



**II
2019**

BILLET D'ÉTAT

WEDNESDAY, 30th JANUARY 2019

THE BUSINESS OF THE MEETING

1. Committee *for* Home Affairs - Data Protection: Data Sharing with the United Kingdom, P.2019/4
2. Policy & Resources Committee – Extending the Bailiwick of Guernsey's Territorial Seas, P.2019/5

BILLET D'ÉTAT

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I hereby give notice, pursuant to Rule 2(4) of the Rules of Procedure, that at the Meeting of the States of Deliberation to be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY**, the **30th January, 2019** at **9.30 a.m.**, the items listed in this Billet d'État are submitted for debate.

R. J. COLLAS
Bailiff and Presiding Officer

The Royal Court House
Guernsey

11th January, 2019

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* HOME AFFAIRS

DATA PROTECTION: DATA SHARING WITH THE UNITED KINGDOM

The States are asked to decide:-

Whether, after consideration of the policy letter entitled 'Data Protection: Data Sharing with the United Kingdom' dated 21st December 2018, they are of the opinion:-

1. To approve the UK as an authorised jurisdiction for the purposes of the Data Protection (Bailiwick of Guernsey) Law, 2017; and
2. To approve the Ordinance entitled "The Data Protection (Authorised Jurisdiction) (Bailiwick of Guernsey) Ordinance, 2019".

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

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR HOME AFFAIRS

DATA PROTECTION: DATA SHARING WITH THE UNITED KINGDOM

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

21st December, 2018

Dear Sir

1. Executive Summary

- 1.1. The purpose of this Policy Letter is to request the approval of the States of Deliberation in respect of matters in the attached draft Ordinance, namely "The Data Protection (Authorised Jurisdiction) (Bailiwick of Guernsey) Ordinance, 2019". Approval of the draft Ordinance will ensure that the status quo regarding the continued free-flow of data between the Bailiwick of Guernsey and the United Kingdom ("UK") is maintained in the event of a no-deal Brexit from the European Union ("EU").

2. Background

- 2.1. The General Data Protection Regulation ("GDPR") is an EU regulation which governs the processing and free movement of personal data within the EU and approved third countries. The Bailiwick of Guernsey is not an EU Member State, but is deemed to operate with data protection 'adequacy', and therefore it is acknowledged as an "authorised jurisdiction". Where personal data is intended to be transferred to an "unauthorised jurisdiction", the GDPR imposes the need for appropriate safeguards to be put in place before any transfer of personal data takes place.
- 2.2. The GDPR includes a principle of "extraterritoriality"; this means that the GDPR extends to the processing of personal data of any EU citizen regardless of where the processing activity takes place. The Islands' global and local businesses routinely process the data of EU citizens and therefore the need to ensure that the Bailiwick of Guernsey operates with an equivalent level of data protection provision to that of the EU is of a paramount importance.

- 2.3. As such, in response to the GDPR, the States of Guernsey drafted and enacted the Data Protection (Bailiwick of Guernsey) Law, 2017 (“DPL”). The DPL provides the same standards of protection of personal data as the GDPR and ensures that Bailiwick residents are afforded the same level of privacy rights as EU citizens. In addition, the DPL supports the local economy by enabling the free movement of personal data with EU Member States.

3. Adequacy

- 3.1. ‘Adequacy’ enables third countries to apply to the European Commission (“the Commission”) for recognition that their own data protection regime provides protection of personal data that is ‘essentially equivalent’ to that found within the EU. Where a third country achieves ‘adequacy’ status from the Commission, personal data can be transferred to that third country without the requirement for any additional safeguards as specified within the GDPR.
- 3.2. The Bailiwick of Guernsey currently has ‘adequacy’ status under the previous EU Data Protection Directive (“the Directive”), but legislative and regulatory changes were required locally to maintain this status under the GDPR. Existing adequacy decisions made under the Directive will remain in force until they are amended, replaced or repealed. It is expected that a review of the Bailiwick of Guernsey’s adequacy decision will be undertaken by the Commission by 2020.

4. Data Sharing

- 4.1. The Bailiwick of Guernsey is home to a number of global businesses which rely heavily on the unrestricted flow of personal data to and from EU Member States; this is particularly crucial for the financial services sector. It is also important to highlight that the UK is currently the Islands’ biggest data sharing partner and therefore it is imperative that an unrestricted data flow between the Bailiwick of Guernsey and the UK is maintained.
- 4.2. In addition to private sector requirements, the Bailiwick of Guernsey’s public authorities also routinely share data with UK Government Agencies in crucial areas such as Policing, Security, Health Care and Education. It is of the utmost importance that public authorities can continue to share data with the UK for intelligence and security purposes.
- 4.3. The need to safeguard the Islands’ current data sharing practices is a clear objective and this is reflected in the ‘Future Guernsey – Policy & Resource Plan Phase One’ (approved by the States of Deliberation on 16th November 2016) and ties in to two of the four themes; ‘Our Quality of Life – safe and secure place to live’ and ‘Our Economy – strong, sustainable and growing’.

5. UK Withdrawal Agreement

- 5.1. The draft agreement on the withdrawal of the United Kingdom and Northern Island from the European Union (published on 14th November 2018) states that:

“Union law on the protection of personal data shall apply in the United Kingdom in respect of the processing of personal data of data subjects outside the United Kingdom, provided that the personal data:

(a) Were processed under Union law in the United Kingdom before the end of the transition period; or

(b) Are processed in the United Kingdom after the end of the transition period on the basis of this Agreement.”

- 5.2. The UK Department for Culture, Media & Sport (“UK DCMS”) has confirmed that the UK remains committed to a high level of data protection standard and regulation, and that European Union law (including GDPR) will remain in force in the UK until the end of the transition period (December 2020).
- 5.3. As such, in the event that the withdrawal treaty is agreed by the House of Commons, the Bailiwick of Guernsey will be in a position to continue to share data with the UK, until the end of the transition period, without the need for additional legislative provision or other remedial action.

6. Implications of a no-deal Brexit

- 6.1. In the event of a no-deal Brexit, the UK would become a third country and EU rules governing the transfer of personal data to third countries would apply. The potential ramifications of a ‘no deal’ could include the prevention of the free flow of personal data to and from the UK by those jurisdictions operating under the umbrella of the GDPR.
- 6.2. The UK DCMS has advised that, in the event of a ‘no-deal’, the UK is ready to begin discussions with the aim of obtaining an adequacy decision from the European Commission. However, in order to ensure the continual free flow of personal data to and from the UK, the Bailiwick of Guernsey must be prepared with alternate provisions should the UK fail to immediately obtain an adequacy decision from the European Commission and also fail to agree a suitable transition period in the interim of continued adequacy negotiations.
- 6.3. In order to prepare appropriately for the potential implications of a ‘no-deal’, there are two plausible solutions for the Bailiwick of Guernsey:

- i. Utilise existing provisions located within the DPL and GDPR for the transfer of data to third countries; or
 - ii. Nominate the UK as an “authorised jurisdiction” by Ordinance for a designated period.
- 6.4. In relation to option one (above), the DPL and GDPR includes a number of provisions which allow for the transfer of personal data to “unauthorised jurisdictions”. These provisions include: transfers on the basis of available safeguards that are in place, the approval of binding corporate rules, the use of standard data protection clauses and the use of approved data protection codes/mechanisms.
- 6.5. However, the provisions located within the DPL and GDPR are most appropriately utilised for specific processing activities or for processing within businesses that are located across multiple jurisdictions. Arguably, the provisions are not intended to facilitate general data sharing to and from a jurisdiction in its entirety.
- 6.6. In addition, the practical implications of putting in place any of the above provisions are significant and would represent a considerable change from the status quo. The provisions would not only place an administrative burden on the public sector, but also the private sector, which could be prohibitive for some of the Islands’ businesses. These provisions are not often utilised across the Bailiwick, and therefore a transition period would be required in order to ensure that the Islands’ private sector and public authorities are able to put the provisions in place.
- 6.7. In relation to option two (above), the DPL contains provisions that allow the States of Deliberation to make various arrangements by Ordinance. As such, and in the event of a ‘no-deal’, the States would by Ordinance designate the UK as an “authorised jurisdiction” for a period of time whilst the UK continued to address the implications of a no-deal Brexit from a data protection perspective.
- 6.8. This provides a simple alternative which would allow the Bailiwick of Guernsey to continue to share personal data with the UK and maintain the status quo until the Ordinance is no longer in place (see paragraph below). As a designated jurisdiction under an Ordinance the UK would be an "authorised jurisdiction" for the purposes of section 111(1) of the Data Protection (Bailiwick of Guernsey) Law, 2017. Accordingly, this definition would also extend to the Data Protection (Law Enforcement and Related Matters) (Bailiwick of Guernsey) Law, 2018.

- 6.9. The decision to nominate the UK as an “authorised jurisdiction” in the event of a ‘no-deal’ could affect the current adequacy status that the Bailiwick has in relation to data protection provision. The Bailiwick’s adequacy decision is due to be reviewed by the European Commission by 2020. Therefore, in order to reduce any potential risk to the Bailiwick of Guernsey’s adequacy, the draft Ordinance contains a “sunset clause” meaning that it would cease to have effect on a designated date.

7. Consultation

- 7.1. As a result of the tight timeline associated with Brexit work-streams, and the need to ensure that data sharing provisions remain in place, there has been and continues to be consultation with the following:
- a) the Data Protection Authority;
 - b) the Policy & Finance Committee of the States of Alderney; and
 - c) the Policy & Performance Committee of the Chief Pleas of Sark.

8. Conclusions

- 8.1. It is proposed that the Assembly approve the UK as an authorised jurisdiction for the purposes of the Data Protection (Bailiwick of Guernsey) Law, 2017 and consequently approve the draft Ordinance entitled “The Data Protection (Authorised Jurisdiction) (Bailiwick of Guernsey) Ordinance, 2019”. This will maintain the status quo regarding the continued free-flow of data between the Bailiwick of Guernsey and the UK in the event of a no-deal Brexit from the EU.
- 8.2. In the event that the UK achieves adequacy before the end of the “sunset clause”, the draft Ordinance would be repealed. Additionally, in the event that the UK does not achieve adequacy following assessment from the Commission, the draft Ordinance would also be repealed. Therefore, should the UK be assessed in terms of its data protection adequacy prior to the lapse of the sunset clause, the draft Ordinance would be repealed despite the outcome.
- 8.3. In the event that the withdrawal treaty is agreed by the House of Commons, the draft Ordinance would not be required.

9. Compliance with Rule 4

- 9.1. 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.

- 9.2. In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 9.3. In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Committee.
- 9.4. In accordance with Rule 4(5), the Propositions relate to the duties of the Committee to advise the States and to develop and implement policies on matters relating to its purpose, including data protection.
- 9.5. Also in accordance with Rule 4(5), the Committee has consulted as detailed in paragraph 7 of this Policy Letter.

Yours faithfully

M M Lowe
President

R G Prow
Vice-President

R H Graham
M P Leadbeater
V S Oliver

The Data Protection (Authorised Jurisdiction) (Bailiwick of Guernsey) Ordinance, 2019

THE STATES, in exercise of the powers conferred on them by sections 108 and 111(1) of the Data Protection (Bailiwick of Guernsey) Law, 2017¹ and following consultation with the Policy and Finance Committee of the States of Alderney, the Policy and Performance Committee of the Chief Pleas of Sark and the Data Protection Authority, hereby order:-

The United Kingdom to be a designated and authorised jurisdiction.

1. (1) The United Kingdom is designated for the purposes of the definition of "**designated jurisdiction**" in section 111(1) of the Data Protection (Bailiwick of Guernsey) Law, 2017.

(2) Accordingly, the United Kingdom is an authorised jurisdiction under both the Data Protection (Bailiwick of Guernsey) Law, 2017 and the Data Protection (Law Enforcement and Related Matters) (Bailiwick of Guernsey) Law, 2018².

Citation.

2. This Ordinance may be cited as the Data Protection (Authorised Jurisdiction) (Bailiwick of Guernsey) Ordinance, 2019.

¹ Order in Council No. VI of 2018; as amended by Order in Council No. IV of 2018; Ordinance No. X of 2018 and G.S.I. No. 21 of 2018.

² Ordinance No. XI of 2018; as amended by Order in Council No. IV of 2018.

Commencement.

3. Subject to section 4, this Ordinance shall come into force on exit day, and for this purpose "**exit day**" has the meaning given by section 12(1) of the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018³.

Expiry.

4. This Ordinance expires at the close of the 31st December, 2020.

³ Order in Council No. * of 2019.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

EXTENDING THE BAILIWICK OF GUERNSEY'S TERRITORIAL SEAS

The States are asked to decide:-

Whether, after consideration of the Policy Letter dated 10th January, 2019, of the Policy & Resources Committee, they are of the opinion:-

1. To agree that Guernsey's territorial sea should extend, in accordance with international law, up to 12 nautical miles from the relevant baselines (but not beyond any appropriate median lines, where relevant).
2. To direct the Policy & Resources Committee (following corresponding decisions by the States of Alderney and the Chief Pleas of Sark in respect of their own territorial seas) to send a formal request to the UK government that an Order in Council be made under the Territorial Sea Act 1987 to extend the territorial seas of the Bailiwick of Guernsey up to 12 nautical miles from the relevant baselines (but not beyond any appropriate median lines, where relevant) in accordance with international law.
3. To note that the territorial seas may be extended whether or not the maritime boundaries between Guernsey, Alderney and Sark or between the Bailiwick of Guernsey and France or between the Bailiwick of Guernsey and the Bailiwick of Jersey have already been agreed.
4. To delegate authority to the Policy & Resources Committee to negotiate and agree, with the States of Alderney and the Chief Pleas of Sark, the co-ordinates to define the maritime boundaries (median lines) between Guernsey and Alderney and Sark.
5. To delegate authority to the Policy & Resources Committee (in conjunction with the States of Alderney and the Chief Pleas of Sark) to work with the UK government to negotiate and agree the co-ordinates where necessary to define the maritime boundary between the Bailiwick of Guernsey and France and between the Bailiwick of Guernsey and the Bailiwick of Jersey.
6. To agree that, following extension of the territorial seas of the Bailiwick, legislative and administrative measures are implemented and adopted in order to ensure that the Bailiwick fisheries management regime remains the same as

it was before extension until any new regime is subsequently agreed between the Bailiwick authorities.

7. To agree that, following or upon extension of the territorial seas of the Bailiwick, any necessary legislation to give full effect in domestic law to the extension and any consequential amendments to extant Bailiwick legislation, such as the Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012, that may be necessary is enacted.
8. To direct the Policy & Resources Committee to establish whether a transfer of Guernsey's foreshore and seabed from the Crown (so far as the same are vested in the Crown) to the States or another suitable person or entity can be agreed in principle, and –
 - (a) if agreed in principle –
 - (i) to identify a suitable person or entity in which title to and rights in the foreshore and seabed surrounding Guernsey might most appropriately be vested,
 - (ii) to negotiate the terms and conditions of transfer, and
 - (iii) to report back to the States with proposals enabling the States to approve any such transfer and the identity of the transferee, or
 - (b) if not agreed in principle –
 - (i) to report any failure to agree to the States, and
 - (ii) to make recommendations as to any further actions or measures that might need to be taken to enable an agreement to be reached.
9. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

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

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

EXTENDING THE BAILIWICK OF GUERNSEY'S TERRITORIAL SEAS

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

10th January, 2019

Dear Sir

1 Executive summary

- 1.1 Guernsey, Alderney and Sark each have a territorial sea which extends to 3 nautical miles ('nm') from the baselines of the islands. This gives each island certain rights and responsibilities in its 0-3 nm areas.
- 1.2 Under the international law of the sea, any coastal state may claim a territorial sea up to a 12 nm limit. Extending the Bailiwick's territorial seas to the 12 nm limit would give the three jurisdictions of the Bailiwick significantly more rights and control in the 3 to 12 nm area, without assuming significant additional liabilities or obligations. It would bring the Bailiwick in line with international norms, and would give it the same breadth of territorial sea as the UK, Jersey and the Isle of Man.
- 1.3 The Policy & Resources Committee ('the Committee') recommends the States of Deliberation to approve the extension of Guernsey's territorial sea to 12 nm. Following consideration and approval of corresponding propositions in Guernsey, Alderney and Sark, the Committee intends to approach the UK government to ask it to make the relevant declaration of extension of the Bailiwick's territorial seas (in effect, the making of a UK Order in Council under the Territorial Sea Act 1987).
- 1.4 Those parts of the boundaries at the edge of any extended Bailiwick territorial seas bordering French and Jersey territorial seas and between the three Bailiwick jurisdictions' territorial seas would need to be defined formally by way of agreement (co-ordinates of individual points along the boundary lines). This, for example, will ensure that precise limits of legislative competence are clear,

but could follow the overall extension by any UK Order in Council, as could agreeing any combined or complementary management plans.

- 1.5 The Committee also recommends the States to direct further work on the possibility of the transfer of rights over the foreshore and seabed from the Crown to the States of Guernsey (or the public or people of Guernsey). The Committee intends to work with the States of Alderney and the Chief Pleas of Sark in regard to issues arising in connection with ownership of the foreshore and seabed surrounding the islands of the Bailiwick where there are common interests. This is a lower priority than the extension of territorial seas and can take place afterwards.

2 Proposal to extend territorial seas to 12 nautical miles

- 2.1 The territorial seas of the Bailiwick of Guernsey currently extend to 3 nm from the relevant Bailiwick low water baselines¹. This is in accordance with the maximum limit previously recognised under international law. It is now possible for the territorial seas to extend up to² 12 nm in accordance with the current international law. As a result, most jurisdictions have claimed a 12 nm limit. Where relevant, a median line will be established between the extended territorial seas of the Bailiwick and those of neighbouring jurisdictions (Jersey and France) in accordance with international law. It is possible to define and agree the precise limits (by co-ordinates of individual points along the boundary lines) following extension of the territorial seas.
- 2.2 A map showing the existing 3 nm limit for the Bailiwick's territorial seas and the proposed 12 nm limit is included below (Figure 1 - Bailiwick of Guernsey maritime boundaries. The map is illustrative not definitive).
- 2.3 A territorial sea is a belt or band of sea around a coastal state³. The state has sovereignty (including the right to legislate) over that area of sea⁴. However, foreign vessels have the right of innocent passage⁵ through any territorial sea. The maximum breadth of any territorial sea is 12 nm from the baseline.
- 2.4 The 3 to 12 nm area around each jurisdiction of the Bailiwick is regulated for a

¹ The baseline is (generally) the low water line along the coast.

² There are circumstances when the territorial sea can extend more than 12 nm from the low-water baselines of the mainland or island.

³ As defined in the United Nations Convention on the Law of the Sea, 1982 (which came into force in 1994; for the UK and the Bailiwick of Guernsey it came into force on 24 August 1997).

⁴ This includes the seabed and subsoil, the water column and the air space over it.

⁵ The right of innocent passage does not include a right to fly over the territorial sea without permission.

number of purposes (including in particular for fisheries management purposes) via various jurisdictions and powers exercisable by the Bailiwick authorities as coastal state. The sea bed (and subsoil) in that area is the continental shelf appertaining to the Bailiwick⁶. The water is high seas⁷. There are international agreements relating to various matters, including fisheries management, search and rescue, shipping management and pollution control.

- 2.5 The UK, Jersey and the Isle of Man all have territorial seas that extend to 12 nm. The UK extended its territorial sea from 3 to 12 nm in 1987, the Isle of Man in 1991 and Jersey in 1997. This is in accordance with the Territorial Sea Act 1987 which applies directly to the UK and has been extended by Order in Council to Jersey and the Isle of Man. Whilst part of the Act has been extended to the Bailiwick⁸, it will be necessary for further provisions of the Act to be extended with suitable modifications to extend the territorial seas of the Bailiwick by a UK Order in Council at the request of Guernsey, Alderney and Sark.
- 2.6 There are a number of benefits in extending the territorial seas (as outlined in Table 1 below). It would extend sovereignty outwards to the 12 nm limit (or the median line as appropriate) and, amongst other things, thus provide advantages for law enforcement and environmental and shipping management purposes. It would bring the Bailiwick in line with international norms, and would give it the same breadth of territorial sea as the UK, Jersey and the Isle of Man.
- 2.7 Each legislature within the Bailiwick will maintain its existing competence in its own wider territorial area. Guernsey's competence in the Bailiwick's wider territorial sea will also be extended for certain purposes. For example, its power to enact Bailiwick-wide criminal justice legislation will be exercisable throughout the extended 12 nm mile limit for the entire Bailiwick.
- 2.8 The boundaries between the three Bailiwick jurisdictions' territorial seas (median lines) would need to be defined formally by way of agreement (coordinates of individual points along the boundary lines). This, for example, will ensure that precise limits of legislative competence are clear, but could follow the overall extension by any UK Order in Council, as could agreeing any combined or complementary management plans.

⁶ The continental shelf is the seabed and subsoil and not simply the rock and the rock surface.

⁷ On the high seas, foreign (in this case non-British) vessels enjoy 'freedom of navigation' (as in Part VII of UNCLOS). This is a more comprehensive freedom than the 'right of innocent passage' which applies to foreign vessels in a territorial sea.

⁸ See the Territorial Sea Act 1987 (Guernsey) Order 2014 (2014 No. 1105).

- 2.9 The UK's withdrawal from the EU and the UK's decision to withdraw from the London Fisheries Convention⁹ both potentially impact the arrangements for fishing. They also mean that there is added impetus to extend the territorial seas. Amongst other things, the extension of the territorial seas to 12 nm would provide greater certainty for the implementation by the Bailiwick's legislatures of suitable measures intended to manage and conserve Bailiwick fish stocks. It would also provide greater powers to take action for incidents or potential incidents of marine pollution or wrecks in the 3-12 nm area.
- 2.10 The islands of the Bailiwick already have certain rights and responsibilities in the 3-12 nm zone. Extending the Bailiwick's territorial seas to the 12 nm limit would give the islands significantly more rights and control in that area, without assuming significant additional liabilities or obligations.
- 2.11 Further background to the issue and relevant considerations relating to the extension of the territorial seas are set out in the Annex to the Policy Letter.
- 2.12 In the circumstances, the Committee recommends that a request should be made by the Committee to the UK authorities to arrange for extension of the territorial seas of the Bailiwick to 12 nm, subject to Alderney and Sark's agreement to extend their own territorial seas.
- 2.13 The Law Officers have advised that whilst any extension will be given legal effect via an Order in Council made under the relevant Act of Parliament (the Territorial Sea Act 1987), it is likely that some consequential amendments will need to be made to Bailiwick legislation enacted by the Bailiwick legislatures. In particular there are provisions of the Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012 and Ordinances made under the Law which will need to be reviewed and, following consultation with Alderney and Sark, amended accordingly. For example in the Law, there is a definition of the territorial seas adjacent to Alderney and Sark which has a specific reference to a limit of 3 miles and it appears likely that that reference will need to be amended.

⁹ The London Fisheries Convention 1964 applies to the 6-12 nm fishing zone around the Bailiwick of Guernsey.

Table 1 – Potential outcomes of extending the Bailiwick’s territorial seas from 3 to 12 nm

	Advantages	Disadvantages	Other
General	Simplify and clarify status of 3-12 nm area around the Bailiwick; Very few or no extra responsibilities, therefore minimal additional costs		Status of 0-3 nm area unaffected
Legislative powers, rights and responsibilities	Greater control over activities in 3-12 nm – local decision making and legislative competence; No discontinuities between areas of the Bailiwick’s territorial seas		In general, automatic extension of applicable Bailiwick legislation (and relevant international conventions) to 12 nm limit
Shipping and maritime traffic	Possibility to control movements in 3-12 nm (e.g. nuclear/hazardous cargo); Foreign ships can still exercise innocent passage in 3-12 nm (but not ‘freedom of navigation’)		Shipping lanes in Channel – existing management arrangements continue (Cross Jobourg) Existing inshore traffic zone (ITZ) unaffected
Search and rescue (SAR)	Possibility for additional legal powers in 3-12 nm		Existing SAR regional operational arrangements unaffected (Mancheplan)
Policing and law enforcement	Powers in the wider area; No discontinuities between areas of the Bailiwick’s territorial seas; Can intervene earlier/further from shore	Possible perceived need for more resources, but manage on risk-based approach; Responsible for investigating deaths in wider area	Clarifies status of law enforcement action taken in 3-12 nm
Fishing/fisheries	Better fisheries management and control over access to fishing grounds in 3-12 nm area		Opportunity to work as Bailiwick to manage fish stocks and fisheries access

	Advantages	Disadvantages	Other
Environmental protection	Enhanced powers to protect environment and reduce marine pollution in 3-12 nm area; Marine plans (to protect habitats and species) can extend over wider area	Pollution risk mitigation or clear up costs – potential reputational risk	Existence of any pollution risk does not change (risk could reduce due to extra powers); Existing pollution plans unaffected
Hurd Deep and other disused munitions sites	Opportunity to control/restrict activity in vicinity of sites	Risk of negative perception because of historic dumping (potential reputational risk)	Sites exist regardless of legal status of waters; Sites already on Bailiwick's continental shelf; Does not alter which parties dumped historically (UK/Belgium)
Shipwrecks	Managing wrecks 3-12 nm (protection/removal); Reclaim certain costs through Nairobi Wreck Convention; Possible rights to valuable cargoes of wrecks	More related administrative activity under Wreck & Salvage Law	More wrecks in larger area (historic and, potentially, future); HMS AFFRAY – continues to be protected site
Hydrography	Extending civil hydrographic programme to 12 nm would promote maritime safety	Careful prioritisation of survey work will be required to manage costs	Future surveys in Bailiwick's civil hydrography programme are likely to be prioritised on risk-based approach (0-3 nm more significant for depths, rocks etc); Need to maintain good working relationship with UKHO as primary charting authority
Infrastructure	Greater controls/protection for cables (power and communications) and renewable energy sites (including through licensing) in 3-12 nm area; Possible opportunities to exploit mineral rights in future	Possibility of more (or more complicated) FEPA licence applications as larger area	Consider whether existing exemptions for licensing requirements are appropriate for the extended area

	Advantages	Disadvantages	Other
International norms	General international standard is 12 nm territorial sea – contributes to development of Bailiwick's international identity		Same breadth of territorial sea as UK, Jersey & Isle of Man; in line with international norms

3 Outline implementation plan

Timing

- 3.1 The Policy & Resources Committee stated in Phase Two of the Policy & Resource Plan (as in paragraphs 7.8 and 7.9) that it intended to pursue negotiations with a view to establishing extended territorial seas before 2020. However, it is actually the Committee's ambition to achieve it before the UK's withdrawal from the EU takes effect (March 2019) and before the UK government's decision to withdraw from the London Fisheries Convention takes effect (July 2019). This compresses the timescales to complete the work.

Resources

- 3.2 There are no direct capital costs incurred in extending the Bailiwick's territorial seas (no area will be purchased and no additional physical structures will be required). The negotiations with other parties to agree boundaries can be covered by existing external relations resources.
- 3.3 The extension of the territorial seas will not increase the number and type of responsibilities but it will, self-evidently, mean that a larger area has to be managed by the Bailiwick's authorities. For the Bailiwick, the area involved would increase from 380 square miles to 1400 square miles (from 290 square nautical miles to 1050 square nautical miles) (all figures approximate). Consequently, it will be crucial to prioritise the resources used to manage the enlarged area (0-12 nm)¹⁰.
- 3.4 There should be advantages to being able to intercept any potentially illegal activity or deleterious substance earlier and further out from the coastlines of the islands (including the potential for similar or lower costs). Any legislation which includes provisions for recovery of costs or fines will apply to the larger area. Resources for law enforcement, shipping management, pollution management, fisheries management etc would continue to be prioritised on a risk-based approach and be responsive to need and circumstances.
- 3.5 There is a disused ammunition and low grade radioactive waste dumping site at the Hurd Deep (within the larger area), but there are not considered to be extra responsibilities and liabilities (and related costs) for such sites. Indeed, the extended territorial sea would allow for greater powers to restrict activity in these areas to reduce risks that might otherwise be caused by any disturbance.

¹⁰ The Bailiwick's sea fisheries patrols already cover the area to 12 nm as it is currently within British fishery limits. Similarly, the Bailiwick already has responsibilities for search and rescue and pollution incidents in the area to 12 nm.

Next steps

- 3.6 The next steps to extend the territorial seas for the Bailiwick are:
- Approval from each of the States of Guernsey, States of Alderney and Chief Pleas of Sark to extend their own territorial seas, noting that an approach is to be made to the UK government by all three together
 - Letter from the President, Policy & Resources Committee, on behalf of the three jurisdictions (Guernsey, Alderney, Sark) to the Foreign & Commonwealth Office requesting the making of the relevant Order in Council
 - UK government to make an Order in Council under the UK's Territorial Sea Act 1987 to extend the territorial sea of the Bailiwick of Guernsey
 - Definition of territorial sea boundaries (median lines) within the Bailiwick (as in paragraph 2.8)
 - Definition and delimitation of territorial sea boundary with France (as in paragraphs 2.1 and 6.10)
 - Definition of territorial sea boundary with Jersey (as in paragraphs 2.1 and 6.8)
 - Enactment of any necessary domestic legislation to give full effect in domestic law to the extension and any consequential amendments to extant Bailiwick legislation, such as the Sea Fish Licensing (Bailiwick of Guernsey), 2012, that may be necessary.

4 Foreshore and seabed surrounding Guernsey, Alderney and Sark

- 4.1 This report focuses on the proposal to extend the territorial sea to 12 nm. In an ideal world, Guernsey would declare an exclusive economic zone (EEZ) immediately adjacent to its extended territorial seas in order to gain (limited) control over a larger area but current circumstances hinder this.
- 4.2 There is also the matter of ownership of the foreshore and seabed of the territorial sea after extension to 12 nm. Insofar as Guernsey is concerned ownership of the majority of the foreshore and the seabed of the territorial sea surrounding Guernsey is vested in the Crown. This is different from the situation in the Isle of Man and Jersey for example where, in the case of the Isle of Man, ownership of the seabed is vested in the Isle of Man government and, in the case of Jersey, ownership of both the foreshore and the seabed is now vested in the people of Jersey (as represented by Her Majesty's Attorney General for Jersey).
- 4.3 The Committee has noted the position relating to ownership of the foreshore and seabed of the territorial seas adjacent to the Isle of Man and Jersey and takes the view that there are advantages in securing a transfer in the ownership of Guernsey's foreshore and seabed. In particular, the Committee believes it

would be appropriate to negotiate with the Crown in order to agree, if possible, a transfer of the Crown's title to and rights in the foreshore and seabed surrounding Guernsey to an appropriate transferee, such as the "people of Guernsey". It is understood that both Alderney and Sark may wish to enter into similar negotiations in relation to those parts of the seabed of the territorial seas adjacent to those Islands that may be in Crown ownership. If successful, this would involve the transfer of rights from the Crown in right of the islands of the Bailiwick directly to Guernsey, Alderney or Sark as the case may be. It would give the islands of the Bailiwick advantages including more direct control and faster decision-making for developments on the seabed.

- 4.4 Currently, the seabed from 0 to 3 nm is the seabed of the territorial sea. The seabed from 3 to 12 nm is the continental shelf. Consequently, according to international law, there are more extensive rights exercisable in the 0-3 nm area than in the 3-12 nm area. For Guernsey the rights over the majority of the foreshore and all the seabed are vested in the Crown in right of Guernsey. For Alderney, the rights over the foreshore and seabed to 3 nm are vested in the States of Alderney¹¹. Sark's foreshore is owned by the Seigneur pursuant to the terms by which the fief was granted by the Crown in 1565. The rights in the seabed of the extended territorial sea (3-12 nm) will vest in the Crown in right of the islands of the Bailiwick.
- 4.5 It is intended that transfer of rights in the foreshore and seabed will be considered and requested from the Crown as the next step. It is not intended to discuss it prior to extension of the territorial sea as it would slow the process to extend.

5 Fisheries

- 5.1 The extension of territorial seas will have an impact on existing legislation relating to fisheries management, because some controls which currently apply in the 0-3 nm limits around each of the islands of the Bailiwick would automatically extend out to 12 nm upon extension. If so, this would have an impact on local industry, as certain controls and restrictions currently in place would apply to a wider area, including places where some local fishing businesses have long-established fishing operations.
- 5.2 In order to enable further consideration to be given to these matters, it is proposed that, where necessary, legislation be enacted in parallel with the extension of the Bailiwick's territorial seas to ensure that the existing fisheries management regime remains the same for an initial period following extension.

¹¹ For Alderney, the rights in the foreshore and seabed from 0 to 3 nm were transferred to the States of Alderney in 1950 along with other Crown properties. This was to assist Alderney in rebuilding its economy following World War II.

It may also be appropriate to use administrative measures (such as altering licence terms/conditions or granting new licences) to achieve the continuation of the existing regime. Alternative arrangements could then be discussed and agreed within the Bailiwick at a later date and the new regime would come into effect at a time agreed by the Bailiwick authorities. This would ensure there remains a distinction between the 0-3 nm area and the 3-12 nm area at the time when territorial seas is extended, rather than merely extending the regime that exists in the 0-3 nm area to the 12 nm limit 'overnight'.

- 5.3 This issue has been raised with representatives of the Policy & Finance Committee in Alderney and the Policy & Finance Committee in Sark. Sark's Policy & Finance Committee has confirmed that it is content with this staged approach to fisheries management within an extended Bailiwick territorial sea by retaining the status quo in the 0-3 nm area and the 3-12 nm area for the initial period following extension. There is ongoing dialogue with Alderney's Policy & Finance Committee and it is understood that this point is under consideration at the time of writing.

6 Engagement, joint working or consultation

Guernsey

- 6.1 The Policy & Resources Committee has led and co-ordinated the work on the extension of Guernsey's territorial sea. It has conferred and consulted with other Committees of the States because the use, protection and management of the sea has many facets. The work of various Committees would be affected by an extension of Guernsey's territorial sea from 3 to 12 nm. These include:

Committee	Topic
Committee <i>for</i> Economic Development	Sea fisheries and renewable energy
Committee <i>for the</i> Environment & Infrastructure	Environmental matters, including protection and conservation of natural environment, maritime affairs (including the development of the Maritime Strategy), spatial planning, energy policy and renewable energy
Committee <i>for</i> Health & Social Care	Control and monitoring of environmental pollution and FEPA licensing
Committee <i>for</i> Home Affairs	Law enforcement, crime prevention, immigration, customs and emergency planning
States' Trading Supervisory Board	Guernsey Harbours Shipping traffic management, search and rescue, hydrography and international maritime Conventions

- 6.2 The Law Officers of the Crown have been consulted and have provided legal advice throughout the consideration of the extension of the Bailiwick's territorial sea. Their views have been taken into account in this Policy Letter. The legal issues considered included any new legislation required, any amendments required to any existing Guernsey, Alderney and/or Sark legislation and any constitutional implications.

Bailiwick

- 6.3 This matter has been progressed in partnership with the States of Alderney and the Chief Pleas of Sark. It was agreed that this Policy Letter be written from a Bailiwick perspective, so that the same document could be considered by the States of Guernsey, States of Alderney and Chief Pleas of Sark at about the same time. During development of the work, there were various meetings, discussions and email correspondence between politicians and officials in Guernsey and Alderney and Sark. The matter was also discussed at the most recent regular Bailiwick Council meetings (in July and November 2018). All three islands were of the view that the likely advantages of extending the Bailiwick's territorial seas outweigh the disadvantages. All three islands recognise that it is preferable to extend the Bailiwick's territorial seas in early 2019.

Alderney

- 6.4 It is intended that a complementary report will be put before the States of Alderney in order that all three islands' assemblies can consider the matter at about the same time. An extended territorial sea would provide an opportunity for Alderney to take control of its own marine resources (including access to fishing grounds) and manage risk more effectively. Alderney representatives have expressed concerns about the Hurd Deep (including HMS AFFRAY and dumped ammunition and low grade radioactive waste), the clean-up of pollution and the Channel shipping lanes. However, these are general principles that relate to Alderney regardless of whether the territorial seas is extended (as the area to 12 nm is already Alderney's continental shelf). The States of Alderney and the Committee are liaising with the Law Officers to ensure the questions the States of Alderney have about liability and future liability are addressed.
- 6.5 Alderney's Policy & Finance Committee has proposed an exchange of letters between the three jurisdictions to set out the process and timescales for achieving agreement on the precise co-ordinates of the territorial sea boundaries within the Bailiwick (as in paragraph 8.2).

Sark

- 6.6 It is intended that a complementary report will be put before the Chief Pleas of Sark in order that that all three islands' assemblies can consider the matter at about the same time. An extended territorial sea would provide Sark with an opportunity to protect its marine resources.

UK

- 6.7 There has been engagement with the UK government about the extension of the Bailiwick's territorial seas. A draft of this Policy Letter was sent to the UK government in March 2018 and circulated to UK departments for consideration as part of the formal consultation process. Relevant departments include the Foreign & Commonwealth Office, Ministry of Justice, Department for Environment, Food and Rural Affairs, Department for Exiting the European Union, Ministry of Defence, Department for Business, Energy & Industrial Strategy, Department for Digital, Culture, Media and Sport, the Home Office, and Department for Transport. At the time of writing, the formal reply from the UK government has not yet been received but all indications are that it would support a formal request from the three islands of the Bailiwick to extend territorial seas to 12 nm.

Jersey

- 6.8 There has been (limited) engagement with Jersey on this topic. The 12 nm seaward limit towards the Bailiwick of Guernsey is set out in the Territorial Sea Act 1987 (Jersey) Order, 1997¹². That seaward limit would become the boundary between a 12 nm territorial sea for the Bailiwick of Guernsey and that for the Bailiwick of Jersey.
- 6.9 Jersey's territorial sea was extended to 12 nm in 1997 (paragraph 2.5) and its foreshore and seabed belong to the public of Jersey (since 2015) (paragraph D6 of the Annex).

France

- 6.10 The UK represents the Bailiwick of Guernsey internationally. This includes declaring the extent of the Bailiwick's territorial sea and negotiating any international maritime boundary. At a regional level, the Bailiwick has important relationships with Normandy and Brittany (including with law enforcement agencies, with search and rescue organisations, with the

¹² It is referred to in the explanatory note appended to the Order as "the seaward limit of the territorial sea adjacent to Jersey and towards Guernsey", because at that time the Bailiwick of Guernsey only had a 3 nm territorial sea.

départements of Ille et Vilaine and La Manche and with the influential fishing committees (CRPMEM)). The extension of the territorial sea is a unilateral act by the UK (on behalf of the Bailiwick), but the UK intends to notify France at an appropriate juncture. In due course, the UK (for the Bailiwick) and France will need to negotiate and agree boundary co-ordinates (delimitation). The Bailiwick is keen to continue to act as a good neighbour to France.

7 Compliance with Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees

- 7.1 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.
- 7.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications (as in paragraph 6.2).
- 7.3 Rule 4(3) requires details on the financial implications of any Propositions for the States of Guernsey. However, there are no direct financial implications associated with the Propositions (as in paragraphs 3.2 and 3.3). The negotiations with other parties to agree boundaries can be covered by existing external relations resources.
- 7.4 In accordance with Rule 4(4), it is confirmed that the Propositions related to this Policy Letter have the unanimous support of the Committee.
- 7.5 In accordance with Rule 4(5), the Propositions contribute to the objectives of the States of Guernsey and relate to the duties and powers of the Committee, as in paragraphs 7.7-7.9 below.
- 7.6 Also in accordance with Rule 4(5), information about the joint working or consultation which has taken place whilst the Committee was considering and preparing this Policy Letter and the Propositions is outlined in Section 6.
- 7.7 The proposal to extend the territorial sea and the Propositions in this Policy Letter relate to the Committee's duties and powers, including "external relations and international and constitutional affairs" as it concerns "relations with the United Kingdom and other jurisdictions ... relations with the other islands of the Bailiwick ... and representing, or overseeing the representation of, and negotiating for, the Island". It also concerns "leadership and co-ordination of the work of the States" by "developing and promoting the States' overall policy objectives".

- 7.8 Further, the proposal and the Propositions contribute to the objectives of the States of Guernsey because the extension is a prioritised workstream in the Policy & Resource Plan. “Securing Guernsey’s territorial seas” is included under the ‘international standards policy’ heading (1 of the 23 priorities approved as part of the States of Guernsey Annual Budget for 2018 ¹³).
- 7.9 In the Policy & Resource Plan – Phase Two ¹⁴, the Policy & Resources Committee stated that it, “... intends to pursue negotiations in this respect, with a view to establishing extended territorial seas before 2020.” ¹⁵ It links with the States’ objectives to “maintain, enhance and promote Guernsey’s rich marine and terrestrial environment as a high value resource which underpins our economy” (under the strategic outcome of ‘Our Economy: Strong, sustainable and growing economy’) and to “understand and promote the importance of our marine and coastal environments and ensure the potential for economic gain does not compromise their health or protection” (‘Our Quality of Life: Safe and secure place to live’) in Phase One ¹⁶. It also links to the strategic outcome of “Our Place in the World: Mature international identity”.

8 Conclusions

- 8.1 The Committee recommends that Guernsey’s territorial seas be extended from 3 to 12 nm. Recent discussions have taken place at political level between Guernsey, Alderney and Sark and it is proposed that the Bailiwick’s territorial seas be extended to 12 nm. If the States of Deliberation, the States of Alderney and the Chief Pleas of Sark decide to extend the Bailiwick’s territorial seas, the Committee will approach the UK government to ask it to make the relevant UK Order in Council under the Territorial Sea Act 1987.
- 8.2 It is possible to extend the territorial seas before agreement has been reached with France on the exact co-ordinates of the median line. Similarly, the exact co-ordinates of the median lines between the islands of the Bailiwick and between the Bailiwick and Jersey can be agreed following extension. The median lines exist in principle from the moment of extension, even if the individual co-ordinates of the boundary lines have not been agreed by that time.

¹³ Billet d’État XX of 2017 <https://gov.gg/CHttpHandler.ashx?id=110408&p=0> (p24) [also in <https://gov.gg/CHttpHandler.ashx?id=110312&p=0> (p5)] (as considered at the States Meeting of 8th November, 2017).

¹⁴ Billet d’État XII of 2017 (as considered by the States in June 2017). <https://gov.gg/CHttpHandler.ashx?id=107774&p=0> (p38 and p127)

¹⁵ Billet d’État XII of 2017 (p127)

¹⁶ Policy & Resource Plan – Phase One ‘Future Guernsey’ (‘Final - approved by the States on 16 November 2016’). (The version published in Billet d’État XXVIII of 2016 was then amended at a States Meeting in November 2016.) <https://gov.gg/CHttpHandler.ashx?id=105052&p=0>

- 8.3 The benefits and risks of extending the territorial seas have been considered. The extension of the territorial sea will, in general terms, offer the islands of the Bailiwick additional controls and powers over the 3-12 nm zone without incurring many additional responsibilities.
- 8.4 The Committee proposes to work closely with Alderney and Sark on issues of common interest that arise in the context of the expected extension of the territorial seas of the islands of the Bailiwick.

9 Propositions

The States are asked to decide whether they are of the opinion:-

1. To agree that Guernsey's territorial sea should extend, in accordance with international law, up to 12 nautical miles from the relevant baselines (but not beyond any appropriate median lines, where relevant).
2. To direct the Policy & Resources Committee (following corresponding decisions by the States of Alderney and the Chief Pleas of Sark in respect of their own territorial seas) to send a formal request to the UK government that an Order in Council be made under the Territorial Sea Act 1987 to extend the territorial seas of the Bailiwick of Guernsey up to 12 nautical miles from the relevant baselines (but not beyond any appropriate median lines, where relevant) in accordance with international law.
3. To note that the territorial seas may be extended whether or not the maritime boundaries between Guernsey, Alderney and Sark or between the Bailiwick of Guernsey and France or between the Bailiwick of Guernsey and the Bailiwick of Jersey have already been agreed.
4. To delegate authority to the Policy & Resources Committee to negotiate and agree, with the States of Alderney and the Chief Pleas of Sark, the co-ordinates to define the maritime boundaries (median lines) between Guernsey and Alderney and Sark.
5. To delegate authority to the Policy & Resources Committee (in conjunction with the States of Alderney and the Chief Pleas of Sark) to work with the UK government to negotiate and agree the co-ordinates where necessary to define the maritime boundary between the Bailiwick of Guernsey and France and between the Bailiwick of Guernsey and the Bailiwick of Jersey.
6. To agree that, following extension of the territorial seas of the Bailiwick, legislative and administrative measures are implemented and adopted in order to ensure that the Bailiwick fisheries management regime remains the same as

it was before extension until any new regime is subsequently agreed between the Bailiwick authorities.

7. To agree that, following or upon extension of the territorial seas of the Bailiwick, any necessary legislation to give full effect in domestic law to the extension and any consequential amendments to extant Bailiwick legislation, such as the Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012, that may be necessary is enacted.
8. To direct the Policy & Resources Committee to establish whether a transfer of Guernsey's foreshore and seabed from the Crown (so far as the same are vested in the Crown) to the States or another suitable person or entity can be agreed in principle, and –
 - (a) if agreed in principle –
 - (i) to identify a suitable person or entity in which title to and rights in the foreshore and seabed surrounding Guernsey might most appropriately be vested,
 - (ii) to negotiate the terms and conditions of transfer, and
 - (iii) to report back to the States with proposals enabling the States to approve any such transfer and the identity of the transferee, or
 - (b) if not agreed in principle –
 - (i) to report any failure to agree to the States, and
 - (ii) to make recommendations as to any further actions or measures that might need to be taken to enable an agreement to be reached.
9. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

Yours faithfully

G A St Pier
President

L S Trott
Vice-President

A H Brouard
J P Le Tocq
T J Stephens

ANNEX TO POLICY LETTER OF 10 JANUARY 2019
BAILIWICK OF GUERNSEY'S TERRITORIAL SEAS, SEABED AND RELATED MATTERS

This Annex is in four parts:

- A – Current situation
- B – Extension of territorial seas – to 12 nautical miles
- C – Related issues
- D – Seabed and foreshore (0-12 nautical miles)

A Current situation

- A1 The right for any state to have a territorial sea of up to 12 nm in breadth is outlined in the United Nations Convention on the Law of the Sea, 1982 ('UNCLOS')¹⁷ (Article 3). There are very few states which have only a 3 nm territorial sea¹⁸. A 12 nm territorial sea is more common. The UK, France, Jersey and the Isle of Man all have a 12 nm territorial sea (claimed in 1987, 1971¹⁹, 1997 and 1997 respectively).
- A2 Each of the three jurisdictions of the Bailiwick has a territorial sea which currently extends to 3 nm from its baselines. The baseline is (generally²⁰) the low water line along the coast²¹. For the purpose of determining the territorial seas: Guernsey includes the islands of Herm, Jethou and Lihou; Alderney includes the Casquets and Burhou; and Sark includes Brecqhou and l'Etac (de Sark).
- A3 There are places where one territorial sea would theoretically overlap with

¹⁷ The text of the United Nations Convention on the Law of the Sea, 1982 can be found at http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

¹⁸ On the United Nations website, Law of the Sea section, there is a 'table of claims to maritime jurisdictions (as at 15 July 2011)'

http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/table_summary_of_claims.pdf It shows that most jurisdictions claim a 12 nm territorial sea, but that there are parts of some jurisdictions where the territorial sea extends only to 3 nm. As at July 2011, it seems that Jordan was the only state for which the whole of its territorial sea extended just to 3 nm.

¹⁹ France claimed a 12 nm territorial sea in 1971 (Law No. 71-1060 of 14 December 1971 states that "the territorial waters of France extend up to a limit of 12 nautical miles from the baselines")

²⁰ Baselines can also be defined with reference to certain 'low-tide elevations' ("a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide."). To be used as the baseline, those low-tide elevations must be within the breadth of the territorial sea of the mainland or island (Article 13 of UNCLOS).

²¹ The baselines for the Bailiwick are defined in UK legislation, namely the Territorial Sea Act 1987, the Territorial Sea (Baselines) Order 2014, the Territorial Sea Act 1987 (Guernsey) Order 2014 and the Territorial Sea Act 1987 (Guernsey) (Amendment) Order 2015.

another territorial sea. In those places, the boundary is the median line (essentially, this is half-way between the baselines for each party) unless the two parties agree to an alternative. The two parties usually agree the exact co-ordinates of the maritime boundary²² so that it is clear where each party's jurisdiction ends. That is the case for international situations (such as between the UK and France). It would seem sensible to use the same approach for the Bailiwick because different laws could apply for the territorial seas of each of Guernsey, Alderney and Sark (as well as for Jersey, the UK itself, and France). There is already a median line between Guernsey and Sark's 3 nm territorial sea limits but it is not yet defined by agreed co-ordinates. It will be desirable to ensure that loxodromic coordinates are agreed between the insular authorities.

- A4 The 3 to 12 nm area around each island of the Bailiwick currently has several different definitions. The sea bed (and subsoil) in that area is the continental shelf appertaining to the Bailiwick. The continental shelf is the seabed and subsoil (Article 76 of UNCLOS) and not simply the rock and the rock surface. The water is high seas²³.

- A5 The area to 12 nm is within British fisheries limits that appertain to the Bailiwick (it is covered by UK legislation extended to the Bailiwick and fishing activities are licensed by the States of Guernsey (Committee for Economic Development)). Each island has its own regime for fisheries management in the 0 to 3 nm zone. For the 3 to 12 nm zone, there is a Fisheries Management Agreement with the UK and devolved governments regulating commercial fishing activity for British (including Bailiwick) registered fishing vessels. There is a 6 to 12 nm fishing zone (around the Bailiwick) in which French fishermen have historic rights to catch demersal and crab species (in accordance with the London Fisheries Convention, 'LFC'²⁴).

- A6 There is a search and rescue area ('SAR area') which extends to 12 nm from the baselines (and to the median lines with France and Jersey). Guernsey Harbours provides a Maritime Rescue Coordination Centre (MRCC) and oversees provision of coastguard services within the Joint Emergency Services Coordination Centre (JESCC). The SAR area is covered by an international

²² Maritime delimitation is the process of establishing lines which separate the maritime space of one state from the maritime space of another state. They are established by agreement (between those two states). It is usual that the territorial sea of each state would not extend beyond the median line (a line for which every point is equidistant between the nearest points of the baseline of one state and the baseline of another).

²³ On the high seas, foreign (in this case non-British) vessels enjoy 'freedom of navigation' (as in Part VII of UNCLOS). This is a more comprehensive freedom than the 'right of innocent passage' which applies to foreign vessels in a territorial sea.

²⁴ The LFC was signed in 1964 and came into force in 1966.

agreement (UK, France and Channel Islands) known as 'Mancheplan' which specifies how certain incidents are to be handled. France and the UK have agreed to jointly respond to calls for search and rescue and to work together to tackle pollution incidents.

- A7 There are shipping lanes running through the Channel to the north of the Channel Islands (a traffic separation scheme ('TSS') in accordance with the requirements of the International Maritime Organization). The Casquets TSS is managed by CROSS²⁵ Jobourg. There is an inshore traffic zone (ITZ) around the Channel Islands intended for small, sailing or fishing craft and local traffic (or other vessels avoiding imminent danger).
- A8 The right of innocent passage (in territorial seas) and the right of freedom of navigation (in high seas) apply to shipping currently operating in the 0-12 nm area around the Bailiwick. The insular authorities will institute a Vessel Traffic Services scheme, in accordance with the Safety of Lives at Sea Convention, Chapter 5 Regulation 12, within the Little Russel in 2019 (regardless of whether territorial seas are extended or not; it is within Guernsey's 3 nm limit).
- A9 It is not possible for another party to claim the zone between 3 and 12 nm from the Bailiwick's coasts. It is already the continental shelf relating to the Bailiwick. Under international law, the rights of the coastal state over its continental shelf are inherent, they do not depend on any express proclamation (Article 77 of UNCLOS). Only the Bailiwick (through the UK) can claim the area up to 12 nm as its territorial sea. The only exception to this would be wherever the distance between the baselines of the Bailiwick and the baselines of another party (France or Jersey) is less than 24 nm (i.e. where the Bailiwick's territorial seas would reach to a median line).
- A10 The Bailiwick already has certain rights, responsibilities and obligations for its 0-3 nm territorial sea and the existing 3-12 nm continental shelf. For example, the Bailiwick has obligations under international law to protect and preserve the marine environment (Article 192 UNCLOS) and to take measures necessary to prevent, reduce and control pollution of the marine environment from any source (Article 194 UNCLOS). Certain responsibilities apply to areas in which the Bailiwick has jurisdiction, which would include the existing 0-3 nm territorial sea and the existing continental shelf (beyond the territorial sea). They would also apply to an extended 0-12 nm territorial sea. Although, strictly speaking, the water above the continental shelf (beyond 3 nm) is not under the jurisdiction of the Bailiwick now (with the exception of fishing access, as in C21-26) all States who are party to UNCLOS have a general obligation to protect and preserve the marine environment.

²⁵ Centre Régional Opérationnel de Surveillance et de Sauvetage (CROSS). French equivalent of Maritime Rescue Co-ordination Centre (MRCC).

- A11 Some of the maritime boundaries within and around the Bailiwick are already defined. Those boundaries have different statuses. The baselines are defined in UK legislation which has been extended to the Bailiwick (as in A2 and footnotes 20 and 21). The current territorial sea is 3 nm wide, so there is a boundary 3 nm from the baselines for each of Guernsey, Alderney and Sark (as shown in Figure 1). As in A3 above, there is a median line between the 3 nm territorial seas of Guernsey and Sark.
- A12 There is a boundary line ²⁶ 12 nm to the north/north-west/west of the Bailiwick between the Bailiwick's continental shelf and the French continental shelf (as shown in Figure 1). The line was delineated in 1977 and 1978 by Court of Arbitration decisions ²⁷. Those decisions were to settle a disagreement (which had lasted for more than a decade) between the UK and France about the claims that they each made regarding continental shelf in the Channel. There is also a defined boundary which runs the length of the Channel between the continental shelf of the UK (to the north) and France (to the south)²⁸ – that is also the boundary between the UK and French EEZs (as in B17).
- A13 The 'seaward limit' of the Bailiwick of Jersey's territorial sea is defined in The Territorial Sea Act 1987 (Jersey) Order 1997 (as in paragraph 6.8). That seaward limit (towards the Bailiwick of Guernsey) would become the boundary between a 12 nm territorial sea for the Bailiwick of Guernsey and that for the Bailiwick of Jersey (as shown in Figure 1).
- A14 For fishing purposes, "Bailiwick fishery limits" are defined in the Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012 as that part of British fishery limits not exceeding 12 nm from the baselines from which the breadth of the territorial seas adjacent to the Bailiwick is measured but not extending beyond the median line with Jersey and excluding the territorial seas adjacent to Alderney and Sark. The boundary lines to the south-west and to the east of the Bailiwick are defined for the purposes of fishing in the 1992 Scholle Bank Agreement relating to fishing in the waters adjacent to the Bailiwick ²⁹.

²⁶ The boundary line is made up of segments of arcs of circles which have a radius of 12 nm from certain defined points on the baselines of the Bailiwick (the points where those arcs intersect are also defined in the Court of Arbitration's decisions).

²⁷ Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic (UK, France) 30 June 1977 – 14 March 1978 Reports of International Arbitral Awards Volume XVIII pp3-413. Available at http://legal.un.org/riaa/cases/vol_XVIII/3-413.pdf

²⁸ <https://www.gov.uk/guidance/uk-maritime-limits-and-law-of-the-sea>

²⁹ One of the provisions was for named fishermen (using certain vessels) to access fishing banks in Bailiwick of Guernsey waters from 1992 until 01 January 2010.

- A15 Also, for fishing purposes, there are inter-island boundary lines within the current Bailiwick fishing limits.

B Extension of territorial seas – to 12 nautical miles

- B1 The possibility of extending the territorial seas has been under consideration in the Bailiwick for years. Until now, it has not proved possible for the three Bailiwick jurisdictions to reach a common position in order for the islands to approach the UK collectively to request extension of the territorial sea around the entire Bailiwick. However, there is increased impetus due to the UK's decision to withdraw from the EU and the UK's decision to withdraw from the LFC (as in C24-25).
- B2 It is proposed that the Bailiwick's territorial seas be extended to 12 nm from each island. In practice, the territorial sea will extend to 12 nm in some directions and to less than 12 nm in others. This is because each island's baseline has places where it is less than 24 nm from (as relevant) France, Jersey or the other islands of the Bailiwick. The seabed up to the 12 nm limit would no longer be defined as continental shelf but would become the seabed of the territorial sea.
- B3 Upon accession/ratification of UNCLOS (25 July 1997³⁰) the United Kingdom lodged a declaration that the, "instruments of accession and of ratification extend to [inter alia] ... the Bailiwick of Guernsey". There is an enabling provision (Section 4(4)) in the UK's Territorial Sea Act 1987 which provides for it to be extended to the Crown Dependencies.
- B4 To extend the territorial seas to 12 nm, the UK would need to make an Order in Council under its Territorial Sea Act 1987³¹. The UK government has previously indicated that the extension of the territorial seas is to be for the whole Bailiwick at once. The extension to the entire Bailiwick, using the phrase Bailiwick of Guernsey, should mean that no relevant island, islet or rock is inadvertently excluded.
- B5 The extension of the territorial sea is a unilateral act by the UK (on behalf of the Bailiwick of Guernsey). The UK does not need to agree or negotiate it with France, but does need to notify France. It is possible to extend the Bailiwick's territorial seas before the exact co-ordinates of the maritime boundaries have been agreed between the UK and France (as the principle of 'median lines'

³⁰ It came into effect on 24 August 1997 (Article 308 of UNCLOS).

³¹ There are already two Orders made under the Territorial Sea Act 1987 which specifically relate to the Bailiwick of Guernsey. They are the Territorial Sea Act 1987 (Guernsey) Order 2014 and the Territorial Sea Act 1987 (Guernsey) (Amendment) Order 2015. They do not extend the breadth of the territorial sea. They do extend certain other provisions of the 1987 Act to the Bailiwick of Guernsey (defining baselines).

already exists in international law) (as in B12-14). An agreed and defined international boundary would provide greater certainty and precision about the limit of each territorial sea (this would be important for various purposes including any submarine cable projects, any possible opportunities to exploit mineral rights and any renewable energy projects).

- B6 When the territorial seas are extended, the Bailiwick would not have a continental shelf beyond it to the east, south or south-west because the baselines of the Bailiwick are too close to the baselines of France and Jersey to fit a continental shelf beyond a 12 nm territorial sea. The boundary of the continental shelf to the north/north-west/west of the Bailiwick was delineated by the 1977/1978 Court of Arbitration decisions (as in A12).
- B7 The change in status for the 3-12 nm area from continental shelf (with high seas over it) to territorial sea means that the Bailiwick will have greater rights and controls over the area, but with similar responsibilities.
- B8 Except where there may be an express or implicit contrary intention (for example, see section 18 of the Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012), existing legislation will automatically extend to the newly expanded territorial seas. However, it would be prudent to enact a Bailiwick Law (similar to the Territorial Sea (Consequential Provisions) (Jersey) Law 1994 which was enacted when Jersey's territorial sea was extended to 12 miles) which would put any doubt about the extent of the Bailiwick territorial seas beyond doubt and deal with the few consequential amendments to Bailiwick legislation that might be needed (see also Section 5 of the main body of the policy letter).
- B9 The extension of the Bailiwick's territorial seas to 12 nm will put it in line with international norms. It could help in the development of the Bailiwick's international identity. It would give the islands of the Bailiwick the same breadth of territorial seas as the rest of the British Isles (as the UK, Isle of Man and Jersey all already have 12 nm territorial seas).
- B10 If the territorial seas remained at 3 nm there would be a smaller area to manage and to police. Therefore, it might be thought that fewer resources would be needed for those purposes (however, see paragraph 3.3 about resource prioritisation).
- B11 The management of the extended territorial sea (to 12 nm) would not require a different approach to that for the current territorial sea (to 3 nm). It would be the same approach, just for a larger area. Resources would still need to be prioritised on a risk-based approach and would need to be responsive to

circumstances. For the Bailiwick, the area involved would increase³² from 380 square miles to 1400 square miles (from 290 square nautical miles to 1050 square nautical miles) (all figures approximate).

Boundaries – international and within the Bailiwick

- B12 The most recent diplomatic exchange between the UK and the Republic of France on delimiting the maritime boundary between the UK (Bailiwick of Guernsey) and France and on fishing rights was during 2017.
- B13 In order to enable the extension of the territorial seas of the Bailiwick at the earliest possible opportunity, it has been agreed that Guernsey, Alderney and Sark can request the extension even though the international boundary between the UK (in regard to the Bailiwick) and France has not been agreed. There is precedent for a territorial sea (or extension to an existing territorial sea) to be declared even when an international boundary has not been fully defined. (For Jersey, its territorial sea to 12 nm was declared in 1997, but the boundary between UK (in regard to Jersey) and France was not fully defined until 2004³³). Article 15 of UNCLOS states that, unless otherwise agreed between them, two states opposite or adjacent to each other (like the UK (Channel Islands) and France) cannot extend their territorial seas beyond the median line (half-way point).
- B14 It is possible to extend the territorial sea before the detailed co-ordinates of the maritime boundaries between the UK and France have been defined (as the principle of ‘median lines’ already exists in international law). Some boundaries around the Bailiwick have already been defined using co-ordinates³⁴. However, it would be preferable to agree a boundary if at all possible to help the respective governments to be clear where their jurisdiction begins and ends and to provide greater certainty (this would be important for various purposes

³² These are all approximate figures until the international boundary has been agreed between the UK (for the Bailiwick of Guernsey) and France and until the boundaries have been agreed between the islands. For Guernsey it would be an increase from 190 square miles to 690 square miles. For Alderney, it would be an increase from 130 square miles to 550 square miles. For Sark, it would be an increase from 60 square miles to 160 square miles.

³³ When the relevant agreement establishing a maritime boundary between France and Jersey came into force, UK Treaty Series No. 8 (2004).

(<https://www.gov.uk/government/publications/agreement-between-the-uk-and-france-establishment-of-a-maritime-boundary-between-france-and-jersey>)

³⁴ The boundary between territorial seas of the Bailiwick of Guernsey (if it were 12 nm) and Bailiwick of Jersey (already 12 nm) is already defined (when Jersey extended its territorial sea). The continental shelf boundary 12 nm to the north/ north-west/ west of Guernsey and Alderney was delineated by Court of Arbitration decisions in 1977 and 1978. The lines to the south-west and east of the Bailiwick are defined (for fishing purposes only) in the 1992 Scholle Bank Agreement.

including for fisheries, for renewable energy projects or for cable infrastructure).

- B15 In order to enable the extension of the territorial seas of the Bailiwick at the earliest possible opportunity, Guernsey, Alderney and Sark have all agreed to request the extension even though not all the boundaries between them have been defined by detailed co-ordinates. It would be possible to have an Order in Council to define the outer limit of the Bailiwick territorial seas. The inter-island boundaries would be the median line between the baselines of each island. This is in step with the provisions in UNCLOS which would apply if the islands were separate nations. The limits of each island's jurisdiction (median lines) would exist at the moment of extension (irrespective of whether the exact co-ordinates had been defined by then). The co-ordinates of the boundaries between the territorial seas for Guernsey, Alderney and Sark are to be agreed between the Bailiwick authorities after extension of the territorial seas.

EEZ (beyond territorial sea, up to 200 nm)

- B16 An Exclusive Economic Zone (EEZ) is a belt or band of sea beyond and immediately adjacent to a territorial sea. The EEZ extends to a maximum of 200 nm from the baseline. The state has control of all economic resources within its EEZ, including fishing, energy production, mining, oil exploration, and any pollution of those resources. The state's powers are more limited than in its own territorial sea.
- B17 France declared an 'economic zone' in 1976/77³⁵ and the UK declared its EEZ in 2014³⁶. The boundary between UK and France was confirmed as the pre-existing mid-Channel continental shelf boundary³⁷. In an ideal world, Guernsey would declare an EEZ around its territorial seas but current circumstances hinder this. Consideration might be given, in future, to the possibility of claiming an EEZ or a contiguous zone beyond the extended territorial sea to the north/northwest/west of the Bailiwick³⁸.

³⁵ Law No 76-655 of 16 July 1976 relating to the Economic Zone off the coasts of the territory of the Republic; and Decree No. 77-130 of 11 February 1976 which inter alia established an economic zone off the French coast bordering the Channel.

³⁶ The Exclusive Economic Zone Order 2013 (which came into force on 31 March 2014)

<https://www.legislation.gov.uk/uksi/2013/3161/introduction/made>

³⁷ Exchange of letters between UK and France (April 2011, which entered into force in March 2014) – Treaty Series No. 19 (2014).

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/350872/42902_Cm_8931_print_ready.pdf

³⁸ In the other directions, the territorial seas of the Bailiwick (to 12 nm) will abut the territorial seas of France or Jersey.

C Related issues

Management of Bailiwick-wide issues and risks

- C1 The Bailiwick Council, which meets quarterly, is a suitable forum for political representatives from Guernsey, Alderney and Sark to discuss and agree Bailiwick-wide issues and risks.
- C2 A Bailiwick of Guernsey Maritime Compliance Steering Group (MACSG) has been established to support and advise the Bailiwick of Guernsey in achieving and maintaining full compliance with relevant maritime international conventions. This would include monitoring the relevance and impact of changes to existing conventions and emerging ones. It is an officer-level group drawing on expertise from relevant committees in Guernsey, Alderney and Sark. Recommendations would be made to those committees for actions that may be required or desirable.

Marine spatial planning

- C3 Marine spatial planning is a process to identify, understand and manage activities in the marine environment. It means mapping current activities, identifying potential future activities, identifying legislation regulating activities and considering a long-term policy for the sea and seabed. It is more complex than terrestrial planning because it involves the water column as well as the seabed. Different activities can co-exist and can have impacts on each other.
- C4 If the territorial sea only extends to 3 nm then any marine spatial plan can only be fully implemented to the 3 nm limit. Ownership or control of the seabed would also have an effect on any marine spatial plan.
- C5 Marine spatial planning can happen in conjunction with other neighbouring jurisdictions. The Bailiwick will want to consider how each island manages its territorial sea, how they do so together and any relationships with spatial plans for Jersey or French waters.
- C6 Guernsey does not have a marine spatial plan and the Committee for the Environment & Infrastructure has stated in the Policy & Resource Plan³⁹ that it does not have the resources to deliver one within this political term. However, the Maritime Strategy which it is currently developing will be an important component to assist in the development of a marine spatial plan in future. Alderney has been developing a draft marine plan through its Alderney Marine Forum. That Plan was noted by the States of Alderney in May 2018 and the

³⁹ Billet XII of 2017, Appendix 6 (The Committee *for the* Environment & Infrastructure Committee policy plan) <https://www.gov.gg/CHttpHandler.ashx?id=107765&p=0>

Alderney Marine Forum was invited to report annually on progress. Sark does not yet have a marine spatial plan.

- C7 The UK is introducing a Blue Belt Programme⁴⁰, for the Overseas Territories. It is to provide long term protection of the marine environment around the Overseas Territories. It does not apply to the Crown dependencies, but could be useful as a reference as the Bailiwick develops its own marine plans in future.

Safety at sea

- C8 The Safety of Lives at Sea Convention 1974 as amended by the Protocol of 1988 ('SOLAS') was extended to the Bailiwick of Guernsey on 30th January, 2004. It requires certain safety standards for merchant ships. Much of the convention is not applicable to the Bailiwick; the most significant provisions which are relevant are set out in Chapter V (Safety of Navigation). These include provisions regarding navigational warnings, aids to navigation, hydrography, and meteorological services and warnings.
- C9 On extension of the Bailiwick's territorial seas, there would not need to be a change to the existing arrangements for the Casquets TSS (shipping lanes to the north of Alderney) which are already managed by CROSS Jobourg.
- C10 The extension of territorial seas could be advantageous to the Bailiwick in terms of controlling the movement of foreign ships in the 3-12 nm area (and in regard to ship reporting systems). Article 22 of UNCLOS empowers the coastal state (in this case, Guernsey, Alderney and Sark) to require foreign ships to use such sea lanes and traffic separation schemes as it deems appropriate (subject to certain conditions). The state is required to indicate those sea lanes and TSS clearly on charts and to give due publicity to them. This limits the foreign ships' right of innocent passage in territorial seas (refer also to C56). The right of innocent passage is itself less comprehensive than the right of freedom of navigation which ships have on the high seas.
- C11 Search and rescue – in the Mancheplan (as in A6), the search and rescue (SAR) area for the Bailiwick is defined as being to the 12 nm limit from the Bailiwick (and to the median lines with France and Jersey. When the territorial seas are extended, there will be no change in practice to the existing SAR operational

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655456/Introducing_Blue_Belt_2017.pdf

arrangements⁴¹.

- C12 Marine accident/incident investigations for vessels in '[Bailiwick of] Guernsey waters' are covered under the Merchant Shipping (Accident Reporting and Investigation) (Bailiwick of Guernsey) Regulations, 2009. The extension of territorial seas will increase the area to which the regulations apply and potentially the volume of interactions, but does not increase the responsibility or liability. It extends the Bailiwick's ability to act under the regulations. (There is a separate section on air accident investigations in paragraph C43 below.) When territorial seas are extended, all investigations of deaths in the 0-12 nm would be dealt with under the Bailiwick arrangements which currently apply in the 0-3 nm area.
- C13 Navigational aids within the Bailiwick (used for general navigation) are the responsibility of Trinity House as the general lighthouse authority. STSB manages the provision of navigational aids for the States of Guernsey. The extension of territorial seas to 12 nm does not impact on the Bailiwick's obligations under SOLAS Chapter V Regulation 13.
- C14 There are responsibilities for the publication of up-to-date nautical information necessary for safe navigation (including meteorological information and charts – linked to hydrography, as in paragraphs C44-47 below). The Bailiwick of Guernsey meets its current obligations for the provision of meteorological information as forecasts and safety of navigation warnings. An extension of territorial seas to 12 nm will have no major impact on the Bailiwick continuing to meet its obligations in this regard. Consideration may be required for Guernsey coastguard to retransmit broadcasts to ensure coverage out to 12 nm.
- C15 Pilotage services typically apply to the approaches to the harbours and do not extend offshore. Extension of territorial seas will have no operational impact on the delivery of pilotage services.
- C16 There is a Guernsey Registry of British Ships. Many of the vessels registered operate all over the world and may never have been to Guernsey. This function

⁴¹ The Mancheplan (2013) states "a sub-region of responsibility for local operations is established around the Channel Islands extending for a distance of 12 miles from the Islands to the sea, with the exception of the East and South, where it follows the Median line to the French coast; The sub-region is divided into two local actions zones, controlled by Guernsey in the North and Jersey in the South, separated by their median line; The institution of this sub-region for the present purpose will have no effect on the status of the waters concerned nor alter in any way the jurisdiction of the two Governments [UK and France] under international law, and will not prejudice any matter relating to the establishment of maritime frontiers which has been or may be decided between them." (Article 8: The Channel Islands sub-region)

will not be impacted by the extension of territorial seas to 12 nm.

Aviation

- C17 Coastal states have the right to sovereignty over their territorial sea, which includes the seabed and subsoil, the water column and the air space over it. The Channel Island Control Zone (CICZ) is within the Functional Airspace Block Europe Central (FABEC), with control delegated from FABEC in Brest to Jersey Air Traffic Control. Control of the air space around the Bailiwick of Guernsey is delegated further to Guernsey Air Traffic Control. Control of the air space will not be impacted by the extension of territorial seas to 12 nm.

Law enforcement

- C18 Extending territorial seas to 12 nm will simplify maritime operations for law enforcement, insofar as the area of jurisdiction for criminal matters would become one continuous sea area between and around the islands of the Bailiwick (rather than territorial seas for each island separated by high seas areas). In many instances (including policing, prevention or dealing with pollution and search and rescue) it would be helpful to be able to intervene further from the coastline and earlier (beyond the 3 nm limit) than to wait for the issue to cross the boundary into the 3 nm territorial sea. Powers of arrest and surveillance would extend to the wider area.
- C19 The Guernsey Border Agency (operations across the Bailiwick) has advised that its maritime operations would be simplified if the territorial seas were extended to 12 nm. It already works with British and French counterparts with regard to interdictions at sea. In certain situations, an extended territorial sea would alter whether an offence had occurred in Bailiwick waters or not.
- C20 The States of Guernsey will introduce a Small Commercial Vessels Code in 2019, which mandates construction, equipment, crew and qualifications for commercial vessels of less than 24M. This applies to vessels in Bailiwick waters and will automatically be extended to 12 nm with the extension of territorial seas.

Fisheries

- C21 The situation regarding fishing in the waters surrounding the islands of the Bailiwick is complicated. There have been conflicting views in the past about who was entitled to fish in the waters in the 3-12 nm zone. Those disagreements have involved the governments and fishermen of Guernsey, Alderney, Sark, Jersey, the UK and France.

- C22 Currently, there are Bailiwick fishery limits⁴² which extend to 12 nm from the Bailiwick's baselines but do not include the territorial seas (to 3 nm) adjacent to Alderney and Sark. Separate arrangements apply to the Alderney 0-3 nm and the Sark 0-3 nm areas. There is a Bailiwick Fisheries Management Commission which works to ensure that the fisheries are managed effectively by licensing throughout that area (3-12 nm). It would be possible for that Commission to continue to operate when the territorial seas are extended.
- C23 Fisheries areas are already patrolled to 12 nm, but there is the potential for different fisheries controls if the territorial sea is extended to 12 nm. The sea fisheries patrol vessel LEOPARDESS patrols Bailiwick waters, not just Guernsey waters.
- C24 The UK announced its intention to withdraw from the LFC in July 2017⁴³. Therefore, the UK will cease to be a party in July 2019. From then, the fishing vessels of other nations will no longer have rights to fish within the UK's 6-12 nm limits.
- C25 The UK's withdrawal from the LFC causes a change to access to fishing grounds. Extended territorial seas would give the greatest certainty about the status of the waters and the rights to fish there. It would also provide additional clarity for future licensing arrangements.
- C26 Fisheries are a priority area for Guernsey as a result of the UK's exit from the EU. There are three aspects to consider: fisheries management, fisheries trade and fisheries access. Fisheries management will be influenced by the terms of the UK relationship with the EU and how the island interplays into that relationship. The trade in fisheries products will be impacted directly by the nature of the deal that the UK negotiates with the EU and whether that is extended to Guernsey (including the islands' status in respect of the WTO). Fisheries access will be impacted as a result of negotiations regarding the new relationship and following the ending of the LFC. Whilst the outcome of the negotiations is heavily dependent on the UK negotiations there is a regional element that is important. Notwithstanding the outcome of the Brexit negotiations, the regional authorities in Normandy, and the CRPMEM (the regional fishing committee), hold significant influence, including on landing at Diélette which is critical for this sector. It is important to continue to manage an effective relationship with our nearest French neighbours (including the

⁴² Set by or under section 1 of the Fishery Limits Act 1976 (An Act of Parliament (1976 c.86); extended to the Bailiwick by United Kingdom S.I. 1989/2412).

⁴³ <https://www.gov.uk/government/news/uk-takes-key-step-towards-fair-new-fishing-policy-after-brexite> (DEFRA press release 2nd July 2017). It seems that the LFC was registered in Guernsey's Greffe on 18 January 1965. Therefore, it will be necessary to register the UK's withdrawal from it in Guernsey's records.

regions of Normandy and Brittany) and their fishermen.

Protection of the marine environment – discharges, dumping and pollution

- C27 Guernsey, Alderney and Sark have certain obligations and responsibilities (for example, to prevent, reduce and control pollution) for the 3-12 nm area whether that zone is defined as continental shelf for Guernsey, Alderney and Sark or whether it is their territorial sea. Under UNCLOS, there are also general provisions relating to the prevention, reduction and control of pollution of the marine environment. There is a potential reputational risk to the islands if pollution occurs near to them (even outside the proposed 12 nm limit), whether or not territorial seas are extended. In any pollution event, it is likely that any pollution would be cleared up at the earliest possible opportunity and claims for costs pursued later. There may be advantages to being able to intercept any potentially deleterious substance earlier and further from coastlines (including similar or lower costs, as in paragraph 3.4 of the Policy Letter).
- C28 An extended territorial sea would give the Bailiwick authorities greater powers to prevent or deal with pollution incidents in the 3-12 nm area and additional remedies available after the event. Extension of the territorial sea should make it easier to take necessary action within the 3-12 nm area as it would give the coastal state (in effect, the Bailiwick) more powers than it would have on the high seas (where the coastal state has no special powers). Article 211 (4) of UNCLOS states that coastal states “may, in the exercise of their sovereignty within their territorial sea, adopt laws and regulations for the prevention, reduction and control of marine pollution from foreign vessels, including vessels exercising the right of innocent passage. Such laws and regulations shall, in accordance with Part II, section 3, not hamper innocent passage of foreign vessels.” (refer also to C56)
- C29 There have been occasional incidents of marine pollution or involving dangerous cargoes in the 3-12 nm area which have been managed in consultation with the French and UK authorities. The existing practical arrangements to deal with pollution incidents (0-12 nm) would be unchanged by an extension of the territorial seas. An element of the Mancheplan is about counter-pollution provisions and no changes are needed to its text when 3-12 nm changes from current status to territorial seas.
- C30 The Food and Environment Protection Act 1985 (‘FEPA’) has been extended to the Bailiwick. It (amongst other things) controls the deposit of substances and articles in the sea and under the seabed in the Bailiwick’s territorial waters. This includes licence applications for laying cables on/in the seabed. The Committee for Health & Social Care (‘HSC’) is responsible for exercising the duties and powers under FEPA as extended to the Bailiwick. HSC has used the

Director of Environmental Health and Pollution Regulation (DEHPR) as an expert to advise the political board. (Generally FEPA applications have tended to be low profile and low risk, including placing of navigational/mooring/fishing buoys and (less commonly) burials at sea.)

- C31 In future⁴⁴, when FEPA licence applications are under consideration, HSC would be required to consult the Director of Environmental Health and Pollution Regulations and to have regard to any views expressed by the Director. More than that, the States has resolved that in future FEPA licences will not be required for matters which fall under the Environmental Pollution (Guernsey) Law, 2004 as amended ('the 2004 Law') (in Guernsey's territorial waters only; FEPA licences would still be required in Alderney's or Sark's territorial waters). However, at present, those provisions are not yet in force.
- C32 Extending the territorial seas should not lead to a significant change in FEPA (and similar) licensing requirements. For example, cable / pipeline routes generally cross the 0-3 nm and through the 3-12 nm area. Consideration is already given to the route and effect in the 3-12 nm area, but extended territorial seas would give greater powers to regulate and protect in that 3-12 nm.

Hurd Deep

- C33 The Hurd Deep is a deep underwater trench north of Alderney (it runs between 49°30'N 3°34'W and 49°54'N 2°05'W). It was used in the past by the UK (and Belgium) to dump waste (including munitions and low grade radioactive wastes) in accordance with international practice at that time. Of course, that historic situation is not altered by any subsequent change from continental shelf and high seas to territorial seas. It could be argued that certain responsibilities would remain with the UK (and Belgium) if any pollution were ever to result from the historic dumping.
- C34 The Hurd Deep and two other recorded munitions sites are located within the proposed 12 nm territorial seas. All of those munitions dumps are now disused (the last use appears to have been in 1973). One of them is to the north of Alderney (mostly within its existing 3 nm limit), the second lies SSW of Guernsey (within the proposed 12 nm limit) and the Hurd Deep is to the north of Alderney (within the proposed 12 nm limit). From the records, it seems that

⁴⁴ In November 2012 (Billet d'État XXI, 2012), the States resolved (inter alia): 1(b) "To commence Part VI of The Environmental Pollution (Guernsey) Law, 2004 ..." and 1(e) "To provide an exemption from the licensing requirement under the Food and Environment Protection Act 1985 (Guernsey) Order, 1987, for operations depositing substances into the sea, within the territorial waters, which are prescribed under [the 2004 Law], so as to avoid a need for 2 licences for the same deposit." Part VI of the 2004 Law is not yet in force.

two of those sites were used for conventional ballistic weapons, whilst the Hurd Deep also received some low grade radioactive waste.

- C35 In 2007/08, the States of Guernsey commissioned a report from an international insurance broking and risk management company to understand risks and insurance options. The report concluded that the risk of any radioactive pollution was low and uninsurable. It is likely that there would be more risk to the environment if there was an attempt to remove the dumped materials than if they are left where they are. The containers used were designed to implode at depth or to degrade gradually to release the radioactivity slowly over time. The best strategy to minimise pollution risk is to prevent disturbance or removal of the material.
- C36 Marine samples are gathered from the Channel Islands and analysed by the UK Centre for Environment, Fisheries and Aquaculture Science (CEFAS) to measure radioactivity. Monitoring in and around the Channel Islands is undertaken by (for various samples) the islands, the UK and France. There should be no increase in costs for those arrangements when territorial seas are extended. There have been no recorded instances of radioactive waste emanating from the Hurd Deep. No evidence of radioactivity from the Hurd Deep site has been found (as in the report 'Marine radioactivity in the Channel Islands, 1990-2009' by Hughes *inter alia* ⁴⁵ which stated, "There was no detectable effect in Channel Islands waters of any releases of radioactivity from the Hurd Deep site.")
- C37 There is an annual report published by the UK's Food Standards Agency on Radioactivity in Food and the Environment (RIFE). It is primarily for the UK, but includes analysis relating to the Channel Islands. The most recent report was published on 18 October 2017⁴⁶ It states that, "The programme ... also monitors any effects of historical disposals of radioactive waste in the Hurd Deep...It is generally difficult to attribute the results to different sources, including fallout from weapon testing, due to the low levels detected. No evidence for significant releases of activity from the Hurd Deep site was found."
- C38 Currently the Hurd Deep is (in part) on Alderney's continental shelf. Consequently there are existing obligations and responsibilities for Alderney (as in A10). The waters above are 'high seas'. If the territorial seas were extended

⁴⁵ The report was written by representatives from Cefas (the Centre for Environment, Fisheries and Aquaculture Science) and the Food Standards Agency. The work was funded by the States of Alderney, Guernsey and Jersey and the Food Standards Agency as part of their respective radiological surveillance programmes.

<https://www.gov.je/SiteCollectionDocuments/Environment%20and%20greener%20living/R%20Radioactivity%20in%20Channel%20Islands%201990%20to%202009%2020110127%20AI.pdf>

⁴⁶ <https://www.food.gov.uk/science/research/radiologicalresearch/radioactivityinfood/radioactivity-in-food-and-the-environment-rife-report-2016> (p199)

then it would be possible to use legislation to stop or limit fishing and other activities up to 12 nm, including over and near to the Hurd Deep (and/or for the other munitions dumps). There is a potential reputational risk, but the extended territorial seas should mean additional powers to reduce the risk of pollution.

Shipwrecks, ditched aircraft and military remains

- C39 Historic shipwrecks in the 0-3 nm area can be protected using existing Bailiwick legislation.⁴⁷ When the territorial seas are extended, historic shipwrecks (and aircraft) can be protected in the 0-12 nm area. There are more wrecks in the larger area when territorial seas are extended.
- C40 Powers to deal with vessels in distress, wreck, salvage and receivership of wreck within the Bailiwick's territorial waters are also defined by local legislation⁴⁸. The powers apply to aircraft as well as vessels. When the territorial seas are extended, those powers will apply to the 0-12 nm area. There may be more administrative activity related to the use of such powers. There are also possible rights to valuable cargoes of wrecks to be considered.
- C41 The States agreed in January 2017⁴⁹ to amend the Merchant Shipping (Bailiwick of Guernsey) Law, 2002, to give effect within the Bailiwick to the Nairobi International Convention on the Removal of Wrecks, 2007 and the corresponding local legislation is being drafted. It makes ship owners financially liable in respect of wrecks, and requires owners of larger vessels to take out insurance to cover the costs of wreck removal. Implementation would thus reduce the States' potential financial exposure in respect of one type of maritime risk. It would only apply in the territorial seas. When the territorial seas are extended to 12 nm, the Nairobi Wreck Convention would provide more powers and safeguards to remove wreck in that area.
- C42 There is a UK law⁵⁰ which protects military remains (including military aircraft and vessels that have crashed or sunk and associated human remains) from interference. It was extended to the Bailiwick of Guernsey in 1987⁵¹. HMS

⁴⁷ The Wreck and Salvage Law (Vessels and Aircraft) (Bailiwick of Guernsey) Law, 1986, as amended (by the Salvage Convention (Bailiwick of Guernsey) Law, 1997). It defines "local waters" as being "the shores of the Island and the territorial waters adjacent thereto". The Committee for Education, Sport & Culture has certain powers to designate restricted areas around sites of important wreck.

⁴⁸ Including The Wreck and Salvage Law, 1986 (as above) and The Salvage Convention (Bailiwick of Guernsey) Law, 1997.

⁴⁹ Billet d'État I of 2017 <https://www.gov.gg/CHttpHandler.ashx?id=105270&p=0>

⁵⁰ The Protection of Military Remains Act 1986

⁵¹ The UK Order which extends the Act to the Bailiwick of Guernsey is The Protection of

AFFRAY, which lies just off the Hurd Deep, is designated as a controlled site under the UK Act⁵². Previously, UK officials had sought assurances that the Bailiwick would continue to protect HMS AFFRAY as a military grave. It would continue to be a protected site when the territorial seas are extended, either by continuing to be designated under the UK Act or by being designated by a Guernsey or Alderney Committee under the Order and/or by being made a restricted area (as it would constitute ‘historic wreck’) under the Wreck and Salvage (Vessels and Aircraft) (Bailiwick of Guernsey) Law, 1986. Additionally, the UK considers that sovereign immunity⁵³ applies to any UK naval warship regardless of where the wreck is located.

- C43 If an aircraft ditches in the waters adjacent to the Bailiwick, and separately from the issue of search and rescue, there are currently different arrangements for air accident investigations in the 0-3 and 3-12 nm areas. In the 0-3 nm area, the investigation would be dealt with by reference to the Bailiff and the AAIB⁵⁴. In the 3-12 nm area, the investigation would be a matter falling to the state of registry of the aircraft concerned. When territorial seas are extended, all investigations in the 0-12 nm would be dealt with under the Bailiwick arrangements.

Hydrography

- C44 Under international law, as defined in SOLAS⁵⁵, there is a requirement to keep up to date “nautical information necessary for safe navigation” for territorial seas. That does not necessarily mean that the latest technology has to be used, provided the technology is adequate for safe navigation.

Military Remains Act 1986 (Guernsey) Order 1987

<http://www.legislation.gov.uk/ukxi/1987/1281/contents/made>

When the 1987 Order was made, responsibility for military remains was with the States Ancient Monument Committee (later renamed the Heritage Committee). Following changes to Guernsey’s machinery of government (in 2004 and 2016) responsibility is now with the Committee for Education, Sport & Culture.

⁵² The Protection of Military Remains Act 1986 (Designation of Vessels and Controlled Sites) Order 2017 <http://www.legislation.gov.uk/ukxi/2017/147/contents/made>

⁵³ This was the UK’s position as expressed in ‘Protection and Management of Historic Military Wrecks outside UK Territorial Waters’ by Department for Culture, Media & Sport and Ministry of Defence April 2014 (as in Appendix A) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307961/Protection_and_Management_of_Historic_Military_Wrecks_outside_UK_Territorial_Waters_April_2014.pdf

⁵⁴ The Civil Aviation (Investigation of Air Accidents and Incidents) (Guernsey) Order 1998 “... ‘the Bailiwick’ means the Bailiwick of Guernsey and the territorial waters adjacent thereto...”

⁵⁵ The Safety of Life at Sea Convention 1974, as amended by the Protocol of 1988 (‘SOLAS’), which was extended to the Bailiwick on 30 January 2004, Chapter V – Regulation 9.

- C45 The United Kingdom has historically provided hydrographic services (surveying and publication of nautical charts) to the Bailiwick. The UK's Hydrographic Office (UKHO) has been the primary charting authority for the waters adjacent to the Bailiwick. Much of the present hydrographic survey coverage of the waters adjacent to the Bailiwick, especially in the 3-12 nm area, dates from the 19th century when lead weights and lines were used (the technology available at the time). The last UKHO sponsored hydrographic surveys in the vicinity are understood to have taken place in 1987 (0-3 nm area) and in 1997-2001 (3-12 nm area).
- C46 More recently, the Bailiwick has begun to take responsibility for hydrographic surveys in its waters, though it continues to work closely with the UKHO which remains the primary charting authority. A Bailiwick-wide civil hydrography programme is being developed to establish an ongoing programme of survey work on a risk-based and proportionate approach. The features which are most likely to be issues for mariners are generally within the shallower waters closer to shore or in the most frequently used passages within 0-3 nm. Those areas are well used and well charted. Spot checks using modern techniques suggest that the lead line data is remarkably accurate and most of the relevant seabed is unaffected by shifting sandbanks or similar, meaning that depths have not materially changed since last surveyed. During the last decade, various modern surveying techniques have been used in the 0-3 nm area using a risk based approach, especially in port limits and where cables have been laid. The Little Russel was last surveyed in 2014. The needs of safe navigation are satisfied through the survey data which has been used to prepare the official nautical charts of the 0-12 nm area.
- C47 The 3-12 nm area generally has fewer hazards to shipping. When territorial seas are extended, the survey programme (0-12 nm) will continue to be managed on a risk-based and proportionate approach with surveys being planned and conducted as and when necessary and by gathering data where possible from commercial surveys undertaken in this area. Careful prioritisation of survey work would assist in managing costs. Survey data would subsequently be incorporated into the official (UKHO) charts.

Cables (electricity, communications and other purposes) and pipelines

- C48 There are different rights and responsibilities for states for cables (and pipelines) laid in territorial seas rather than those laid on the continental shelf or in high seas. Some responsibilities and rights already exist and would be unchanged when the territorial seas are extended.
- C49 The FEPA licensing regime (and similar licensing under the Environmental Pollution (Guernsey) Law, 2004, as amended, in future) applies to cables and pipelines in the 0-3 nm (as in C30-32).

- C50 Currently, between 3-12 nm, cables (and pipelines) are governed by the regime of the continental shelf under which all states can lay cables (and pipelines), subject to certain rights (and responsibilities) of the Bailiwick. When the territorial sea is extended, the Bailiwick will have full powers over cables (and pipelines) on the seabed in that area. Extension of the territorial seas would give more powers, but not more liabilities.
- C51 There are a number of electricity cables already in position. There are a number of electricity cable projects currently proposed in and around the Bailiwick, these include: a direct cable from France to Guernsey ('GF1') to supply carbon neutral nuclear energy direct from the French grid (to replace existing infrastructure that is nearing end of its expected life); a cable from Guernsey to Jersey to link to CI cable which runs from France to Jersey ('GJ3') (to be an alternative to an existing cable); and a cable from France to Alderney to Britain. The exact line of the territorial sea boundary would be important in terms of ownership/responsibilities of any new cables and the GF1 project as a whole (there is a French requirement to hold a monopoly on all submarine cable infrastructure in their waters). There is also a network of telecommunications cables already in position in and around the Bailiwick.

Renewable energy

- C52 Renewable energy sources are becoming more important globally. If the Bailiwick has a larger territorial sea then it has a larger area in which to explore the possibility of renewable energy projects. (This would also apply if the Bailiwick had an EEZ beyond its 3 nm territorial seas.)

International maritime conventions

- C53 There are international maritime standards and obligations for various aspects of the sea and its uses. Various international maritime conventions have been extended to the Bailiwick. Domestic legislation is often required to implement convention obligations.
- C54 There are several other international conventions which it might be relevant, proportionate and helpful to have extended to the Bailiwick in due course. Extension of the territorial sea does not in itself require the extension of any additional maritime conventions.
- C55 The Bailiwick/Harbour authorities and relevant committees are currently considering whether it would be appropriate to extend the International Convention for the Prevention of Pollution from Ships 1973 as amended (known as 'MARPOL') (including Annex I Regulations for the Prevention of Pollution by Oil and Annex II Regulations for the Control of Pollution by Noxious

Liquid Substances in Bulk, but possibly not the other Annexes to it) and the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (known as 'OPRC') to the Bailiwick. If those conventions were extended to the Bailiwick, additional resources or careful reprioritisation might be required to draft the relevant legislation. Consideration would also need to be given to whether additional operational resources would be required.

- C56 UNCLOS contains provisions (Articles 22 and 23) about ships with nuclear power or carrying nuclear materials or other inherently dangerous or noxious substances exercising the right of innocent passage in the territorial sea. Article 22 (2) is about the possibility of requiring such ships to confine their passage to certain sea lanes designated by the coastal state.

D Seabed and foreshore (0-12 nautical miles)

- D1 For Alderney, the rights over the foreshore and seabed (to the 3 nautical mile limit) are already vested in the States of Alderney. The situation in Alderney is partly due to historic factors including post World War II economic development in Alderney. In 1950, property was transferred from the Crown to the States of Alderney⁵⁶; that property included "all the foreshore and seabed of the islands"⁵⁷.
- D2 There are three main options available to transfer seabed rights from the Crown to Guernsey, Alderney and Sark (as appropriate). Those options are:
- Transfer of all the rights over the seabed from the Crown in right of Guernsey to the States of Guernsey for the benefit of the people of Guernsey (or from the Crown to the people of Guernsey)
 - Lease of the seabed or parts of the seabed to the States of Guernsey
 - Uninhibited enjoyment of rights to use the seabed
- D3 The transfer absolutely and in perpetuity of the seabed for the benefit of the people of Guernsey would give Guernsey all the rights and all the responsibilities of ownership (and similarly for the other islands). This option seems the most advantageous for the islands.
- D4 The advantages of transfer of all seabed rights to Guernsey, Alderney and Sark (as appropriate) include:
- Each jurisdiction of the Bailiwick having control over any developments on

⁵⁶ By an Order in Council under The Alderney (Transfer of Property) Act 1923. Those Orders in Council include The Alderney (Transfer of Property etc.) Order 1950 (later changed by the 1987 Order); The Alderney (Transfer of Property etc.) Order 1987.

⁵⁷ The Alderney (Transfer of Property etc) 1950 Order refers to "all the foreshore and seabed of the Islands" (with one exception, which is separately transferred earlier in the same schedule)

its seabed

- Improved environmental management and marine conservation
- Greatest flexibility for Bailiwick governments to undertake any development itself in the future (including cabling, ports, infrastructure development etc)
- Possibility to speed up decisions for developments on the seabed (as there would be fewer parties involved)
- Offers maximum autonomy and flexibility to lease and/or licence use of parts of the seabed to a third party
- Improving Bailiwick's competitiveness as a destination for renewable energy or other seabed investment
- Contributes to development of the Bailiwick's international identity

D5 Any transfer of seabed rights would need to:

- Appropriately reflect the autonomy of each island with regard to its jurisdiction and responsibilities for the seabed
- Have no adverse implications for the UK or for the Crown with regard to the sovereign state's international obligations
- Safeguard the Crown's interests, through the inclusion of provisions to restrict any subsequent transfer of ownership of any part of the seabed without the consent of the Crown
- Enable the States of Guernsey/ States of Alderney/ Chief Pleas of Sark to be able to enter into lease (or similar) arrangements with developers
- Facilitate future appropriate developments on the seabed

D6 By way of comparison, Jersey's foreshore and seabed now belong to the public of Jersey (represented by HM Attorney General), having been transferred from the Crown in right of Jersey in 2015. The Isle of Man's seabed rights were transferred from the Crown Estate to the Isle of Man government in 1991, reflecting the slightly different constitutional relationship the Isle of Man has with the Crown.