However, in addition, electors would also be faced with a small number of manifestos received from the candidates seeking election to the office of Parish Deputy.

#### 52. **Manifestos**

Paragraph 25 applies equally to this scheme with regard to candidates for the office of Parish Deputy. Paragraph 34 applies equally to this scheme insofar as Island-wide elections are concerned.

#### 53. **Hustings**

- (a) Sub-paragraph (a) of paragraph 26 applies equally to this scheme insofar as it relates to the election of a Parish Deputy. Indeed, given the likelihood that there would be fewer candidates for the single Parish Deputy's seat than there are for the current six or seven People's Deputies, candidates for Parish Deputy would probably face a greater number of questions at the hustings.
- (b) Paragraph 35 applies equally to this scheme insofar as it relates to the Island-wide election.

#### 54. **Polling Stations**

The details set out in paragraph 36 apply to this scheme, but with modifications. The number of candidates in the Island-wide election would probably be less given that some candidates would, instead be seeking election as Parish Deputies. However, whatever marginal gain arises in that regard, will be negated by the fact that candidates would be given two ballot papers – one for the Parish Deputy's election and one for the Island-wide election. This would also give more work for the polling station officials. If two ballot boxes were used (one for each election) then an official would need to supervise the placing of the votes in the boxes to ensure that the votes were not placed in the incorrect box.



## 55. **Vote Count**

- (a) In the previous paragraph reference is made to the possibility of using two ballot boxes to ensure, as far as possible, that the voting slips of the two elections were not mixed. However, experience in the United Kingdom indicates that however much care is taken, a few voting slips will inevitably be placed in the wrong container. As a preliminary to counting, therefore, both boxes would need to be opened to ensure that there were no Parish Deputy votes amongst the Island-wide votes, and vice-versa.
- (b) The votes relating to the Parish Deputy's election would be counted by parochial officials manually. Where there is only one candidate the process is very simple and takes relatively little time – certainly less than an hour in the smaller parishes.<sup>16</sup>
- (c) Paragraph 37 applies equally to this scheme insofar as it relates to the Island-wide election.

## 56. **Estimated Cost**

- (a) General costs are estimated at £50,000, electronic counting at £25,000 and the full cost of delivering a 'manifesto' package to each household occupied by at least one elector would be in the region of £11,000. The overall cost, therefore, for a single Island-wide election held every four years with manifestos delivered as set out in paragraph 34 together with the election on the same day of one Parish Deputy in each parish, is estimated to be £86,000.
- (b) If, however, Island-wide manifestos were to be delivered by post under the current scheme (i. e. Individual mailings by candidates), the cost to the States for postage alone would be in excess of £170,000 for a mailing to each household occupied by at least one elector and in excess of £320,000 if manifestos were posted to each elector individually. To those figures has to be added the general costs of £50,000 and electronic counting cost of £25,000. The overall cost, therefore, for a single Island-wide election held every four years with manifestos delivered by post together with the election on the same day of one Parish Deputy in each parish, would range from £245,000 to £395,000.
- (c) In addition to the figures estimated in (b) and (c) above, the provision of additional polling booths as identified in paragraph 36 could be in the region of £7,500, although this would be a one-off cost.

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<sup>16</sup> Prior to the establishment of multi-parish electoral districts in 2004 it was not unusual for single-seat parishes to declare the result within 15-20 minutes of the close of polling.



**57. Effect of modification of numbers**

In general paragraph 39 applies equally to the Island-wide element of this scheme. It would have no effect on the Parish Deputy element as the substance of that part of the scheme is that each parish has one such representative and ten is therefore the minimum number without destroying the rationale for having Parish Deputies.

**(v) RESTRICT THE NUMBER OF VOTES WHICH ELECTORS MAY CAST**

**58. Overview**

- (a) In the Committee's Second Report reference was made to the additional comments which were sought in the public consultation. One such comment was that if Island-wide voting was introduced, each elector should be limited to 10 votes. Some members of the Committee, in supporting that view, believed that restricting the number of votes would not have an effect on the outcome of the election but would result in a greater efficiency in the electoral process. Other members of the Committee, however, believed that the electors should be entitled to vote for as many candidates as there are seats available.
- (b) The views of the Electoral Reform Society regarding this option are set out in paragraph (c) of Appendix 5.
- (c) A majority of the Committee believe that restricting the number of votes would result in a greater efficiency in the electoral process. If that premise is accepted then it follows that as the number of votes given to each elector increases the efficiency of process achieved will diminish. The converse is also true – if electors were to be allocated fewer votes the efficiency would increase.

**59. Candidates**

Limiting the number of votes which each elector may cast is unlikely to have any effect on the number of candidates but candidates themselves may feel under greater pressure to obtain every possible vote given that the total number of votes cast would be reduced to between 25% and 45% of the total number of seats being contested, depending on which scheme was introduced.

**60. Electors**

Electors may be less daunted by having to choose not more than ten candidates from a list of perhaps 90 or 100 but it is contrary to one of the arguments in favour of Island-wide voting that every elector should have the opportunity of voting for (or not voting for) every candidate.

61. **Manifestos**

There are no implications which relate to manifestos.

62. **Hustings**

There are no implications which relate to hustings.

63. **Polling Stations**

The logistical difficulties regarding polling stations identified in earlier sections would be reduced to some degree as selecting up to ten candidates is very likely to take less time than selecting 45, 35 or 22 candidates. However, voters would still have a large ballot paper to contend with as this option would not result in a reduction in the number of candidates.

64. **Vote Count**

In earlier paragraphs it is noted that electronic counting of votes is considered to be essential in any Island-wide vote which involves a large number of candidates. That being so placing a limit on the number of votes available to each elector is unlikely to have any major impact if the votes are counted electronically. However, should a manual count of votes take place then there would be a significant reduction in the time required to complete the count.

65. **Estimated Cost**

This option is considered to be cost neutral.

66. **Effect of modification of numbers**

A reduction in the total number of seats contested would have no effect on this option.

**(vi) CHIEF MINISTER ELECTED ISLAND-WIDE, 10 ISLAND-WIDE DEPUTIES AND 34 DISTRICT DEPUTIES ELECTED THE SAME DAY**

67. **Overview**

(a) This proposal envisages three elections being held on the same day for the following offices:

- A Chief Minister;
- 10 Island-wide Deputies;

- 34 Electoral District Deputies.

- (b) This proposal goes much further than simply prescribing the method of election of certain offices. Electing the Chief Minister by universal suffrage would have a fundamental impact on the present system of government which should not be under-estimated. The Committee believes that there is a strong possibility that such an election would lead to the establishment of a presidential system being introduced. In the Committee's view if substantial powers were vested in the holder of that office this would have an adverse effect on Guernsey's system of consensus government.
- (c) The proposers of the amendment included the provision that candidates for the office of Chief Minister shall be eligible in accordance with Rule 20 (2A) of the Rules of Procedure of the States of Deliberation. The precise text of that Rule is as follows:

*“Any Member of the States shall be eligible to hold the office of Chief Minister provided that he shall have held the office of People's Deputy for a period of not less than four years in the eight years immediately preceding the date set for the election of a Chief Minister”.*

- (d) As presently drafted the effect of that Rule would mean that a person who first commenced service as a Member of the States on 1<sup>st</sup> May 2008 would be ineligible to seek election as Chief Minister in April 2012 as, at the date of election, they would not have been a People's Deputy *“for a period of not less than four years”*. Similarly, a person who had served for many years but who was not currently a Member of the States on the date of the election would also be ineligible as the Rule presently restricts the office of Chief Minister to a *“Member of the States”*.
- (e) It is, however, assumed that the proposers of the amendment were not seeking to exclude the candidature of such persons. That being so, if this scheme were to find favour with the States, it would be necessary to remove the anomalies identified above. In any event if the Chief Minister were to be elected by the electorate legislation would be required. It would therefore no longer be a matter for regulation by Rules of Procedure.

## 68. **Candidates**

- (a) The 34 seats would be distributed between the seven electoral districts as follows:

<b>District</b>	<b>Population</b>	<b>34 seats</b>
<b>St. Peter Port South</b>	7,843	5
<b>St. Peter Port North</b>	8,742	5
<b>St. Sampson</b>	8,592	5
<b>Vale</b>	9,573	5
<b>Castel</b>	8,975	5
<b>West</b>	7,406	4
<b>South-East</b>	8,676	5
	<b>59,807</b>	<b>34</b>

- (b) The Chief Minister and the 10 Island-wide Deputies would be elected by Island-wide franchise. The election of Electoral District Deputies and Island-wide Deputies would be held on the same day. Candidates would not be able to contest both elections – they would have to decide whether they wished to stand either for a district seat or one of the Island seats. Those who choose to stand in the Island-wide election and who are eligible pursuant to (an amended) Rule 20(2A), would also have to consider whether they wished to seek election for the office of Chief Minister.
- (c) Given that the ratio of district seats to Island-wide seats is 3:1 it is assumed (for the purpose of this report) that the candidates would be in a similar ratio in which case it is possible that there might be 25 candidates in the Island-wide election and 77 candidates in the district elections (i.e. 11 in each district). In the 1994 General Election 26 candidates contested the 12 seats for the office of Conseiller.

#### 69. **Electors**

Electors would be faced with literature from two sets of candidates. However, given that the Island-wide candidates' manifestos would probably be in the form of a newspaper supplement and the district candidates in traditional form, confusion between the two elections is not likely. Electors would be able to cast their votes at any polling station situated in the electoral district in which they reside.

#### 70. **Manifestos**

Paragraph 25 applies equally to this scheme with regard to candidates for the office of Parish Deputy. Paragraph 34 applies equally to this scheme insofar as Island-wide elections are concerned.

#### 71. **Hustings**

The 'traditional' form of hustings described in paragraph 26 could continue with regard to the election of district deputies. It might also be possible with regard to the Island-wide elections although it is noted that in the 1994 election of Conseillers with 26 candidates each candidate spoke for no more than five or six

minutes at each of the seven hustings. Indeed an additional difficulty arises under this scheme in that some of the Island-wide candidates would also be seeking election as Chief Minister and it is probably inevitable that many electors would choose to focus questions on the candidates for that office rather than generally. That being so the Committee believes that it would be necessary to hold separate hustings solely for those seeking election to the office of Chief Minister.

## 72. **Polling Stations**

- (a) Electors would be handed two ballot papers – one for the election of district Deputies and one for the election of Island-wide Deputies. It is envisaged that the latter would also incorporate the ballot for the office of Chief Minister. Under the current system it is noticeable that some electors take several minutes to choose their preferred candidates. Each elector is likely to take at least twice as long to vote in the two elections.
- (b) This could result in serious logistical issues for the polling stations. At present the smaller polling stations have just one polling booth whilst some of the larger polling stations have eight polling booths. This could mean that the smaller polling stations would need two or three polling booths with the larger polling stations needing perhaps 16 or more.
- (c) Consequently several of the existing polling stations would be of inadequate size. A further consequence of electors taking longer to complete their ballots is that more people means more cars – and car parking is already an issue at some polling stations under the present system.
- (d) Two ballot papers would also give more work for the polling station officials. If two ballot boxes were used (one for each election) then an official would need to supervise the placing of the votes in the boxes to ensure that the votes were not placed in the incorrect box.

## 73. **Vote Count**

- (a) In the previous paragraph reference is made to the possibility of using two ballot boxes to ensure, as far as possible, that the voting slips of the two elections were not mixed. However, experience in the United Kingdom indicates that however much care is taken, a few voting slips will inevitably be placed in the wrong container. As a preliminary to counting, therefore, both boxes would need to be opened to ensure that there were no District Deputies' votes amongst the Island-wide votes, and vice-versa.
- (b) The votes relating to the District Deputies' election would be counted by parochial officials manually at a central location within the electoral district. The number of seats in each district (and also probably the numbers of candidates) would be fewer than at present so it should be

possible for the votes to be counted manually, with a result being declared somewhat earlier than has been the case in the last two General Elections.

- (c) However, given that the parish officials would be fully engaged in counting the votes in the District elections it would be necessary to have a different team available at a central location to count the Island-wide votes. This might, for example, involve seeking volunteer civil servants to carry out the task. Given also that two counts would be necessary (i.e. the Island-wide deputies votes and also the Chief Minister's votes) it would be necessary to employ electronic counting.
- (d) In the 1994 General Election of Conseillers a recount of the entire vote was requested because of the very close margin between the 12<sup>th</sup> and 13<sup>th</sup> places. This was carried out by a team of about 80 people and took in excess of 12 hours.

#### 74. **Estimated Cost**

- (a) General costs are estimated at £74,000, electronic counting at £25,000 and the full cost of delivering a 'manifesto' package to each household occupied by at least one elector would be in the region of £11,000. The overall cost, therefore, for a single Island-wide election coupled with a Chief Minister's election held every four years, with manifestos delivered as set out in paragraph 34, together with the election on the same day of Electoral District Deputies, is estimated to be £110,000. The election of a Chief Minister would not add materially to the overall cost of the Island-wide election.
- (b) If, however, manifestos in the Island-wide elections were to be delivered by post under the current scheme (i.e. individual mailings by candidates), the cost to the States for postage alone would be in excess of £70,000 for a mailing to each household occupied by at least one elector and in excess of £130,000 if manifestos were posted to each elector individually. To those figures has to be added the general costs of £74,000 and electronic counting cost of £25,000. The overall cost, therefore, for a single Island-wide election coupled with a Chief Minister's election held every four years, with manifestos delivered by post, together with the election on the same day of Electoral District Deputies, would range from £169,000 to £229,000.
- (c) In addition to the figures estimated in (b) and (c) above, the provision of additional polling booths as identified in paragraph 36 could be in the region of £7,500, although this would be a one-off cost.

#### 75. **Effect of modification of numbers**

A reduction in the number of Members of the States would have no adverse consequences on this method of election. However, a reduction in the number of

seats does not necessarily mean a reduction in the number of candidates. The potential savings identified in paragraph 30 (b) would apply equally in this case.

**(vii) 11 ISLAND-WIDE DEPUTIES AND 34 DISTRICT DEPUTIES ELECTED THE SAME DAY**

**76. Overview**

- (a) This proposal envisages two elections being held on the same day for the following offices:
- 11 Island-wide Deputies;
  - 34 Electoral District Deputies.
- (b) It is, in effect, a variation of scheme (vi), the difference being that 11 rather than 10 Island-wide Deputies are elected and the election of a Chief Minister is excluded from this process.

**77. Candidates**

- (a) The 34 seats would be distributed as set out in the table in paragraph 68.
- (b) The 11 Island-wide Deputies would be elected by Island-wide franchise. The election of Electoral District Deputies and Island-wide Deputies would be held on the same day. Candidates would not be able to contest both elections – they would have to decide whether they wished to stand either for a district seat or one of the Island seats.
- (c) Given that the ratio of district seats to Island-wide seats is 3:1 it is assumed (for the purpose of this report) that the candidates would be in a similar ratio in which case it is possible that there might be 25 candidates in the Island-wide election and 77 candidates in the district elections (i.e. 11 in each district). In the 1994 General Election 26 candidates contested the 12 seats for the office of Conseiller.

**78. Electors**

Paragraph 69 applies equally to this scheme.

**79. Manifestos**

Paragraph 25 applies equally to this scheme with regard to candidates for the office of Parish Deputy. Paragraph 34 applies equally to this scheme insofar as Island-wide elections are concerned.

**80. Hustings**

Paragraph 71 applies equally to this scheme.

81. **Polling Stations**

- (a) Electors would be handed two ballot papers – one for the election of district Deputies and one for the election of Island-wide Deputies. Under the current system it is noticeable that some electors take several minutes to choose their preferred candidates. Each elector is likely to take at least twice as long to complete vote in the two elections.
- (b) Sub-paragraphs (b) to (d) of paragraph 72 apply equally to this scheme.

82. **Vote Count**

Paragraph 73 applies equally to this scheme, save for the reference to the election of the Chief Minister.

83. **Estimated Cost**

Paragraph 74 applies equally to this scheme.

84. **Effect of modification of numbers**

Paragraph 75 applies equally to this scheme.

**(viii) 15 ISLAND-WIDE DEPUTIES ELECTED IN JUNE 2011 BY THE ELECTORATE OF GUERNSEY AND ALDERNEY, HAVING BEEN NOMINATED BY 2 PERSONS FROM EACH OF THE 7 GUERNSEY ELECTORAL DISTRICTS AND 30 DEPUTIES FROM THE EXISTING 7 ELECTORAL DISTRICTS (WITH TRANSITIONAL ARRANGEMENTS)**

85. **Overview**

- (a) This proposal includes:
  - electing 15 Deputies Island-wide in June 2011 for a three-year term and thereafter for four-year terms;
  - including the Alderney electorate in the Island-wide poll;
  - requiring candidates to be nominated by two persons from each of the seven Guernsey electoral districts;
  - increasing the number of States Members on a transitional basis so as to accommodate the additional members elected in June 2011;
  - providing that only Island-wide Deputies shall be eligible to hold office as Chief Minister;



- vacating the offices of Chief Minister and ministers in June 2011 and replacing them with persons elected in the June 2011 Island-wide election.
- (b) Electing 15 Deputies in an Island-wide election would not be far removed from the situation in St. Peter Port from 1949 until 1973 when that parish elected 13 People's Deputies. Under this scheme the Island-wide Deputies would be elected for three years – i.e. to 2014 and thereafter in 2018, 2022 etc. Elections of District Deputies would take place in 2016, 2020 etc. This would mean that General Elections would cease as there would be no occasion when all the Members of the States vacated office simultaneously.
- (c) Given that the ratio of district seats to Island-wide seats would be 2:1 it is assumed that the candidates would be in a similar ratio in which case it is possible that there might be 30 candidates in the Island-wide election. However, this election would not be taking place at the same time as the election of District Deputies and there is a reasonable likelihood that the number of candidates would therefore be greater.
- (d) This scheme proposes the participation of the Alderney electorate in the election of Island-wide Deputies. The Law<sup>17</sup> provides that “*The people of the Island of Alderney shall ... be entitled to be represented in the States of Deliberation by ... ‘Alderney Representatives’ ... two in number*”. The two Alderney Representatives therefore comprise 4.25% of the membership of the States of Deliberation although the population of Alderney is only 3.69% of the combined population of Guernsey and Alderney.
- (e) If the Alderney electorate were to participate in the election of 15 Island-wide Deputies it seems reasonable that it should then have only a proportional share of the remaining 32 seats in the Assembly in which case the allocation would be as follows:

District	Population	32 seats
St. Peter Port South	7,843	4
St. Peter Port North	8,742	5
St. Sampson	8,592	4
Vale	9,573	5
Castel	8,975	5
West	7,406	4
South-East	8,676	4
Alderney	2,294	1
	<b>62,101</b>	<b>32</b>

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<sup>17</sup> The States of Guernsey (Representation of Alderney) Law, 1978

- (f) Alderney participated in the Conseillers' elections in 1994 and 1997. In 1994 the turnout in Alderney was 37% compared to 65% in Guernsey and in 1997 it was 30% in Alderney and 43% in Guernsey which may be an indication of the likely level of interest which would arise should Alderney participate in Island-wide elections.
- (g) Regardless of all the foregoing, the Committee concludes that if this scheme is introduced, the question of Alderney's participation should be decided by the people of Alderney. It would therefore be for them to decide either to maintain the status quo or else participate in the Island-wide elections with the proviso that there would be only one Alderney Representative. The Projet de Loi required to achieve this would need to be approved by both the States of Deliberation and the States of Alderney.
- (h) This scheme requires each candidate to be sponsored by a proposer and seconder from each of the seven Guernsey electoral districts. Whilst this might nominally indicate a degree of Island-wide support it would serve no real purpose. It also seems somewhat illogical to the Committee that if Alderney is to participate in the election that it should not also be a requirement to have a proposer and seconder registered on the Alderney electoral roll.
- (i) The next element of this scheme is that the number of States Members be increased on a transitional basis to accommodate between 0 and 15 States Members elected in 2011 who do not at that time already have a seat in the States. This appears to be predicated on the basis that many – although possibly not all or even any – of the present ministers and Chief Minister would seek election as Island-wide Deputies so as to be able to continue as Chief Minister/ministers. The final element is that the present Chief Minister and ministers be required to vacate those offices in June 2011 and that their successors in office be elected from the newly-elected Island-wide Deputies.
- (j) From the wording used in the relevant amendment it would appear that its proposer and seconder intended that any current States Member who wished to seek election as an Island-wide Deputy would be required to resign his/her existing seat before being nominated as an Island-wide Deputy, hence the proviso that the number of seats overall be increased on a transitional basis. Should a large number of States Members offer themselves as candidates in the Island-wide election it would, effectively, bring the business of the States to a halt for some six weeks, as presently happens from mid-March to the end of April in General Election years.
- (k) There would be logistical issues with regard to seating in the States Chamber. Whilst it would be possible to accommodate two or three

additional Members it would certainly not be possible if ten or twelve additional seats were required.

- (l) Given the lead-in time required to run an election it is improbable, in any event, that this scheme could be introduced in June 2011. Of no small consequence is the fact that an Order in Council would be required. That being so it is unlikely that an election could be held before the autumn of 2011 – just six months before the scheduled 2012 General Election.

#### 86. **Candidates**

Under this scheme the Chief Minister would have to seek election as an Island-wide Deputy in 2011 notwithstanding the fact that his term of office as a People's Deputy will not expire until 30<sup>th</sup> April 2012.

#### 87. **Electors**

- (a) As stated in paragraphs 85 (b) and (c) the task of electing 15 Members in one election is not dissimilar to the previous elections of 13 Deputies in St. Peter Port although the potential number of candidates could be at the point where reading the manifestos becomes burdensome. A further issue is that electing one half of the Assembly every two years would mean that there would be no General Election in which the electorate could express its opinion on the States as a whole. In addition, requiring voters to turn out every two years may result in a degree of voter apathy.
- (b) Electors would be able to cast their votes at any polling station within the parish in which they reside.

#### 88. **Manifestos**

Paragraph 34 applies equally to this scheme.

#### 89. **Hustings**

- (a) Paragraph 35 (a) describes the hustings which took place in 1994. On that occasion there were 26 candidates and that appeared to be at or near the maximum which could be accommodated at that type of meeting. A traditional hustings might just be possible under this scheme but very short speech limits would have to be imposed.
- (b) Otherwise, paragraph 35 (b) and (c) applies.

#### 90. **Polling Stations**

Choosing up to 15 candidates would clearly take longer than the time it presently takes to select up to seven candidates. Some polling stations may therefore require additional polling booths.

91. **Vote Count**

- (a) It would be theoretically possible for the votes to be counted on a parish by parish basis. However, given that there would be twice as many votes to count as there are in the present elections and considering that some declarations are not made until the early hours of the morning, it unlikely that the parish officials would welcome the task, given that many of them also run the polling stations throughout the day.
- (b) The more likely alternative, therefore, would be to count the votes electronically (see paragraph 37 (c) for further details).

92. **Estimated Cost**

- (a) The cost of this scheme would be high as the electoral system would have to be set up every two years rather than every four years. The Home Department has also expressed strong reservations regarding electoral roll costs should this scheme be pursued: the Department's comments are attached as Appendix 4.
- (b) General costs for a four-year period (i.e. two elections) are estimated at £100,000, electronic counting at £50,000 and the full cost of delivering a 'manifesto' package to each household occupied by at least one elector would be in the region of £22,000. A further variation is whether electronic counting would be used in the Electoral District elections (it is assumed that it would be employed in the Island-wide elections). The overall cost, therefore, for two elections in each four-year period with manifestos delivered by newspaper is estimated to be £172,000.
- (c) If, however, manifestos were to be delivered by post under the current scheme (i.e. individual mailings by candidates), the cost to the States for postage alone would be in excess of £85,000 for a mailing to each household occupied by at least one elector and in excess of £160,000 if manifestos were posted to each elector individually. To those figures has to be added the general costs of £100,000 and electronic counting cost of £50,000. A further variation is whether electronic counting would be used in the Electoral District elections (it is assumed that it would be employed in the Island-wide elections). The overall cost, therefore, for two elections in each four-year period with manifestos delivered by post would range from £235,000 to £310,000.

93. **Effect of modification of numbers**

Paragraph 66 applies equally to this scheme.

### **PART III - OTHER ISSUES**

#### **(i) ELECTIONS TO BE HELD BY THE SINGLE TRANSFERABLE VOTE SYSTEM**

##### **94. Overview**

- (a) Paragraphs (f) to (j) of the letter from the Electoral Reform Society reproduced as Appendix 5 sets out in detail the single transferable vote system (STV). Under the present system voters choose up to six or seven candidates without expressing an order of preference. With STV voters place the candidates in order of preference. STV reduces the chance element – particularly in respect of candidates on the margins of being elected or not being elected.
- (b) STV is capable of being used in any type of election other than in single seat elections. It will be noted that the Electoral Reform Society expresses strong reservations in respect of the use of STV in ballots in which there are large numbers of candidates. It would, however, be an innovation for Guernsey and would require good and sustained voter education to avoid confusion at the polls. The counting process is also cumbersome but this can be overcome with electronic counting.

##### **95. Candidates**

Under the present first-past-the-post system it matters not to the candidate whether he is a voter's first choice or sixth/seventh choice – securing a vote is the sole objective. However, when STV is used, not only must candidates ask electors to give them a vote, they must also persuade them to rank them as one of their early choices.

##### **96. Electors**

- (a) For electors it would be a totally new concept. No longer would voters mark their ballot papers with a cross – such papers would be invalid. Instead candidates are ranked in order of preference. They may rank as many or as few candidates as they choose. Thus in an election in which there were 90 candidates at one extreme they could rank all candidates from 1 to 90 or, at the other extreme simply rank one candidate as “1”. Both would be valid ballot papers. However, if a voter marks two candidates with the same preference then only the preferences with a higher value than the duplicated preference will be counted.
- (b) Considerable effort would have to be expended to ensure that every elector understood precisely how they were required to record their votes.

##### **97. Manifestos**

There are no implications which relate to manifestos.

98. **Hustings**

There are no implications which relate to hustings.

99. **Polling Stations**

The logistical difficulties regarding polling stations identified in earlier sections are likely to be exacerbated by STV. This would apply particularly with regard to schemes which potentially involve large numbers of candidates.

100. **Vote Count**

- (a) The first step is the calculation of the number of votes which candidates must receive to be elected. This is called the 'quota'. Ballot papers are then sorted according to voters' first choices. Candidates with at least the quota are then noted as elected. The surplus votes (the number of votes over the quota) of these candidates are then transferred to other candidates according to the voters' second choices. Any new surpluses created by this process are similarly transferred.
- (b) If not enough candidates have been elected, the candidate with the lowest number of votes is eliminated. That candidate's votes are then transferred to the (unelected) candidates marked as the next choice by the voters. The transfer of surpluses and the elimination of candidates continues until the required number of candidates has been elected.
- (c) The effect of all the above means that a manual count, whilst possible, would be so lengthy as to make it a necessity for electronic counting to be used.

101. **Estimated Cost**

The only additional cost would be with regard to voter education. Given the importance of ensuring that each and every elector is fully aware of what is required a substantial education programme would be required. It is difficult to estimate with accuracy, but given the cost of such a campaign in Scotland when STV was introduced in that country it could be in the region of £50,000.

102. **Effect of modification of numbers**

Reducing the number of seats available would affect the introduction of STV in that fewer seats make the counting process marginally simpler. However, for the reasons stated in paragraph 100, given that electronic counting would be a necessity, the real impact would be insignificant.

**(ii) CHIEF MINISTER TO BE ELECTED BY THE PUBLIC FROM THOSE ELECTED AS ISLAND-WIDE DEPUTIES**

**103. Overview**

At present the only condition which applies specifically to the candidature of persons seeking election as Chief Minister is Rule 20 (2A) of the Rules of Procedure which is set out in extenso in paragraph 67 (b).

**104. Candidates**

There are no implications which relate to candidates other than the obvious point - prospective Chief Ministers would first have to be elected as Island-wide Deputies. Such candidates would probably focus their election campaign on their intention to seek election as Chief Minister and may, for that reason, attract greater attention than the remaining candidates who might thus potentially be placed at a disadvantage.

**105. Electors**

There are no implications which relate to electors.

**106. Manifestos**

There are no implications which relate to manifestos.

**107. Hustings**

There are no implications which relate directly to hustings. However, as already stated above, Chief Minister candidates may be the focus of questions to the detriment of other candidates.

**108. Polling Stations**

There are no implications which relate to polling stations.

**109. Vote Count**

There are no implications which relate to vote counting.

**110. Estimated Cost**

There are no implications relating to the cost of running elections.

**111. Effect of modification of numbers**

Modifying the number of Members would have no effect on this suggestion.

**(iii) ELECTION FOR THE OFFICES OF CHIEF MINISTER AND MINISTERS TO BE HELD IMMEDIATELY AFTER THE JUNE 2011 ELECTION**

**112. Overview**

- (a) This issue is associated with the scheme set out in Part II section viii (paragraphs 85-93) which envisages that the Chief Minister must be an Island-wide Deputy. Should that scheme be introduced the Chief Minister would be deemed to have vacated that office and a fresh election would be held to replace him from amongst those recently elected as Island-wide Deputies.
- (b) The comments relating to timing in paragraph 85 (l) would have a consequential effect on this issue.
- (c) The comments in paragraph 85 (j) relating to the potential disruption also relates to this suggestion.

**113. Candidates**

There are no implications which relate to candidates.

**114. Electors**

There are no implications which relate to electors – i.e. the voting public. Insofar as the election of a Chief Minister is concerned the electors are the Members of the States of Deliberation. Having a fresh election for that office would require the convening of a special meeting of the States for that purpose.

**115. Manifestos**

There are no implications which relate to manifestos.

**116. Hustings**

There are no implications which relate to hustings.

**117. Polling Stations**

There are no implications which relate to polling stations.

**118. Vote Count**

There are no implications which relate to vote counting.



119. **Estimated Cost**

There would be some indirect and unquantifiable costs to the departments relating to the briefing of new ministers.

120. **Effect of modification of numbers**

Modifying the number of Members would have no effect on this suggestion.

**(iv) PARTY POLITICS**

Included as an appendix to the Committee's First Report was a note relating to political parties and this is reproduced as Appendix 6 to this Report.

**THE PROPOSED WAY FORWARD**

121. The States Assembly and Constitution Committee, in producing this present report, has been conscious of the criticism levelled at it in the States debate on the 1<sup>st</sup> July 2010, in particular, that the 2<sup>nd</sup> Report did not fully set out the merits or otherwise of the various options under consideration. The Committee believes that this present report fairly addresses all of the issues of concern raised in that debate. It is acknowledged by the Committee that pursuant to the States Resolutions of the 27<sup>th</sup> April 2006 and 28<sup>th</sup> January 2009 there is an expectation that it will present to the States propositions providing for Island-wide voting at the 2012 General Election.
122. The Committee believes that a majority of the electorate wishes to elect all the Members of the States on an Island-wide basis. This conclusion is clearly supported by the public consultation carried out last year. Paragraphs 31 to 39 set out in detail the issues which arise in relation to an Island-wide election of 45 Deputies. There exists amongst members of the Committee a range of views about the concept and methods of Island-wide voting. However, by a majority, the Committee has resolved that the method of Island-wide voting it should present to the States is that all People's Deputies be elected in one Island-wide election with effect from the General Election to be held in 2012.

**Manifestos**

123. The Committee proposes that manifestos be distributed to the electorate by means of a document containing the manifestos of all candidates which would be delivered to each household occupied by at least one elector. Candidates would be required to share the cost of printing, packaging and labelling the collective manifesto document. Candidates would, of course, be at liberty to decide not to participate in the publication, although any candidates who did so decide would still have to contain their overall expenditure within the prescribed limits.

### **Polling Stations**

124. Paragraph 36 identifies certain logistical issues relating to polling stations. The Committee acknowledges that the size of some of the current polling stations will be inadequate and that it will therefore be necessary in certain parishes to find more suitable premises. This may include church halls and other community halls. School halls might also be used, particularly if elections were held on Saturdays. In that regard the Committee notes that school premises are often used as polling stations in both the United Kingdom and France. The Committee will be discussing the matter with all the Douzaines and, where changes are necessary, appropriate premises will have to be designated as polling stations by resolution of the States.

### **Restriction on number of votes which electors may cast**

125. Paragraph 58 refers to the possibility of reducing the number of votes which each elector may have and it will be noted that the Committee believes that restricting the number of votes available to each elector would result in a greater efficiency in the electoral process. However, the Committee is of the opinion that the democratic process should not be compromised solely to achieve efficiency in the electoral process. It is of the view that every elector should have the opportunity of casting as many votes as there are seats available. Consequently no proposal is made which would limit the number of votes available to each elector.

### **Vote Count**

126. For the reasons set out in paragraph 37 the Committee considers that it will be necessary for the votes to be counted electronically. The count will take place at a central location. Tenders will be sought from UK companies which specialise in hiring out the necessary equipment.

### **Estimated Cost**

127. The cost of running an Island-wide election of 45 Deputies is estimated as follows:

General costs	£ 40,000
Electronic Counting	£ 25,000
Manifesto delivery	£ 19,000
Additional polling booths	<u>£ 7,500</u>
	<u>£ 91,500</u>

### **RECOMMENDATION**

128. The States Assembly and Constitution Committee recommends the States to resolve that –

- (1) the Reform (Guernsey) Law, 1948, as amended<sup>18</sup> be further amended to provide that with effect from the General Election to be held in 2012 there shall be 45 Deputies elected Island-wide for a four-year term and that the candidates in Island-wide elections shall be entitled but not obliged to have their manifestos distributed at the expense of the States by means of an election publication, the cost of which will be borne by the candidates;
- (2) the States Assembly and Constitution Committee be directed to report to the States with detailed proposals relating to the procedure at, and conduct of, such elections.

## LEGAL CONSULTATION

129. The Law Officers have been consulted and advised that there would not appear to be any great difficulty in settling the legislative changes which would be required in order to give effect to the recommendations in paragraph 128 (1) of this report.

Yours faithfully

M M Lowe  
Vice-Chairman

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<sup>18</sup> It may assist Members of the States to have the precise wording of Article 3(4) of The Reform (Guernsey) Law, 1948, as amended which applies to the above recommendation.

*“... any resolution of the States of Deliberation directing the preparation of legislation to repeal or vary any of the provisions of this Law which is carried by a majority of less than two-thirds of the members present and voting shall not be deemed to have been carried before the expiration of seven days from the date of the resolution:*

*Provided that where before the expiration of the aforesaid seven days an application in writing signed by not less than seven members of the States of Deliberation is made in that behalf to the Presiding Officer such resolution shall be brought back before the States of Deliberation by the Presiding Officer as soon as may be after the expiration of three months from the date of the resolution whereupon such resolution shall be declared lost unless confirmed by a simple majority.”.*

## APPENDIX 1

## AVERAGE NUMBER OF VOTES CAST BY EACH ELECTOR

	2004 General Election	2008 General Election
<b>SEVEN SEAT DISTRICTS</b>		
<b>St. Peter Port North</b>	4.87 - 69.6%	5.07 - 72.4%
<b>Vale</b>	4.93 - 70.4%	5.15 - 73.6%
<b>Castel</b>	4.73 - 67.6%	5.02 - 71.6%
<i>Average for seven seat districts</i>	<i>4.84 - 69.2%</i>	<i>5.08 - 72.6%</i>
<b>SIX SEAT DISTRICTS</b>		
<b>St. Peter Port South</b>	4.39 - 73.3%	4.56 - 75.9%
<b>St. Sampson</b>	4.51 - 75.2%	4.60 - 76.7%
<b>West</b>	4.79 - 79.8%	4.53 - 75.5%
<b>South-East</b>	4.81 - 80.2%	4.61 - 76.9%
<i>Average for six seat districts</i>	<i>4.63 - 77.1%</i>	<i>4.58 - 76.2%</i>
<b>ISLAND-WIDE CONSEILLERS ELECTIONS</b>		
<b>1994 – 12 seats</b>	8.39 - 69.9%	
<b>1997 – 6 seats</b>	4.16 - 69.3%	

## APPENDIX 2

**USE BY CANDIDATES OF  
SUBSIDISED POSTAGE SCHEME  
IN 2008 GENERAL ELECTION**

District	N° of Electors	N° of House-holds	Postings by 2* or more Candidates	Postings by Single Candidates	Average number of items in each posting
St. Peter Port South	3,370	2,090	1	9	2,056
St. Peter Port North	4,476	2,649	5	4	2,878
St. Sampson	4,848	2,678	1	8	1,209
Vale	5,651	2,997	1	6	1,282
Castel	4,984	2,599	4	2	2,380
West	4,906	2,483	3	4	2,262
South-East	5,018	2,656	2	7	2,511
All Districts	33,253	18,152	17 #	40	2,088

(# - 38 candidates)

40 individual candidates posted a total of	64,820 envelopes
38 candidates in 17 groupings* posted a total of	<u>54,224</u> envelopes
Total number of items posted	<u>119,044</u>

The total cost of posting was	£41,072.46
Less paid by candidates	<u>£10,824.95</u>
Net cost to the States*	<u>£30,247.51</u>

\* The cost to the States only decreases when three or more candidates use the same mailing – two candidates using the same mailing is cost neutral. In the 2008 General Election only four of the mailings contained the manifestos of three candidates.

## APPENDIX 3

**POPULATION**  
**According to the Guernsey and Alderney Censuses of 2001**

**BY PARISH/ISLAND ETC.**

St. Peter Port	16,488
St. Sampson	8,592
Vale	9,573
Castel	8,975
St. Saviour	2,696
St. Pierre du Bois	2,188
Torteval	973
Forest	1,549
St. Martin	6,267
St. Andrew	2,409
Herm and Jethou	97

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59,807

**ALDERNEY**      2,294

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62,101

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**BY PRESENT ELECTORAL DISTRICTS**

St Peter Port South:		
St. Peter Port	7,746	
Herm & Jethou	<u>97</u>	7,843
St. Peter Port North		8,742
St. Sampson		8,592
Vale		9,573
Castel		8,975
West:		
St. Saviour	2,696	
St. Pierre du Bois	2,188	
Torteval	973	
Forest	<u>1,549</u>	7,406
South-East:		
St. Martin	6,267	
St. Andrew	<u>2,409</u>	8,676
		<hr/>
		59,807

**APPENDIX 4****HOME DEPARTMENT**

The Chairman  
States Assembly and Constitution Committee  
Sir Charles Frossard House  
La Charroterie  
St. Peter Port

15<sup>th</sup> October 2009

Dear Deputy Rihoy

**Island Wide Voting**

At a recent Board meeting, the Home Department discussed the consultation paper and it was agreed that the Board would make a formal approach to your Committee to present any areas of concern. These comments are limited purely to the potential impact on the Electoral Roll and do not reflect the individual views of members regarding the merit of Island-wide voting or otherwise.

The Board carefully considered Option C, believing it to be the most relevant to the Home Department and the Electoral Roll. I note, from your guidance notes on the internet, that the intention is that this option would be phased in over a period of time, with elections being held from 2012 on a district basis and then from 2014 onwards on an Island wide basis.

The Department has significant concerns over the introduction of these proposals in regard to the Electoral Roll. In order for any election to take place, an accurate and comprehensive Electoral Roll needs to be in place. Currently, although the work for the Electoral Roll is constantly ongoing, it is cyclic in nature becoming more resource intensive in the eighteen months leading up to the General Election. Adopting a General Election on a biannual basis would effectively place the Department permanently in the intensive run up to an Election and will significantly affect staff and financial resources.

This is a concern intensified by the current financial position affecting the States. As you may be aware, as part of the States Strategic Plan, the Department had put in a request for money to be allocated to the Electoral Roll for 2010, but this is not one of the eight priorities supported by Policy Council. This effectively puts the Department in an exceptionally difficult position. In order for an accurate and comprehensive Electoral Roll to be compiled, the Department requires the necessary resources, and I

would be unwilling to support any initiative which would increase the work associated with the Electoral Roll without strong assurances that the necessary resources will be in place.

Further, one of the recommendations of the post 2008 Election Report was the creation of a new Electoral Roll for each quadrennial Election. Although I am mindful that there are possible work streams around, such as the creation of a Population Office or a Citizen's Register, which may in the long run negate the need for an independent Electoral Roll, the creation of biannual Elections does cause me some significant concerns. The Department would be unable to create a new Electoral Roll each time- the employment of enumerators would make this unfeasible and I believe that requesting that the public resubmit their details so frequently would be unpopular and could cause some confusion. This would therefore mean that every other election would again be conducted using an inaccurate and out of date Electoral Roll.

I would be grateful if you could consider this submission as part of your consultation process. If you require any further information, please contact the Chief Officer, Home Department.

Yours sincerely

G H Mahy  
Minister



## APPENDIX 5

## REPORT OF THE ELECTORAL REFORM SOCIETY

- (a) We note the Committee's instructions to undertake a comprehensive review of all practicable methods of introducing Island-wide voting. There are possible models for all-island voting, but unfortunately they all present significant practical difficulties, because of the size of the States of Deliberation, and the lack of political parties in Guernsey.
- (b) The first model would be to hold elections under a variant of First-Past-the-Post, called the **Multiple Non Transferable Vote (MNTV)**. This system is used for a number of local elections in England and Wales. Each voter has the same number of votes as there are seats to be filled. However, this means that the system is ill-suited to elections where a large number of seats are up for election. Under present circumstances in Guernsey, it would require a voter to place an 'X' beside as many as 45 candidates, a task that would quickly become laborious. In the event that an issue arose that split voters and candidates 60-40, the candidates in the majority viewpoint would tend to be elected, and there would be no guarantee of representation of the minority view.
- (c) One refinement of this process may be a '**Limited Vote**' system, whereby voters may be given a set number of votes - say six or seven as at present – and could thereby place an 'X' next to their most favoured candidates. However the mechanics of the system mean it would have the potential to produce perverse and unrepresentative results. There would also be the danger that not all 45 seats would be filled, particularly if most votes gravitate towards a handful of popular candidates.
- (d) A second possibility would be the **Single Non Transferable Vote system (SNTV)**. This system would give each voter one vote, and they would simply be required to place an 'X' next to the candidate of their choice. The 45 candidates who gained most votes would be elected. This is perhaps the most theoretically feasible of the Island-wide models. However, it has clear limitations. Firstly, it places large restrictions on the ability of voters to exercise any real choice between candidates. Whereas at present voters have seven votes to choose seven members, under SNTV they will be limited to one vote, with little or no say over which of the other candidates they would like to see elected or not. In addition, SNTV would present a logistical problem in that voters would be choosing between as many as 82 candidates. Again, such a task could quickly become laborious, and an element of random luck could enter the equation – voters simply opting for the name at the top of a long and daunting list. There would again also be the danger of not all posts being filled if votes gravitate towards popular candidates.
- (e) A third possibility for a national constituency would normally be a **proportional list system**. These are used in countries operating a nationwide constituency

such as the Netherlands and Israel. Unfortunately, it is virtually impossible to operate in a culture where no political parties operate. In the Netherlands and Israel, the vast majority of votes are cast for a party, and seats are thus allocated in strict proportion to the number of votes gained by each party. Voters thus have a limited number of choices between the parties standing for election. In Guernsey this will be impossible to implement unless candidates form parties or electoral blocs, which would enable seats to be allocated proportionately according to the number of votes each group receives.

- (f) The fourth possibility would be to use the system that the Electoral Reform Society advocates, the **Single Transferable Vote (STV)**. STV allows voters to rank candidates in order of preference, and allows seats to be allocated proportionately based on multi-member seats. It would be theoretically possible to operate STV on a nationwide constituency, but again it would be a laborious process, requiring voters to rank as many as 82 candidates in their order of preference. This is unlikely to be popular with voters.
- (g) In short therefore, a nationwide constituency system could only feasibly operate in Guernsey if one of the following conditions were met:
  - Candidates coalesced into political parties, or (at the very least) electoral blocs
  - There were fewer seats to be filled (however any more than twenty seats would make any of the above systems problematic, and a twenty-member assembly would not seem appropriate).
- (h) The Electoral Reform Society therefore recommends that the Committee consider alternative models based on the present electoral districts. The system that we believe would best represent the views of Guernsey voters is the Single Transferable Vote, based on the current seven electoral districts. Voters would be asked to elect between six and seven members for each district by ranking candidates in order of preference. Those candidates who reached the following 'quota' of required votes would be elected:
 
$$(\text{Number of votes cast}) \div (\text{Number of seats in the electoral district} + 1) + 1$$
- (i) If any candidate reaches the required quota on the basis of first preference votes (those votes ranking the candidate first), the candidate is declared elected and its surplus votes (the number of votes over and above the quota) are redistributed in proportion to the second preferences indicated by voters. Once the surpluses of all elected candidates are redistributed, the votes of the candidate with fewest votes are also redistributed according to the next preference. The process continues until all seats have been filled by candidates reaching the quota. If one seat remains to be filled and there are two candidates remaining short of the quota, the remaining candidate with the most seats takes the final seat.

- (j) The system operates successfully in Northern Ireland, the Republic of Ireland, Malta, Australia, and, from May 2007, local elections in Scotland. The Electoral Reform Society advocates it because it gives maximum power to voters, and is more representative of their views than First-Past-the-Post, which can tend to produce skewed results in favour of the 'largest minority'. If STV was based on the current electoral districts, the problems mentioned above would be alleviated, since voters would only be required to choose between 10-12 candidates each – a far more feasible prospect. STV elections to the Northern Ireland Assembly for instance elect six members per constituency, and voters choose between an average of fifteen candidates. However, STV could also easily work based on smaller electoral districts, electing between four and six members per constituency as in the Republic of Ireland. However the Committee should note that the more seats per district, the more representative the result will be. It is purely a matter of balance between proportionality and practicality – any more than seven seats to fill and the number of candidates to choose from would once again become a laborious process.

STUART STONER  
Parliamentary Officer

31<sup>st</sup> January 2007

## APPENDIX 6

## POLITICAL PARTIES

- i. This brief note on political parties is included because in several places in the principal report it is stated that the absence of political parties has the effect of reducing the choice of possible electoral systems for Guernsey. The Committee is certainly not suggesting that political parties be introduced simply to facilitate any particular electoral system. It is not the function of any parliament to engineer the foundation of a party system.
- ii. Political parties – that is groups of people who hold similar political aims and opinions who have organized, usually to contest elections so that they might form a government – have never been part of the political scene in Guernsey. From time-to-time parties have emerged but their existence has been short-lived and only very seldom have party representatives been successful in contesting seats in the States of Deliberation.
- iii. In jurisdictions which have no political parties government is, of necessity, consensual and Guernsey is no exception in this regard. Indeed this has long been held out as one of the reasons why the Island has had a sound and stable government for many years. Each and every Member of the States, whether or not a minister, is effectively a member of the government. No proposition can succeed without the consent of a majority of the Members which means that no department or committee of the States can be certain of gaining States' approval in respect of any particular proposition.
- iv. In a party system, however, the government is formed by the party securing most votes in a general election (or, if no party has secured a majority of the seats, by an alliance of parties). Members of the party are generally required to vote in accordance with party policy which will have been set out in the party's election manifesto published prior to the election. It can be argued that where there is no majority government the alliance of parties which form the government governs by consensus, but it is not fully consensual as the views of the minority who are not in government need not necessarily be taken into consideration. An alliance of parties is often necessary in jurisdictions in which a proportional representation voting system is used as it is seldom that one party alone secures a majority of the seats available.
- v. The submission from the Electoral Reform Society contains several references to the absence of a party system in Guernsey and the constraints which that places on the range of electoral systems which might be adopted. Paragraph 51<sup>19</sup> of the report notes that several of the jurisdictions listed do have party systems. One such jurisdiction is Gibraltar.

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<sup>19</sup> of the 1<sup>st</sup> Report (Billet d'État I of 2009)

- vi. In Gibraltar there are 17 seats and each elector has a maximum of 10 votes. Each political party tends to nominate ten candidates in the hope of securing 'block votes'. Independents may stand but usually find it difficult to secure sufficient votes to be elected. In the October 2007 general election the Gibraltar Social Democrats secured 10 seats, the Gibraltar Socialist Labour Party four seats and the Gibraltar Liberal Party three seats. The Progressive Democratic Party and two independents failed to obtain any seats.
- vii. In most jurisdictions which have political parties provision is made for candidates to state on the ballot paper, in addition to their names, the title of their political party or else they are permitted to display the emblem of the political party.
- viii. The presence of political parties allows more flexibility in the choice of the method of election of the members of parliament and also results in greater certainty in the delivery of policy but this is balanced in non-political party jurisdictions with the freedom of each member to vote according to conscience rather than being obliged to hold to party policy.

**MINORITY REPORT  
SUBMITTED BY DEPUTY I F RIHOY**

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

17<sup>th</sup> December 2010

Dear Sir

1. I rather regret that I find myself in the unenviable position of having to present a minority report to a report of the States Assembly and Constitution Committee, of which I am Chairman. I do so after considerable thought and only because I feel very strongly about the area of policy addressed by the report: island-wide voting.
2. Since before my election to the States of Deliberation in 1985, I have been of the opinion that Members of the States should be elected on an island-wide basis. Indeed, it was following a successful amendment proposed by me that on the 27<sup>th</sup> April, 2006, the Assembly resolved: *“To direct the [then] House Committee to undertake a comprehensive review of all practicable methods of introducing Island-wide voting for the office of People’s Deputy, and to report back to the States in sufficient time to enable the introduction of such a system with effect from the General Election to be held in 2012.”*.
3. On the 28<sup>th</sup> January, 2009, the States of Deliberation debated the States Assembly and Constitution Committee’s first report on island-wide voting – which had been submitted pursuant to Rule 12 (4) – and resolved: *“To note the Report and to direct the States Assembly and Constitution Committee to report further to the States with detailed proposals regarding the election and constitution of the States of Deliberation which will take effect from the General Election to be held in 2012.”*. In fulfilling this States Resolution, the Committee presented proposals to the June, 2010 meeting of the States of Deliberation, but on 1<sup>st</sup> July, 2010 the Assembly approved a successful sursis motiv  , the terms of which are fulfilled by this latest detailed Report submitted by the Committee and to which this minority report is attached. Although I take a different view to the majority of the Committee in respect of the propositions to be put before the Assembly, I wish to make it clear that the Committee is of one mind in believing that its Report is as thorough and as comprehensive as possible.
4. During the debate of June, 2010 it emerged that many Members of the States continued to favour some form of island-wide voting for the office of People’s

Deputy. However, I sensed then, and continue to judge now, that a majority of States Members are not prepared to support the introduction of island-wide voting for all 45 People's Deputies, which is the model of Island-wide voting favoured by three of the five members of my Committee and which accordingly the Committee is recommending to the States. My view is that a greater number of States Members, and indeed a considerable proportion of our community, may be more disposed towards introducing an element of island-wide voting, i.e. having at least some People's Deputies elected on an island-wide franchise. This would represent a form of compromise between those who wish for island-wide voting for all people's deputies and those who do not favour fully abolishing the present district-based electoral system.

5. Therefore, in this minority report I wish to propose an electoral system whereby around one-quarter of People's Deputies would be elected island-wide and about three-quarters would continue to be elected within districts. Aside from the matter of seeking a pragmatic proposal to put to the States, there is one overriding reason for my favouring an alternative scheme to that recommended by the majority of my Committee: I consider that it would be impractical, indeed possibly even unworkable, to organise an Island-wide election for all 45 People's Deputies in a little more than a year's time and in a political system which features neither political parties nor cabinet government.
6. The basics of the alternative scheme which I am proposing are set out in paragraphs 7 to 13 below. A more detailed analysis of the scheme is actually included in part ii, section vii of the Committee's Report to which this minority report is attached, although as with any form of Island-wide voting which the States may choose to introduce the precise mechanics will be the subject of further consideration as part of a pre-2012 General Election Report which the Committee is obliged to lay before the Assembly.
7. I envisage two elections being held for the following offices:
  - **10 Island Deputies; and**
  - **35 District Deputies.**
8. The 35 district-based seats would be distributed equally among the existing electoral districts, i.e. five district deputies for each of St Peter Port South, St Peter Port North, St Sampson, Vale, Castel, South-East and the West.
9. The elections for 10 island deputies and 35 District Deputies would not take place on the same day. The election for District Deputies would take place approximately one month after the election for Island Deputies. It would be possible for a candidate who stood unsuccessfully for the office of Island-wide Deputy to stand a month or so later for the office of District Deputy. Introducing restrictions to force candidates to choose to stand for one or other office would seem to me unacceptably and unnecessarily undemocratic.



10. Given that the ratio of district seats to island-wide seats would be 3.5:1, I have assumed that the candidates would likely be in a similar ratio, in which case it is possible that there might be 22 candidates in the island-wide election (for 10 seats) and 77 in the seven district elections (for a total of 35 seats). As an indicative guide, in 1994 26 candidates contested the 12 seats for the office of Conseiller, which was, of course, an island-wide election.
11. Electors would be able to cast their votes at any polling station situated in the electoral district in which they reside. The first election would be for **Island Deputies and the second for District Deputies.**
12. It is quite plain that under the proposals being put by the Committee, the traditional 'hustings' would cease to exist. 90 or 100 candidates cannot possibly participate in one 'hustings' on one platform at the same time. However, the alternative scheme which I am proposing allows traditional 'hustings' to continue, for the office of District Deputy, and in a slightly modified form (i.e. over two meetings rather than one) for the office of Island Deputy. I consider this a very significant advantage: 'hustings' are a valuable way of candidates engaging with the electorate, not least of all because they test the credentials of candidates in answering questions against each other and under a degree of pressure. One to One surgeries where the electorate can meet and discuss issues on a one to one basis could still be used during both elections.
13. Seating arrangements will be at the discretion of the President/Presiding Officer however I would recommend that all Island Deputies will sit on the top bench regardless of what position they might hold after the election of Department Ministers and Chairmen as was the position in 1991, when Presidents of major committees did not always sit on the top bench.
14. In respect of the eligibility of candidates for both offices, I envisage no need for restrictions further to those which apply already for the office of People's Deputy.
15. The scheme which I am proposing reflects my judgement that the vast majority of Guernsey people who take an interest in political matters strongly favour some form of island-wide voting, and speaks to my view that introducing an element of island-wide franchise would strengthen the legitimacy of the island's government, but it also overcomes all of the logistical problems and weaknesses which are inevitable, and essentially cannot be overcome, in a scheme in which all 45 People's Deputies are elected island-wide and at the same time.
16. I do not believe that electronic counting is a necessity with regard to this particular scheme and I have not, therefore, made any provision in that regard in the figures contained in the following paragraph.



17. I have sought advice from the Registrar-General of Electors regarding the cost of this scheme. I am informed that the estimated cost is as follows:

10 Island Deputies

General costs	£35,000	
Manifesto distribution	<u>£11,000</u>	£ 46,000

35 District Deputies

General costs	£41,000	
Manifesto postage	<u>£24,000</u>	£ <u>65,000</u>

£111,000

18. It is my intention to propose an amendment to the propositions set out in the Billet d'État. In accordance with this minority report, my amendment will propose that with effect from 2012 there should be 10 Island-wide Deputies elected for a four-year term and 35 District Deputies elected for a four-year term.
19. As the figure of £111,000 falls within the budgetary provision for elections, i.e. £120,000, the amendment which I shall be proposing will not be subject to the provisions of Rule 15 (2) of the Rules of Procedure.

Yours faithfully

I F Rihoy

The States are asked:-

VII.- Whether, after consideration of the Report dated 17<sup>th</sup> December, 2010, of the States Assembly and Constitution Committee, they are of the opinion:-

1. That the Reform (Guernsey) Law, 1948, as amended be further amended to provide that with effect from the General Election to be held in 2012 there shall be 45 Deputies elected Island-wide for a four-year term and that the candidates in Island-wide elections shall be entitled but not obliged to have their manifestos distributed at the expense of the States by means of an election publication, the cost of which will be borne by the candidates.
2. To direct the States Assembly and Constitution Committee to report to the States with detailed proposals relating to the procedure at, and conduct of, such elections.

**IN THE STATES OF THE ISLAND OF GUERNSEY  
ON THE 24<sup>TH</sup> DAY OF FEBRUARY, 2011**

(Meeting adjourned from 23rd February, 2011)

**The States resolved as follows concerning Billet d'État No III  
dated 14<sup>th</sup> January 2011**

**STATES ASSEMBLY AND CONSTITUTION COMMITTEE**

**ISLAND-WIDE VOTING – 3<sup>rd</sup> REPORT**

VII.- After consideration of the Report dated 17<sup>th</sup> December, 2010, of the States Assembly and Constitution Committee:-

1. TO NEGATIVE THE PROPOSITION that the Reform (Guernsey) Law, 1948, as amended be further amended to provide that with effect from the General Election to be held in 2012 there shall be 45 Deputies elected Island-wide for a four-year term and that the candidates in Island-wide elections shall be entitled but not obliged to have their manifestos distributed at the expense of the States by means of an election publication, the cost of which will be borne by the candidates.

**D J ROBILLIARD  
HER MAJESTY'S DEPUTY GREFFIER**

**(N.B. From the responses above, it is evident that there is no unanimity amongst those consulted regarding the prayer of the Requête.**

**What is clear is that the Requête raises more questions than answers, and potentially would result in significant resource and financial implications.**

**In the light of the many previous debates on these matters, the Policy Council considers the timing of this Requête unfortunate given: (i) the July 2015 resolutions on Island-wide voting and the potential use of a referendum to be taken forward by the States Assembly and Constitution Committee; (ii) the significant volume of important business to be debated by the States before the 2016 General Election.**

**Notwithstanding the above, 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:-

XXII.- Whether, after consideration of the Requête dated 17<sup>th</sup> November, 2015, signed by Deputy A M Wilkie and six other Members of the States, they are of the opinion:-

1. To agree that, subject to the enactment of the necessary legislation and approval in a public referendum, with effect from the General Election to be held in June 2020 38 People's Deputies shall be elected in 8 electoral districts, one of which shall comprise the entire Island (including Herm and Jethou) and shall return 7 of those People's Deputies.
2. To direct the States Assembly and Constitution Committee (and its successors) to lay before the States of Deliberation detailed proposals concerning the conduct of such a public referendum, to be held not later than 2018.
3. To direct the States Assembly and Constitution Committee (and its successors) to lay before the States detailed proposals of General Elections including an electoral district comprising the entire Island.

## REQUÊTE

### HOLOCAUST MEMORIAL

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

1. The twenty-seventh of January marks Holocaust Memorial Day in many countries around the world and has been commemorated here in Guernsey on that day.
2. The theme of the 2015 Holocaust Memorial Day was “Keeping the Memory Alive” and, as it marked the seventieth anniversary of the liberation of Auschwitz Birkenau, it was commemorated by a large service – as has been custom on previous tenth anniversaries.
3. It is important that as the memories of the occupation of Guernsey turn to history, a day to mark the Holocaust is officially recognised and that we keep the memory of the Holocaust alive in our community.
4. On the seventh of May 1998 the International Holocaust Remembrance Alliance (IHRA) was formed – the purpose of the IHRA is to ensure that education of the Holocaust is passed on to the next generation.
5. Membership of IHRA is only open to UN Sovereign States, but the UK is a founding member and Guernsey may be part of the UK delegation if it requests to be so.
6. One of the conditions for membership of IHRA is to “satisfy the IHRA that its archives dealing with the Holocaust period (1933-1950) are open for research, and that there is, or will be, academic, educational, and public examination of the country’s historical past as related to the Holocaust period.”.
7. It is understood that the UK Department for Education is drafting a new National Curriculum that will include the narrative of the Holocaust in the Channel Islands.
8. Guernsey’s participation in drafting this curriculum is imperative if we are to own our history and not have it written by others.
9. The Holocaust scarred Guernsey in different ways, specifically in the deportation of three Jewish women, Auguste Spitz, Marianne Grunfeld and Therese Steiner; the death of the Guernsey Eight including Sidney Ashcroft, Joseph Gillingham, John Ingrouille, Charles Machon, Percy Miller, Marie Ozanne and Louis Symes and the numerous prisoners of war that were set to work and died whilst building the Atlantic Wall.

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

1. To officially recognise the 27<sup>th</sup> January as Holocaust Remembrance Day in Guernsey.
2. That the Chief Minister shall write a letter to the UK Envoy on Post Holocaust Issues on behalf of the States of Guernsey seeking to join the UK delegation to the International Holocaust Remembrance Alliance.
3. For the avoidance of doubt, that the Holocaust is recognised in Guernsey as the persecution and murder of all by the hands and policies of the Nazi forces of the Second World War, including the Guernsey Eight, the three Jewish women deported to Auschwitz Birkenau and those who died in building the Atlantic Wall.
4. To direct the Education Department to engage with Her Majesty's Department for Education in relation to the curriculum on the Holocaust.
5. To direct the Education Department to undertake a teaching of the Holocaust in schools, including how the Holocaust relates to Guernsey.
6. To direct the Culture and Leisure Department (and its successors) to mark Holocaust Memorial Day annually in collaboration with the Holocaust Memorial Day Trust.

AND YOUR PETITIONERS WILL EVER PRAY  
GUERNSEY

This 17<sup>th</sup> day of November, 2015

Deputy E G Bebb  
Deputy F W Quin  
Alderney Representative S D G McKinley O.B.E.  
Deputy C J Green  
Deputy P A Sherbourne  
Deputy P A Harwood  
Deputy S A James M.B.E.

## Declaration of the Stockholm International Forum on the Holocaust

The members of the International Holocaust Remembrance Alliance are committed to the Declaration of the Stockholm International Forum on the Holocaust, which reads as follows:

1. **The Holocaust (Shoah) fundamentally** challenged the foundations of civilization. The unprecedented character of the Holocaust will always hold universal meaning. After half a century, it remains an event close enough in time that survivors can still bear witness to the horrors that engulfed the Jewish people. The terrible suffering of the many millions of other victims of the Nazis has left an indelible scar across Europe as well.
2. **The magnitude of the Holocaust**, planned and carried out by the Nazis, must be forever seared in our collective memory. The selfless sacrifices of those who defied the Nazis, and sometimes gave their own lives to protect or rescue the Holocaust's victims, must also be inscribed in our hearts. The depths of that horror, and the heights of their heroism, can be touchstones in our understanding of the human capacity for evil and for good.
3. **With humanity still scarred** by genocide, ethnic cleansing, racism, antisemitism and xenophobia, the international community shares a solemn responsibility to fight those evils. Together we must uphold the terrible truth of the Holocaust against those who deny it. We must strengthen the moral commitment of our peoples, and the political commitment of our governments, to ensure that future generations can understand the causes of the Holocaust and reflect upon its consequences.
4. **We pledge to strengthen** our efforts to promote education, remembrance and research about the Holocaust, both in those of our countries that have already done much and those that choose to join this effort.
5. **We share a commitment** to encourage the study of the Holocaust in all its dimensions. We will promote education about the Holocaust in our schools and universities, in our communities and encourage it in other institutions.
6. **We share a commitment** to commemorate the victims of the Holocaust and to honour those who stood against it. We will encourage appropriate forms of Holocaust remembrance, including an annual Day of Holocaust Remembrance, in our countries.
7. **We share a commitment** to throw light on the still obscured shadows of the Holocaust. We will take all necessary steps to facilitate the opening of archives in order to ensure that all documents bearing on the Holocaust are available to researchers.

8. **It is appropriate** that this, the first major international conference of the new millenium, declares its commitment to plant the seeds of a better future amidst the soil of a bitter past. We empathize with the victims' suffering and draw inspiration from their struggle. Our commitment must be to remember the victims who perished, respect the survivors still with us, and reaffirm humanity's common aspiration for mutual understanding and justice.

## IHRA



INTERNATIONAL HOLOCAUST REMEMBRANCE ALLIANCE

### **Membership Criteria**

#### **Membership and Application Procedure**

The IHRA consists of representatives of governments. Delegations are chaired by Ambassadors or officials of a senior rank. Non-Governmental Organizations (NGOs) are part of the delegations as experts. Experts are nominated by their country to serve on their national delegation to the IHRA.

The IHRA welcomes new member countries, on the basis of their adherence to the Stockholm Declaration on Holocaust Education, Remembrance and Research of January 28, 2000.

Acceptance into the IHRA is a process, and these are its stages:

- When a government of any UN member country expresses an interest in working with and/or within the IHRA, it will submit an official letter of application, signed by a senior governmental representative (generally either the Minister of Foreign Affairs or the Minister of Education). It will then be accepted as an Observer Country, subject to approval by the Plenary, and will participate as such in the Working Groups and the Plenary.
- The IHRA will only accept countries commonly seen as democracies (i.e. not countries with authoritarian, dictatorial, or totalitarian regimes) to full membership. However, other countries may be encouraged to develop projects in cooperation with the IHRA, or agree to such projects with local NGOs.



- When an interested government expresses its wish to advance its status beyond that of an Observer, it applies for its country to become a Liaison Country. To that effect, the interested government must submit the completed Liaison Projects - Baseline Study form to the Chair of the IHRA. The Liaison Projects - Baseline Study is circulated to the members of the IHRA over the general listserv at least four months before the plenary meeting at which the interested government seeks admission as a Liaison. The new Liaison Country will designate one or more IHRA countries with experience in IHRA work to establish liaison programs with the new candidate, provided the "lead" country or countries agree(s), and subject to approval by the Plenary. The minimum mandatory period for liaison status is one year.
- Liaison programs will include, as a minimum, two multilateral (i.e. involving more than one IHRA member country) in depth teacher-training courses, with government commitment. As is customary with IHRA projects organized by the Education Working Group, observers from IHRA countries will attend, and evaluations of the seminars will be made to the Education Working Group, which in turn will report to the Chair. The seminars will be concentrated around a core of Holocaust topics.
- A Holocaust Memorial Day (on January 27, or another date chosen by the applicant country), will be established.
- The government of the candidate country should demonstrate clear public policy commitment to Holocaust education at a senior political level. This will mean appropriate involvement of relevant government departments.
- The Chair will visit the candidate country at least once during its period of candidacy, and will receive copies of relevant correspondence of the different Working Groups with the relevant institutions of the candidate country. The Chair may disseminate reports about the activities in the candidate country over the general IHRA listserv.
- The new applicant country will satisfy the IHRA that its archives dealing with the Holocaust period (1933-1950) are open for research, and that there is or will be academic, educational, and public examination of the country's historical past as related to the Holocaust period.
- The applicant country will commit itself to pay a yearly contribution to the IHRA Fund of EUR 30,000.
- The applicant country will endorse the previous decisions of the IHRA.
- The applicant country will commit itself to contribute to the operational activities of the IHRA.
- The applicant country will commit itself to the IHRA's four Working Groups, sending two delegates to the Education Working Group, one to the Academic Working Group, one to the Memorials and Museums Working Group, and one to the Communication Working Group.
- Upon fulfillment of these conditions, the government of the candidate country will submit the completed Membership Application - Baseline Study form, at least 4

months before the Plenary at which it seeks admission. The Chair will designate a subcommittee of three member states, each of whom will be represented by a governmental delegate and by an NGO member (i.e. - six persons), who will review the application in depth. The subcommittee will invite and take into account comments by other delegations.

The following procedures will be adhered to with every future application:

- There will be a formal presentation of up to 20 minutes by the delegation of the applying government in the Plenary at which admission is sought.
- Up to 45 minutes will be set aside for questions and/or comments of concern, and answers to these by the applying delegation.
- Up to 45 minutes will be devoted to internal discussion by IHRA members, with the applicant delegation absent. Consensus on the application between the IHRA delegations will be sought. If no consensus is reached, or if the consensus is negative regarding the application, the applying government will be so informed immediately, and may be offered a continuation of the liaison relationship.
- Once a government/country is accepted, it immediately becomes an equal partner in all IHRA bodies and Working Groups.

#### **Terminology:**

##### *Observer Country:*

Country having officially declared its intention to join the IHRA (item 1 Membership and Application Procedure).

##### *Liaison Country:*

Former Observer Country in the process of becoming a Member Country (item 3 Membership and Application Procedure).

##### *Member Country:*

Country accepted as a member following the Membership and Application Procedure described above.

##### *Permanent International Partners:*

International Organizations with the status of observers. They can actively participate in the meetings of the Working Groups.

##### *Special Guest:*

Country or NGO temporarily invited by the Chair of the IHRA to participate in the meetings.

[IHRA](#)

**(N.B. In accordance with Rule 17(2) of the States Rules of Procedure of the States of Deliberation, the Policy Council has sought the views of all Departments and Committees appearing to have a particular interest in the subject matter of the Requête, in this case the Culture and Leisure Department, the Education Department and the Treasury and Resources Department.**

**The Departments have responded as follow:**

### **Culture and Leisure Department**

Thank you for your letter dated 24 November seeking the views of the Culture and Leisure Department with regards to the above Requête from Deputy Bebb. I can confirm that my Board discussed this matter at its meeting of 1<sup>st</sup> December.

Having carefully considered the Requête I can confirm that my Board was generally supportive of its aims with members fully accepting that there should be due recognition of the Holocaust on an annual basis so that its memory remains alive within the local community. It was also agreed that it would be entirely appropriate to ensure that the event is remembered in a way that provides a prominent recognition of those who had lived in Guernsey who were directly affected by the atrocities.

Having said this I am sure you will appreciate that individual members wish to reserve the right to vote as they see fit in the light of the States debate on the matter.

Deputy Mike O'Hara  
Minister

### **Education Department**

Thank you for the opportunity to respond to the Requête laid by Deputy Bebb.

1. The Education Board supports the recognition of the 27<sup>th</sup> January as Holocaust Remembrance Day in Guernsey.
2. The Education Board supports the writing of a letter to the United Kingdom envoy as outlined in the Requête.
3. The Education Board supports the definition as recorded in the Requête.
4. Whilst the Education Department could attempt to engage with Her Majesty's Department for Education in relation to the curriculum on The Holocaust, the Department has great difficulty in engaging with the Department of Education (United Kingdom / England). This would depend on the Department of Education being content to engage with us. However, we believe Dr. Gilly Carr has been consulted by the Department of Education regarding the Guernsey history of the

impact of the Holocaust and we are therefore confident that this will be accurately reflected in the curriculum in England.

5. The Education Department supports the teaching of the Holocaust in schools and we were delighted to host the Anne Frank exhibition in our schools which was also open to public viewing. However, we have concerns regarding a Requête as being the best way to amend, alter or add to the curriculum framework and the possibility of a precedent being set. These modifications can be arranged without the need for a States resolution and indeed we strongly advise that constructing the Guernsey curriculum should be a matter for the Education Board.
6. The Education Board supports the proposition to mark Holocaust Memorial Day annually in collaboration with the Holocaust Memorial Day Trust.

Deputy R W Sillars  
Minister

### **Treasury and Resources Department**

The Treasury and Resources Department notes that, contrary to the provisions of Rule 15(2)(a) of the Rules of Procedure, this Requête does not include a reference of the financial implications to the States of carrying the proposal into effect.

It is expected that any expenditure incurred in carrying out any resolutions arising from this Requête is funded by the prioritisation of existing resources by the Department(s) / Committee(s) concerned.

Gavin St. Pier  
Minister

**(N.B. For its part, the Policy Council fully supports the recognition of the 27<sup>th</sup> January as Holocaust Remembrance Day in Guernsey, and the writing of a letter to the United Kingdom envoy as outlined in the Requête.**

**However, the Policy Council shares the reservations of the Education Department regarding the appropriateness of the States being asked to determine the content of educational curricula.)**

The States are asked to decide:-

XXIII.- Whether, after consideration of the Requête dated 17<sup>th</sup> November, 2015, signed by Deputy E G Bebb and six other Members of the States, they are of the opinion:-

1. To officially recognise the 27<sup>th</sup> January as Holocaust Remembrance Day in Guernsey.
2. To agree that the Chief Minister shall write a letter to the United Kingdom Envoy on Post Holocaust Issues on behalf of the States of Guernsey seeking to join the United Kingdom delegation to the International Holocaust Remembrance Alliance.
3. To agree that, for the avoidance of doubt, the Holocaust is recognised in Guernsey as the persecution and murder of all by the hands and policies of the Nazi forces of the Second World War, including the Guernsey Eight, the three Jewish women deported to Auschwitz Birkenau and those who died in building the Atlantic Wall.
4. To direct the Education Department (and its successors) to engage with Her Majesty's Department for Education in relation to the curriculum on the Holocaust.
5. To direct the Education Department (and its successors) to undertake a teaching of the Holocaust in schools, including how the Holocaust relates to Guernsey.
6. To direct the Culture and Leisure Department (and its successors) to mark Holocaust Memorial Day annually in collaboration with the Holocaust Memorial Day Trust.