

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY

HEALTH AND SAFETY LICENSING OF CERTAIN WORK-RELATED ACTIVITIES

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled 'Health and Safety Licensing of Certain Work-Related Activities', dated 7th October 2024, they are of the opinion:

1. To agree that the Health and Safety at Work (General) (Guernsey) Ordinance, 1987 be amended to give the Committee *for* Employment & Social Security the power by regulation to license certain work-related activities involving significant hazards, risk, or public concern, and to provide for breaches of any requirements or prohibitions stipulated in any such regulations to be an offence, where appropriate, as set out in section 4 of the Policy Letter.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

The above Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1)(c) of the Rules of Procedure of the States of Deliberation and their Committees.

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The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

7th October 2024

Dear Sir

1. Executive summary

- 1.1 The Health and Safety Executive ('HSE') is a regulatory unit of the Committee for Employment & Social Security ('the Committee'), established under the Health and Safety at Work (General) (Guernsey) Ordinance, 1987¹. The Committee has mandated responsibility for advising the States on health and safety policy in Guernsey.
- 1.2 The HSE's primary function is to secure the health, safety, and welfare of people at work and to protect others from risks to health and safety from work activity. The HSE does this by applying an appropriate and proportionate mix of intervention techniques.
- 1.3 Under current legislation, the only activities that can be regulated through a form of formal licensing, and for which fees are chargeable, are the importation and storage of explosives, petroleum and pesticides, and the erection of scaffolding on or over a footpath, road or verge interacting with a public highway. For other activities, Health and Safety Inspectors rely on discretion to exercise their powers in deciding how to secure compliance with health and safety requirements based on the level of risk, and the level of confidence the inspector has in a business achieving the required standard. Regulatory monitoring of other activities is currently undertaken free of charge at the point of service, with the full cost currently borne by the taxpayer.
- 1.4 The Committee proposes that the Health and Safety at Work (General) (Guernsey) Ordinance, 1987 be amended, specifically sections 36 and 25(1), to

¹ [The Health and Safety at Work \(General\) \(Guernsey\) Ordinance, 1987.](#)

widen existing powers of the Committee to make regulations to also permit the licensing of certain work-related activities involving significant hazards, risk, or public concern arising in certain higher risk businesses and activities, and to provide for breaches of any requirements or prohibitions stipulated in any such regulations to be an offence, where appropriate.

- 1.5 Regulations made by the Committee under this proposed new power would require licensees to proactively manage risks in accordance with relevant industry good practice, and would impose conditions in relation to the operation of the relevant activity, or activities, while enabling the recovery of regulatory costs, currently borne by the taxpayer, through the charging of licence fees. The Committee considers this to be a proportionate extension of its powers.

2. Background

- 2.1 The HSE is a regulatory unit of the Committee, established under the Health and Safety at Work (General) (Guernsey) Ordinance, 1987. The Committee has mandated responsibility for advising the States in respect of health and safety policy in Guernsey.
- 2.2 The HSE's primary function is to secure the health, safety, and welfare of people at work and to protect others from risks to health and safety from work activity. The HSE is responsible for regulating work-related health and safety in Guernsey and Alderney and works in partnership with other regulators and States' Committees, particularly in relation to public safety.
- 2.3 The HSE regulates health and safety across a range of sectors and industries including major hazard sites, such as onshore gas and petroleum installations, through to more conventional sites, including quarries, farms, factories, waste management, construction, service sector, retail, hospitality, healthcare, and adventure activities. The HSE does this by applying an appropriate and proportionate mix of intervention techniques including inspection, auditing, provision of advice and support, awareness raising and, where necessary, implementing enforcement action.
- 2.4 Under current legislation, the only activities that can be regulated through a form of formal licensing, and for which fees are chargeable, are the importation and storage of explosives, petroleum and pesticides, and the erection of scaffolding on or over a footpath, road or verge interacting with a public highway. The power to license and set licence fees in relation to these activities is conferred on the HSE through the following legislation:

- Loi relative aux Explosifs [1905]²,
- Loi Relative aux Essences, huiles minerales et autres substances de la meme nature [1924],
- The Public Highways Ordinance, 1967³
- The Control of Poisonous Substances (Guernsey) Regulations, 2014⁴ made by the former Commerce and Employment Department under powers conferred on it by the Poisonous Substances (Guernsey) Law, 1994⁵.

2.5 There are currently no other formal licensing schemes in Guernsey that regulate health and safety requirements for significant hazards, risks, or public concern arising in certain higher risk businesses and activities.

2.6 Health and Safety Inspectors currently use their powers to secure compliance with the relevant legal requirements in a proportionate, consistent, and lawful manner. Inspectors have a degree of discretion in exercising their powers and in deciding how to secure compliance with health and safety requirements. This is based on the level of risk, and the level of confidence the inspector has in the business achieving the required standard. For some sectors, this involves undertaking sector specific, nationally benchmarked audits conducted by specialist qualified consultants.

2.7 In the absence of formal licensing, this discretionary use of power to secure compliance with legal requirements is carried out free of charge at the point of service, with no cost borne by the business delivering the higher risk service or activities. The cost is instead currently covered by the taxpayer through the HSE's annual budget allocation.

3. Proposed introduction of licensing of certain work-related activities

3.1 The Committee is minded to introduce a formal health and safety licensing scheme for higher risk work-related activities with the aim of providing assurance that good safety management practice is being consistently followed by relevant employers and their employees, and to recover the cost of regulating these activities from the businesses delivering them, instead of funding this from the public purse.

3.2 The Committee envisages that licensing could be applied to any higher risk work-related activities, as deemed necessary and proportionate by the Committee.

² [Loi relative aux Explosifs \[1905\]](#).

³ [The Public Highways Ordinance, 1967](#).

⁴ [The Control of Poisonous Substances \(Guernsey\) Regulations, 2014](#) (G.S.I. No. 18 of 2014).

⁵ [The Poisonous Substances \(Guernsey\) Law, 1994](#).

- 3.3 In considering how a licensing scheme could be introduced in Guernsey, a number of options have been considered:
- Option 1 - Do nothing and continue with the current model of regulation;
 - Option 2 - Amend section 36 of the Health and Safety at Work (General) (Guernsey) Ordinance, 1987 to give the Committee the power to make regulations to license certain work-related activities involving significant hazards, risk, or public concern; or
 - Option 3 - Add more general regulation making powers to the Health and Safety at Work (General) (Guernsey) Ordinance, 1987, enabling the Committee to make regulations, including, but not limited to, licensing, for work-related activities and to protect the public from the risks arising out of work activities.
- 3.4 Under Option 1, the current system would continue whereby Health and Safety Inspectors inspect business activities and investigate complaints and accidents. When poor compliance is found, compliance is achieved through a gradual approach of providing advice, enforcement notices and, on rare occasions, prosecution. Under this option, the higher standards expected from high-risk activities are only subject to licensing for explosives, petroleum, pesticides and scaffolding. The auditing that is undertaken for some higher-risk activities, provides assurance to the Committee that those activities are subject to additional scrutiny, but this falls short of the standard expected under a licensing regime, which would require licensees to proactively manage the risks to a set of industry best practices and impose conditions on the operation of those activities. Maintaining the current system would also mean that the monitoring activities undertaken by Health and Safety Inspectors would continue to be funded by the taxpayer through the HSE's annual budget allocation.
- 3.5 Under Option 2, the Committee would have the power by regulation to create new licensing schemes for work-related activities involving significant hazards, risks or public concern. This would provide the Committee with the flexibility to prioritise which work-related activities should be subject to more stringent requirements based on the needs of Guernsey rather than simply copying the UK licensing regime. This would also enable the Committee to be more responsive to changes in business and risk in Guernsey. The introduction of licensing for certain work-related activities would have the benefit of setting clear expectations and standards for those businesses undertaking those activities. This would make monitoring for compliance easier and more efficient for Health & Safety Inspectors and could make it easier for businesses to understand and meet the health and safety standards required of them. Under the current system a variety of tools and measures are used to monitor safety

requiring Health and Safety Inspectors and businesses to navigate and interpret various courses of action taking up valuable time and resources for both.

- 3.6 Under Option 3, the Committee would have broader regulation-making powers which would enable it to create new licensing schemes for any work-related activities. This differs from Option 2 by enabling standards to be set by regulation for medium and lower risk businesses, in addition to higher risk businesses, and with or without recourse to licensing to achieve good compliance. This is akin to the UK system, where the Secretary of State can make general health and safety Regulations. In Great Britain, the vast majority of health and safety requirements are imposed by regulation, rather than by Acts of Parliament, and this option would give the Committee the same powers.

4. Proposed amendment of the Health and Safety at Work (General) (Guernsey) Ordinance, 1987

- 4.1 The Committee and Chief Health and Safety Officer are of the opinion that Option 2 strikes the appropriate balance by providing a proportionate extension of the current powers under the Health and Safety at Work (General) (Guernsey) Ordinance, 1987, while maintaining political scrutiny of any use of the powers to make regulations for work-related activities involving significant hazards, risk, or public concern.

- 4.2 It is proposed that section 36 of the Health and Safety at Work (General) (Guernsey) Ordinance, 1987 be amended by Ordinance to give the Committee the power by regulation to license certain work activities involving significant hazards, risk, or public concern.

- 4.3 In connection with this, it is proposed that section 25 of the Health and Safety at Work (General) (Guernsey) Ordinance, 1987 be amended by Ordinance to provide for breaches of any requirements or prohibitions stipulated in any such regulations to be an offence in circumstances where the breach poses a significant risk to health and safety, or where the regulations otherwise specifically designate the breach as an offence. It is also proposed that such consequential and incidental legislative provision as may be necessary further to the amendments to sections 25 and 36 of the 1987 Ordinance should be included in the proposed amending Ordinance.

- 4.4 As previously noted, subject to States approval of the Committee's proposition, the Committee intends to recover the cost of regulating such activities by charging operators a licence fee. These costs are currently borne by the taxpayer. Fees can be set by the Committee by order under the existing provisions of the Health and Safety (Fees) (Guernsey) Law, 1993. For the avoidance of doubt, there would be no intention to make a profit from fees charged; the aim is simply to recover the cost of regulation.

4.5 Subject to States approval of the propositions in this Policy Letter, it is planned that consultation with relevant stakeholders would be conducted when identifying the need for, and in developing proposals for licensing schemes for specific work-related activities involving significant hazards, risk, or public concern.

5. Compliance with Rule 4 of the Rules of Procedure

5.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.

5.2 In accordance with Rule 4(1)(a), the Committee confirms that its proposal to amend the Health and Safety at Work (General) (Guernsey) Ordinance, 1987 to enable the licensing of certain work-related activities involving significant hazards, risk, or public concern contributes to the Government Work Plan strategic portfolio to '*maintain public service resilience, security & governance*' which includes the aim to ensure '*sustainable finances*'. The proposal also aligns with the wider aims of the strategic portfolios which are intended to ensure that the States' '*limited resources are directed to deliver a safe, prosperous and sustainable future*'⁶.

5.3 In accordance with Rule 4(1)(b), the Committee confirms that it has not consulted with any States Committees or other stakeholders in the preparation of the propositions. Consultation will take place with relevant stakeholders when considering the need for, and in developing proposals for, any licensing schemes for specific work-related activities involving significant hazards, risk, or public concern.

5.4 In accordance with Rule 4(1)(c), the Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.

5.5 In accordance with Rule 4(1)(d), it should be noted that it is envisaged that the introduction of licensing schemes will result in modest savings to the States of Guernsey through the recovery of reasonable costs.

5.6 In accordance with Rule 4(2)(a), it is confirmed that the Propositions relate to the responsibility of the Committee to advise the States and develop and implement policies on matters relating to its purpose, including health and safety in the workplace.

⁶ [Government Work Plan 2023-25: a mid-term reset Investing in Islanders our Island and our Future, Billet d'État XI, 2023, pg. 10.](#)

5.7 In accordance with Rule 4(2)(b), it is confirmed that the Propositions have the unanimous support of the Committee.

Yours faithfully

P J Roffey

President

H L de Sausmarez

Vice-President

T L Bury

S J Falla

L C Queripel

M R Thompson

Non-States Member

R J Le Brun

Non-States Member