BILLET D'ÉTAT

V
2020

WEDNESDAY, 26th FEBRUARY, 2020

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BILLET D'ÉTAT

TO
THE MEMBERS OF THE STATES
OF THE ISLAND OF GUERNSEY

I hereby give notice that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE,** on **WEDNESDAY,** the **26th February, 2020** immediately after the Meeting of the States of Election convened for 9.30 a.m., to consider the items listed in this Billet d'État which have been submitted for debate.

R. J. COLLAS
Bailiff and Presiding Officer

The Royal Court House
Guernsey

7th February, 2020

P.2020/16

ELECTION OF ONE MEMBER OF THE
STATES' TRADING SUPERVISORY BOARD

The States are asked:

To elect, in accordance with Rule 16 of The Rules of Procedure, a sitting Member of the States as a member of the States' Trading Supervisory Board to complete the unexpired term of office of the late Deputy J. Kuttelwascher (that is to the 30th June 2020).

(N.B.

1. Pursuant to the Mandate of the States' Trading Supervisory Board, a Member of the Board shall not be the President or a member of the Transport Licensing Authority.)

P.2020/12

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* HOME AFFAIRS

POLICE COMPLAINTS COMMISSION:
APPOINTMENT OF CHAIR AND NOTIFICATION OF RESIGNATION

The States are asked to decide: -

Whether, after consideration of the Policy Letter dated 20th January 2020, of the Committee *for* Home Affairs, they are of the opinion:

1 to note the resignation of Mr Stewart Chisholm as Chairman, of the Police Complaints Commission with effect from 1st January 2020 and as Member of the Police Complaints Commission with effect from 1st March 2020.

2 to appoint Mr Robert Steven Jordan as the Chairman of the Police Complaints Commission with immediate effect for a term of four years.

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

POLICE COMPLAINTS COMMISSION:
RE-APPOINTMENT OF CHAIR AND NOTIFICATION OF RESIGNATION

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

20th January 2020

Dear Sir

1. Executive Summary

1.1 The purpose of this report is note that Mr Stewart Chisholm has resigned as Chairman of the Police Complaints Commission ('the Commission') with effect from 1st January 2020 and will resigned as an ordinary member with effect from 1st March 2020 and to approve the appointment of Mr Robert Steven Jordan as Chairman of the Commission.

2. Background

2.1 In 2005, the States of Deliberation approved the then Home Department's recommendation that legislation be introduced to establish a Police Complaints Commission (Billet d'Etat I, 2005[1]). The Police Complaints (Guernsey) Law, 2008 [2]("the Law") came into effect on 1st July 2011, and the Commission was established.

2.2 The Committee *for* Home Affairs ("the Committee") would like to take this opportunity to put on record its thanks and appreciation to all the Commissioners for their patience, dedication and commitment to their roles.

3. Constitution

[1] Billet d'Etat I, 2005
[2] The Police Complaints (Guernsey) Law, 2008

3.1 The Schedule to the Law sets out the composition of, and appointment process to, the Commission. The following parts are relevant.

3.2 Paragraph 1(1) of the Schedule states that *"The Commission shall consist of a Chairman and five ordinary members."*

3.3 Paragraph 1(2) states that *"The Chairman and ordinary members shall be appointed by the States on the recommendation of the Committee"*.

3.4 Paragraph 3(1) states *"A member may resign from office at any time."*

3.5 Paragraph 3(2) states that when a resignation is made to the Committee, *"the Committee will notify the States of it at the first available opportunity thereafter"*.

4. Resignation of Chairman

4.1 Mr Stewart Chisholm has served as the Chairman of the Commission since the commencement of the Law on 1st July 2011. He was reappointed in 2015 and 2019.

4.2 Mr Chisholm has resigned as Chairman with effect from 1st January 2020 and will cease acting as ordinary member with effect from 1st March 2020.

4.3 The Committee would like to take this opportunity to thank Mr Chisholm for his eight year tenure on the Commission and for role he has had in identifying areas of improvement within the Law and in developing relationships.

5. Appointment of Chairman

5.1 Mr Robert Steven Jordan has served as ordinary member of the Commission since 18th July 2018.

5.2 Mr Jordan is a senior manager at an international securities firm based in Zurich, which has offices in Guernsey. Mr Jordan He has experience in recruitment, management, mediation and is familiar with investigating in depth issues, ensuring compliance and due diligence. Mr Jordan deals with sensitive and confidential information with integrity, assessing and making decisions at the highest level. Mr Jordan has useful knowledge in dealing with Anti Money Laundering, Cyber-crime and IT Forensics as part of his MLRO (Money Laundering Reporting Officer) role.

5.3 Mr Jordan has been a volunteer at St John Ambulance & Rescue Service for the past 13 years serving as a Community First Responder and on the Cliff Rescue Team. This has given him a wide range of skills and has enabled him to develop expertise and has enabled him to develop broader skills. Mr Jordan has experience of working with many different people from all walks of life and

believes that everyone has a place in our community.

5.4 The Committee has met with Mr Jordan and is satisfied of his suitability for appointment.

6. Compliance with Rule 4

6.1 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications. She has advised that there is no reason in law why the Propositions should not to be put into effect.

6.2 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.

6.3 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 law enforcement and policing.

Yours faithfully

M M Lowe
President

M P Leadbeater
Vice-President

V Oliver
P R Le Pelley
J C S F Smithies

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

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

No. 109 of 2019

THE REPUBLIC OF MALDIVES (REPEAL OF RESTRICTIVE MEASURES) (GUERNSEY AND SARK) REGULATIONS, 2019

In pursuance of section 2 of the Sanctions (Bailiwick of Guernsey) Law, 2018, "The Republic of Maldives (Repeal of Restrictive Measures) (Guernsey and Sark) Regulations, 2019", made by the Policy *and* Resources Committee on 7th November, 2019, are laid before the States.

EXPLANATORY NOTE

These Regulations repeal legislation in Guernsey and Sark that gives effect to sanctions measures enacted by the European Union in response to concern about the political situation in the Republic of Maldives. The European Union has repealed those measures following its assessment that the situation in the Republic of Maldives has now improved.

These Regulations came into force on 8th November, 2019.

No. 110 of 2019

THE NICARAGUA (RESTRICTIVE MEASURES) (BAILIWICK OF GUERNSEY) REGULATIONS, 2019

In pursuance of section 2 of the Sanctions (Bailiwick of Guernsey) Law, 2018, "The Nicaragua (Restrictive Measures) (Bailiwick of Guernsey) Regulations, 2019", made by the Policy *and* Resources Committee on 7th November, 2019, are laid before the States.

EXPLANATORY NOTE

These Regulations give effect within the Bailiwick to sanctions measures enacted by the European Union in response to concern about the situation in Nicaragua. These measures comprise an asset freeze and other financial restrictions on listed persons that are responsible for serious human rights violations or abuses or for the repression of civil society and democratic opposition in Nicaragua, those undermining democracy and the rule of law in Nicaragua, and persons associated with them.

These Regulations came into force on 8th November, 2019.

No. 111 of 2019

THE CYBER-CRIME (RESTRICTIVE MEASURES) (BAILIWICK OF GUERNSEY) REGULATIONS, 2019

In pursuance of section 2 of the Sanctions (Bailiwick of Guernsey) Law, 2018, "The Cyber-Crime (Restrictive Measures) (Bailiwick of Guernsey) Regulations, 2019", made by the Policy *and* Resources Committee on 7th November, 2019, are laid before the States.

EXPLANATORY NOTE

These Regulations give effect within the Bailiwick to sanctions measures enacted by the European Union in response to concern about the threat from cyber-attacks. These measures comprise an asset freeze and other financial restrictions on listed persons that are responsible for, provide financial, technical or material support for, or are otherwise involved in, cyber-attacks, as well as those who assist or encourage such activities.

These Regulations came into force on 8th November, 2019.

No. 125 of 2019

THE HEALTH SERVICE (BENEFIT) (GENERAL) (AMENDMENT) REGULATIONS, 2019

In pursuance of sections 5 and 35 of the Health Service (Benefit) (Guernsey) Law, 1990, made by the Committee *for* Employment & Social Security on 13th December, 2019 are laid before the States.

EXPLANATORY NOTE

These Regulations amend the Health Service (Benefit) (General) Regulations, 1990, by removing any requirement to issue a physical health benefit card which currently must be issued to persons who satisfy the conditions of benefit under the Health Service (Benefit) (Guernsey) Law, 1990.

The amendment will enable the Committee for Employment & Social Security to communicate, by electronic means, the information as to health benefit currently recorded on cards, which will facilitate the administration of health benefit and related benefits (such as specialist medical benefit).

These Regulations come into force on 1st January 2020.

No. 1 of 2020

THE INCOME SUPPORT (GUERNSEY) (AMENDMENT) REGULATIONS, 2020

In pursuance of sections 1 and 15B of the Income Support (Guernsey) Law, 1971, made by the Committee *for* Employment & Social Security on 7th January, 2020 are laid before the States.

EXPLANATORY NOTE

These Regulations further amend the Income Support (Guernsey) Regulations, 2014, so as to establish a work requirement for a single parent, or both parents of a couple, when their youngest child reaches age 5.

This revision reflects changing social norms and the expectation that it is reasonable for parents to seek appropriate work by the time their youngest child begins full time education.

These Regulations come into force on the 10th day of January, 2020.

No. 2 of 2020

THE DATA PROTECTION (GENERAL PROVISIONS) (BAILIWICK OF GUERNSEY) (AMENDMENT) REGULATIONS 2020

In pursuance of sections 7(1) and 109 of, and paragraph 17(a) of Schedule 2, to the Data Protection (Bailiwick of Guernsey) Law, 2017, The Data Protection (General Provisions) (Bailiwick of Guernsey) (Amendment) Regulations 2020, made by the Committee *for* Home Affairs on 6th January 2020, is laid before the States.

EXPLANATORY NOTE

These Regulations amend the Data Protection (General Provisions) (Bailiwick of Guernsey) Regulations, 2018 ("**the principal Regulations**") to authorise a further form of processing of personal data.

Currently the Scrutiny Management Committee coordinates or leads the scrutiny of States of Guernsey committees and organisations that receive public funds under the mandate given to it by the States of Deliberation. In order to carry out this scrutiny function effectively, it needs to obtain information from those committees and organisations. Often the information obtained from such a committee or organisation in a particular case contains personal data within the meaning of the Data Protection (Bailiwick of Guernsey) Law, 2017 ("**the DP Law**").

These Regulations are intended to remove a potential obstacle to the scrutinised committee or organisation disclosing that personal data to the Scrutiny Management Committee. These Regulations *authorise* the processing of personal data in certain circumstances and subject to specified conditions, and (for the purpose of section 7(1) of the DP Law) provide a

lawful basis for processing personal data in those circumstances and under those conditions. Any processing of personal data in accordance with this authorisation would be deemed compatible with the purpose for which that data was collected (in line with the principle in section 6(2)(b) of the DP Law), by virtue of section 9(3)(c) of the DP Law.

However, these Regulations do not *require* any scrutinised committee or organisation to disclose personal data to the Scrutiny Management Committee and do not *negate* the application of any of the other applicable duties and data protection principles in the DP Law. For example, both scrutinised committees and the Scrutiny Management Committee would need to comply with the principle that personal data must be processed fairly and in a transparent manner (in section 6(2)(a) of the DP Law), and that personal data processed must be adequate, relevant and limited to what is necessary in relation to the purpose of the processing (in section 6(2)(c) of the DP Law).

The authorisation applies to a request for information made for the purpose of a review or an inquiry commenced by the Scrutiny Committee (in the exercise of its scrutiny function) before the commencement of the Data Protection (General Provisions) (Bailiwick of Guernsey) (Amendment) Regulations, 2020.

Regulations 1 and 3 of these Regulations insert a new row 2A in Schedule 2 to the principal Regulations.

The new row 2A, read with regulation 11 of the principal Regulations, specifically authorises committees of the States of Guernsey as well as public committees (any authority, board, committee or council of the States of Guernsey constituted by or under a resolution, Law or Ordinance approved by the States of Guernsey, to process (including disclose) information where necessary to assist or facilitate the Scrutiny Management Committee to carry out its scrutiny function, in response to a particular request made by the Scrutiny Management Committee.

Apart from the other duties and obligations which would apply to the Scrutiny Management Committee's control of the personal data under the DP Law, there are additional safeguards in the conditions of the authorisation. The scrutinised committee must not disclose the personal data of any data subject to the Scrutiny Management Committee unless the Scrutiny Management Committee undertakes not to process any of that personal data other than as necessary for the purpose of carrying out its scrutiny function or any other purpose contemplated in a fair processing notice given to the scrutinised committee. In addition, in the case of the personal data of any data subject other than a member of a scrutinised committee, that data must not be disclosed to the Scrutiny Management Committee unless the Scrutiny Management Committee undertakes not to publish that personal data without the consent of the data subject concerned.

Regulation 2 of these Regulations inserts a new paragraph (3) at the end of regulation 11. This new paragraph provides that the new row 2A inserted in Schedule 2 to the principal Regulations has no effect in Alderney or Sark (in fact, the amendment made by these Regulations only affects States of Guernsey committees or bodies established by the States of Guernsey and receiving public funds).

Regulations 4 and 5 are the citation and commencement provisions respectively.

These Regulations will come into force on the 7th January, 2020.

The full text of the legislation can be found at:
http://www.guernseylegalresources.gg/article/90621/Statutory-Instruments

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE INCOME TAX (GUERNSEY) (APPROVAL OF AGREEMENT WITH ISLE OF MAN) ORDINANCE, 2020

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Guernsey) (Approval of Agreement with Isle of Man) Ordinance, 2020", and to direct that the same shall have effect as an Ordinance of the States.

This proposition has 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.

EXPLANATORY MEMORANDUM

This Ordinance specifies, as an approved international agreement, an agreement providing for the obtaining, delivery, making available, furnishing and/or exchanging of documents and information in relation to tax, made for the purposes of the Income Tax (Guernsey) Law, 1975.

The agreement specified is the Protocol amending the Agreement between the States of Guernsey and the Government of the Isle of Man for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on the 24th January, 2013, the Protocol having been signed at Douglas on the 18th October, 2019 and Saint Peter Port on the 12th November, 2019.

The Income Tax (Guernsey)
(Approval of Agreement with Isle of Man)
Ordinance, 2020

THE STATES, in exercise of the powers conferred on them by section 75C of the Income Tax (Guernsey) Law, 1975[a], and all other powers enabling them in that behalf, hereby order:-

Approval of Agreement.

1. (1) Pursuant to section 75C of the Income Tax (Guernsey) Law, 1975, the agreement described in subsection (2) providing for the obtaining, delivery, making available, furnishing and/or exchanging of documents and information in relation to tax is specified for the purposes of that Law.

(2) The agreement is the Protocol amending the Agreement between the States of Guernsey and the Government of the Isle of Man for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on the 24th January, 2013, the Protocol having been signed at Douglas on the 18th October, 2019 and Saint Peter Port on the 12th November, 2019.

Citation.

2. This Ordinance may be cited as the Income Tax (Guernsey) (Approval of Agreement with Isle of Man) Ordinance, 2020.

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[a] Ordres en Conseil Vol. XXV, p. 124; section 75C was inserted by section 5 of Order in Council No. XVII of 2005 and has been subsequently amended.

Commencement.

3. This Ordinance shall come into force on the 1st March, 2020.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE INCOME TAX (GUERNSEY) (APPROVAL OF AGREEMENT WITH NEW ZEALAND) ORDINANCE, 2020

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Guernsey) (Approval of Agreement with New Zealand) Ordinance, 2020", and to direct that the same shall have effect as an Ordinance of the States.

This proposition has 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.

EXPLANATORY MEMORANDUM

This Ordinance specifies, as an approved international agreement, an agreement providing for the obtaining, delivery, making available, furnishing and/or exchanging of documents and information in relation to tax, made for the purposes of the Income Tax (Guernsey) Law, 1975.

The agreement specified is the Protocol amending the Agreement between the States of Guernsey and the Government of New Zealand for the Exchange of Information with Respect to Taxes and the Allocation of Taxing Rights with respect to Certain Income of Individuals signed on the 21st July, 2009, the Protocol having been signed at London on the 16th September, 2019.

The Income Tax (Guernsey)
(Approval of Agreement with New Zealand)
Ordinance, 2020

THE STATES, in exercise of the powers conferred on them by section 75C of the Income Tax (Guernsey) Law, 1975[a], and all other powers enabling them in that behalf, hereby order:-

Approval of Agreement.

1. (1) Pursuant to section 75C of the Income Tax (Guernsey) Law, 1975, the agreement described in subsection (2) providing for the obtaining, delivery, making available, furnishing and/or exchanging of documents and information in relation to tax is specified for the purposes of that Law.

(2) The agreement is the Protocol amending the Agreement between the States of Guernsey and the Government of New Zealand for the Exchange of Information with Respect to Taxes and the Allocation of Taxing Rights with respect to Certain Income of Individuals signed at London on the 21st July, 2009, the Protocol having been signed at London on the 16th September, 2019.

Citation.

2. This Ordinance may be cited as the Income Tax (Guernsey) (Approval of Agreement with New Zealand) Ordinance, 2020.

---

[a] Ordres en Conseil Vol. XXV, p. 124; section 75C was inserted by section 5 of Order in Council No. XVII of 2005 and has been subsequently amended.

Commencement.

3. This Ordinance shall come into force on the 1st March, 2020.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE INCOME TAX (GUERNSEY) (APPROVAL OF AGREEMENT WITH ESTONIA) ORDINANCE, 2020

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Guernsey) (Approval of Agreement with Estonia) Ordinance, 2020", and to direct that the same shall have effect as an Ordinance of the States.

This proposition has 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.

EXPLANATORY MEMORANDUM

This Ordinance specifies, as an approved international agreement, an agreement providing for the obtaining, delivery, making available, furnishing and/or exchanging of documents and information in relation to tax, made for the purposes of the Income Tax (Guernsey) Law, 1975.

The agreement specified is the Agreement between the States of Guernsey and the Republic of Estonia for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance signed on the 18th November, 2019, on behalf of the States of Guernsey and the Republic of Estonia.

The Income Tax (Guernsey)
(Approval of Agreement with Estonia)
Ordinance, 2020

THE STATES, in exercise of the powers conferred on them by section 75C of the Income Tax (Guernsey) Law, 1975[a], and all other powers enabling them in that behalf, hereby order:-

Approval of Agreement.

1. (1) Pursuant to section 75C of the Income Tax (Guernsey) Law, 1975, the agreement described in subsection (2) providing for the obtaining, delivery, making available, furnishing and/or exchanging of documents and information in relation to tax is specified for the purposes of that Law.

(2) The agreement is the Agreement between Guernsey and the Republic of Estonia for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance signed by the duly authorised representatives of the Governments of Guernsey and the Republic of Estonia at London on the 18th November, 2019.

Citation.

2. This Ordinance may be cited as the Income Tax (Guernsey) (Approval of Agreement with Estonia) Ordinance, 2020.

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[a] Ordres en Conseil Vol. XXV, p. 124; section 75C was inserted by section 5 of Order in Council No. XVII of 2005 and has been subsequently amended.

Commencement.

3. This Ordinance shall come into force on the 1st March, 2020.

P.2020/10

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* HEALTH & SOCIAL CARE

'CAPACITY LAW' - SUPPLEMENTARY POLICY MATTERS AND POTENTIAL FINANCIAL IMPLICATIONS ARISING FROM THE APPEALS PROCESS

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled ''Capacity Law' – Supplementary Policy matters and potential financial implications arising from the appeals process', dated 20th January, 2020 they are of the opinion:-

1. To agree the supplementary matters of policy as described in section 3 of this Policy Letter and direct that the Projet de Loi entitled "The Capacity (Bailiwick of Guernsey) Law, 2020" is drafted accordingly.

2. To agree that legal representation at Mental Health and Capacity Review Tribunal hearings (primarily in relation to protective authorisations) is to be provided under the Legal Aid Scheme generally on a *'no means, no merits test'* basis; whilst reserving the right for the Legal Aid Administrator to exceptionally apply a *'means test'* to an application, where reasonable and in conformity with human rights obligations.

3. To agree that legal representation for appeals from a Mental Health and Capacity Review Tribunal to the Royal Court or Court of Appeal may be provided under the Legal Aid Scheme on a *'means and merit test'* basis.

4. To note that, upon enactment of "The Capacity (Bailiwick of Guernsey) Law, 2020", there are anticipated to be additional ongoing funding requirements of:
   i. £25,000 per annum for the Guernsey Legal Aid Service; and
   ii. £75,000 per annum for the future Mental Health and Capacity Review Tribunal

   and that requests for additional budget will be submitted as part of the annual budget process.

5. To direct the Committee *for* Health & Social Care to report back to the States with proposals for the introduction of an advocacy service.

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* HEALTH & SOCIAL CARE

'CAPACITY LAW' - SUPPLEMENTARY POLICY MATTERS AND POTENTIAL FINANCIAL IMPLICATIONS ARISING FROM THE APPEALS PROCESS

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

20th January, 2020

Dear Sir

1. Executive Summary

1.1 In March 2016[1], the States of Deliberation approved proposals by the then Health and Social Services Department (HSSD) to introduce a new legal framework to empower individuals who may lack capacity to make their own decisions where possible, to allow them to plan for the future and, if they lack capacity, to ensure that decisions made on their behalf respect their basic rights and freedoms.

1.2 The Capacity Law is an important part of the Disability & Inclusion Strategy and has been the Committee's top legislative priority of the political term.

1.3 The 2016 Policy Letter and the Resolutions agreed by the States set out the general policy intentions of the law, which has provided the framework for legislative drafting.

1.4 During the drafting process, some changes have been made to the recommendations which were originally approved on the basis of the 2016 Policy Letter and some related additions have also been made. This Policy Letter asks the States to consider and approve these minor variations and supplementary matters.

[1] Health & Social Services Department - "Capacity Law" - Article III of Vol. II of Billet d'État VII of 2016

1.5 This Policy Letter also addresses an outstanding States Resolution[2] to report back on the potential financial implications for the Guernsey Legal Aid Service (GLAS) arising from the appeals process. It describes how the number of expected appeal cases have been estimated, the impact of this on the workload of the Mental Health Review Tribunal (MHRT) and the anticipated associated costs.

1.6 The resource implications arising from the introduction of the legislation are also described (Section 5).

1.7 Subject to any amendments being required to the draft legislation following consideration of this Policy Letter, it is expected that the Capacity (Bailiwick of Guernsey) Law will be submitted to the Assembly for approval during this political term.

An overview of the Capacity Law

1.8 The Capacity Law has been developed with the principal purpose of empowering people to make decisions for themselves wherever possible.

1.9 Careful consideration has been given to ensure that the new provisions that will be introduced by the legislation are those that would most effectively assist and protect members of the community in the Bailiwick, in a proportionate way, whilst being sufficiently robust and respectful of the human rights of those who lack capacity.

1.10 In summary, it is proposed that the Capacity (Bailiwick of Guernsey) Law will:

- Set out a statutory test to decide whether a person has the mental capacity to make a specific decision;
- Establish the best interests principle in relation to decision making on behalf of persons who have been assessed to lack capacity;
- Describe the powers of, and applications to, the Royal Court and Mental Health and Capacity Review Tribunal;
- Introduce Lasting Powers of Attorney, which permit a person to nominate one or more people to act on their behalf when that person has lost capacity in relation to property and financial affairs and/or health and welfare matters;
- Introduce Advance Planning to include Advanced Decisions to Refuse Treatment and Advance Care Plans;
- Introduce Independent Capacity Representatives to provide advocacy support to those who lack capacity and who do not have family or friends who can provide support; and

[2] Resolution 4 of Article III of Vol. II of Billet d'État VII of 2016

- Introduce a Protective Authorisation Scheme to authorise the accommodation of people who lack capacity in appropriate care settings, in compliance with Article 5 of the European Convention on Human Rights. This includes the introduction of the role of Capacity Professional to oversee the authorisation process.

1.11 Where the policy approach has been further developed since the States instruction in 2016, detailed consideration of the above matters is set out in Section 3 of this Policy Letter.

1.12 The drafting of the Law has been informed by the provisions of the Mental Capacity Act 2005 (the 2005 Act) enacted in England and Wales. More recently, the Committee has considered the recommendations of the Law Commission of England and Wales in relation to the reform of Deprivation of Liberty Safeguards (DoLS), in addition to the relevant decisions of the United Kingdom Supreme Court and the amendments made by the Mental Capacity (Amendment) Act 2019 in shaping the Projet de Loi.

1.13 In August 2019, the Committee *for* Health & Social Care (the Committee) carried out some targeted engagement on an initial draft of the legislation. Further information about this is provided in Section 6. This allowed the Committee, at an early stage, to seek feedback on the practical application of some of the provisions within the draft Law for those in the community who will have operational responsibility for the relevant issues arising from the legislation. This included representatives from the Third Sector, residential and nursing care homes, the Guernsey Bar, General Practitioners and other health and social care professionals. The Judiciary has also been consulted.

1.14 The Committee is grateful for the valuable feedback that was received, which has informed the drafting of the Law.

1.15 The Committee has also discussed the proposed legislation with the States of Alderney and the Government of Sark and both Islands have confirmed that they are in agreement for the legislation to be a Bailiwick-wide Law.

Potential financial implications for Legal Aid

1.16 One of the outstanding Resolutions from the March 2016 Policy Letter (Resolution 4) is for the Committee to report to the States on the potential implications for the Legal Aid budget arising from the provisions introduced by the Capacity Law.

1.17 The Capacity Law establishes an appeals mechanism for decisions made under the Protective Authorisation Scheme to the MHRT. The Committee recommends

that the Legal Aid assistance that should be afforded to those wishing to appeal a decision made under the Protective Authorisation Scheme should mirror the arrangements that have been established following the introduction of the Mental Health (Bailiwick of Guernsey) Law, 2010[3] (the 2010 Law). It was previously agreed by the States, in order to respect human rights requirements, to extend Legal Aid to those appealing against compulsory and other related decisions under the 2010 Law.

1.18 It is proposed that the Tribunal be renamed the Mental Health and Capacity Review Tribunal (MHCRT) to take account of the expanded remit to hear appeals bought forward under the Capacity Law. This has been discussed with existing Tribunal Members and their support staff.

1.19 As a result, it is expected that there will be an increased caseload for the MHCRT, which will have direct financial implications for the costs associated with convening the Tribunal to hear an increased number of appeals. This will also impact on the GLAS as a greater number of appeals cases would be eligible for Legal Aid to ensure that appropriate legal representation is available to them at a Tribunal hearing.

1.20 This Policy Letter recommends that Legal Aid should be available for appeals bought forward under the framework of the Capacity Law (Proposition 2), but that Legal Aid assistance should not be available for subsequent appeals to the Royal Court (Proposition 3).

1.21 In line with the arrangements in place for appeals bought forward under the Mental Health Law, 2010, it is also recommended that a right should be reserved for the Legal Aid Administrator to exceptionally apply a *'means test'* to an application, where reasonable and in conformity with human rights obligations[4].

1.22 It is expected that the additional revenue expenditure required to cater for an additional 12-15 appeal cases estimated each year will be in the region of £25,000 to provide Legal Aid to support such appeals. To convene the Tribunal on an increased number of occasions is expected to cost an additional sum in the region of £75,000 per annum. Detailed explanation is provided in Section 4.

1.23 The Committee considers that it would be challenging to subsume the expected additional cost for the Tribunal within its existing General Revenue budget allocation and therefore additional budget to enable the MHRT to administer and

[3] The Policy & Resources Committee – "Guernsey Legal Aid Service – Legal Aid Funding of Mental Health Review Tribunals and Public Law Cases" – Billet d'État IV of 2013

[4] Although a right has been reserved to apply a means and merits test, this has not been applied to date and all appeals to the MHRT have received Legal Aid.

convene to hear these additional appeals and to provide Legal Aid will be requested as part of the annual budget process.

Resourcing the implementation of the legislation

1.24 The 2016 Policy Letter highlighted that the greatest resource implications arising from the new Law would fall to the Committee. The former HSSD made a commitment that it planned to absorb the Department's cost of implementation within its existing budget. Indeed, it is expected that the new processes arising from the Law will be absorbed into 'business as usual' within Health & Social Care over time, and there is a good level of understanding across the organisation of the requirements of the legislation from the consultation.

1.25 Whilst the Committee aims to uphold this earlier commitment and will make every effort to introduce the changes to comply with the Law as far as possible without additional resources, it also recognises the Law's importance and the need to be sufficiently prepared when it comes into force.

1.26 It will therefore keep under review any additional resource requirements and, if necessary, the Committee will request one-off funding from the Budget Reserve in order to adequately resource the implementation of the legislation. Further detail is provided in Section 5 of this Policy Letter.

2. Introduction and Background

2.1 In March 2016, the States of Deliberation approved proposals by the Health and Social Services Department to introduce a new legal framework to empower individuals who may lack capacity to make their own decisions where possible, to allow them to plan for the future and, if they lack capacity, to ensure that decisions made on their behalf respect their basic rights and freedoms. The 2016 Policy Letter set out the general policy intentions of the law, which has provided the framework for legislative drafting.

2.2 The drafting of the Law has progressed on the basis of the following collection of principles, which reflect the approach of section 1 of the 2005 Act. These principles are:

- a person must be assumed to have capacity unless it is established that they lack capacity;
- a person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success;
- a person is not to be treated as unable to make a decision merely because they make an unwise decision;

- an act done, or decision made, under this legislation for or on behalf of a person who lacks capacity must be done, or made, in their best interests; and
- before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

2.3 The Law has been developed with the principal purpose of empowering people to make decisions for themselves wherever possible. At the highest level, the Law provides a framework for:

(i) dealing with issues relating to mental capacity for an individual who has lost capacity, including establishing appropriate safeguards to protect their interests; and

(ii) enabling individuals to plan ahead for a time when they may no longer have capacity to make decisions for themselves, to enable them to register their wishes in advance.

2.4 The 2016 Policy Letter highlighted that the Capacity Law would address the current shortfall of legislative provision for those vulnerable people within the Bailiwick who require assistance to make decisions in their own best interests, but who do not fall within the remit of the 2010 Law.

2.5 Careful consideration has been given during the drafting to ensure that the new provisions effectively assist and protect members of the community in the Bailiwick, in a proportionate way, whilst being sufficiently robust and respectful of the human rights of those who lack capacity.

3. Supplementary matters for consideration

3.1 This section provides a summary of the key provisions within the Law and cross refers to the policy instruction from the States in March 2016. It provides further information about a small number of supplementary matters that have developed as the drafting of the legislation has progressed, in terms of fulfilling the original States instruction for the preparation of the law. These areas are as follows:

(i) Lasting Powers of Attorney;
(ii) Advance Care Plans;
(iii) Representation;
(iv) Protective Authorisation;
(v) Role of the Mental Health and Capacity Review Tribunal; and
(vi) Safeguarding.

i) Lasting Powers of Attorney

3.2 The 2016 Policy Letter (paragraphs 4.3.1 to 4.3.13) set out the Committee's proposals in relation to lasting powers of attorney (LPAs). LPAs will allow an individual (the grantor) to plan ahead for a time when they may no longer have capacity, by appointing another person as the "attorney" to make decisions on their behalf.

3.3 In order to make a valid LPA, the grantor would need to have capacity to make the decision to appoint an attorney when the appointment is made. This will provide the attorney with the delegated power to make decisions in line with the beliefs and wishes of the grantor, if and when the grantor no longer has capacity to do so for themselves.

3.4 The Projet de Loi has been drafted to allow for two different types of LPA, which will confer power of attorney in relation to health and welfare matters, and in relation to property and financial affairs.

3.5 Taking into account the propositions agreed by the States in 2016, the Committee has considered how best to introduce the process for making and using LPAs. It has taken into account the mixed feedback received during the period of engagement, in particular in relation to the proposed registration process for LPAs. Differences in views were expressed about the extent to which a formal registration process is necessary and whether the same process should be embedded for health and care matters as for financial and property affairs.

3.6 Rather than enshrining this process in primary legislation, the Committee has decided that certain provisions regarding LPAs should remain within the Law, but the process itself should be set out in an Ordinance made under the Law. This will allow the Committee to monitor the making and use of LPAs and to amend the process relatively quickly, if it considers this to be necessary over time.

3.7 The Ordinance will be drafted on the basis of a proposed registration system for LPAs through Her Majesty's Greffier, who would establish and maintain a register of LPAs. Subject to any amendments, the Ordinance will be brought back to the States in due course when the Law has been enacted.

ii) Advance Care Plans

3.8 The Capacity Law also includes provisions for an Advance Care Plan (ACP). This is a formal document that will enable a person (P) to set out their future wishes regarding their care, in advance of a time when they may lose the mental capacity to make their own decision. An ACP should be considered by those making decisions about P's care, after they have lost the capacity to make that specific decision.

3.9 An ACP can only cover the decisions that P could make if they still had capacity. For example, an ACP cannot require that a person can only be accommodated in a specific care setting, as this may not be available at the time when they need such care. It could also be used to express other wishes and preferences not directly related to care, such as food choices, or to express religious or ethical views.

3.10 An ACP should always be made in writing to ensure that it is available to decision makers and a copy is provided to P's family members, GP and/or care home manager (where appropriate).

iii) Representation

3.11 The Capacity Law introduces Independent Capacity Representatives (ICRs) to protect the rights of people who lack capacity in relation to both the Protective Authorisation Scheme and capacity legislation in general. Principally, ICRs would provide representation for a person (P) lacking capacity with no friends or family who are eligible to represent P (i.e. able to act in P's best interests) or able to represent P effectively.

3.12 Medical and social care staff will have a duty to request the support of an ICR in the following situations:

(a) where there is a safeguarding enquiry or another allegation has been made which might affect the eligibility of a family member or friend to act on P's behalf,

(b) where it is proposed to provide or withdraw serious medical treatment, which will include treatment which is likely to affect P's life expectancy or significantly affect P's quality of life,

(c) where P's accommodation is likely to change for a period of more than 28 days, and

(d) where P is or may be subject to a Protective Authorisation but does not have any friends or family who can be consulted or who can act as P's Representative.

3.13 However, in all of these cases, there will be a proviso that no such appointment would be required in the case of an emergency (or other necessity) where there would be insufficient time to consult.

3.14 An ICR can also be appointed to support P's Representative where P has a family member or friend acting as the Representative but who wishes to have assistance to carry out the role.

iv) Protective Authorisation

3.15 The 2016 Policy Letter (paragraphs 5.1-5.2.5) set out the Committee's initial proposals in relation to the Bailiwick equivalent of the Deprivation of Liberty Safeguards (DoLS) in force in England and Wales.

3.16 As set out in the original Policy Letter, the Committee has considered the recommendations of the Law Commission of England and Wales in relation to the reform of DoLS, in addition to the relevant decisions of the United Kingdom Supreme Court and the amendments made by the Mental Capacity (Amendment) Act 2019.

3.17 The Committee has also consulted with stakeholders and representatives of the Third Sector on its proposed equivalent, both in relation to its name and to the processes. The Protective Authorisation Scheme in the proposed Bailiwick Law has therefore been developed to protect the rights of people who lack capacity and whose care requires them to be accommodated in circumstances which might otherwise breach their right to liberty under Article 5 of the European Convention on Human Rights (the ECHR).

3.18 The Protective Authorisation Scheme uses the term "significant restriction of a person's personal rights" instead of "deprivation of liberty" as this is not a popular or easily understandable term. A significant restriction occurs when -

(a) a person (P) is confined in a particular restricted space for a not negligible time,

(b) P has not validly consented to that confinement, and

(c) the arrangements which include the confinement are made by, or are due to an action of, a person or body responsible to, or regulated by, an Island authority,

which includes deprivation of liberty within the meaning of Article 5(1), ECHR.

3.19 The Protective Authorisation Scheme will apply to all persons aged 16 years and over who are assessed to lack capacity to consent to the arrangements for their care. In addition, it will apply to all settings, including hospitals, care homes, supported accommodation and domestic settings, thereby ensuring that the safeguards afforded by the scheme apply to everyone deprived of their liberty.

3.20 A Protective Authorisation should be requested in advance of the arrangements being made, unless there is an emergency, and it is therefore envisaged that for many people, the Protective Authorisation will be granted as part of the process of arranging a care package/placement, where such arrangements would effectively deprive a person of their liberty. A new role of Capacity Professional is also created, who will act as an independent reviewer of cases, as well as assessing certain cases, such as where a person is objecting.

3.21 Finally, it is proposed that more straightforward challenges to Protective Authorisations could be dealt with more quickly and informally by the Mental Health and Capacity Review Tribunal (see v) below), although some complex issues might need to go to the Royal Court.

3.22 A Representative will be appointed for the period of the Protective Authorisation, who will usually be a family member or friend, but may be an attorney who holds an LPA or a guardian under the customary law. The Committee proposes that the position of individuals who do not have friends or family, or whose friends and family are not capable of acting in that individual's best interests should be protected by the appointment of an Independent Capacity Representative (outlined in iii) above). The Representative, the Independent Capacity Representative or another person who is in regular contact with P must also be consulted in relation to certain decisions.

3.23 In guiding the preparation of the Projet de Loi, the Committee has sought to fit the new arrangements around existing structures within the Bailiwick (where possible) and to avoid unnecessary bureaucracy, whilst providing appropriate safeguards.

v) Role of the Mental Health and Capacity Review Tribunal

3.24 The 2016 Policy Letter recognised the need to ensure that the new legislation would respect relevant human rights obligations. This includes ensuring that there is a right to appeal against any decision made on an individual’s behalf that relate to a "significant restriction of a person’s personal rights".

3.25 It is suggested that the remit of the MHRT should be widened to hear most cases where a person or their Representative objects to the arrangements for their care or more general issues relating to capacity. It is intended that cases can be dealt with more quickly and informally by using a tribunal, rather than the more formal processes of a court. With this in mind, it is proposed for the Tribunal to be renamed the Mental Health and Capacity Review Tribunal (MHCRT).

3.26 Section 4 of this Policy Letter explores the potential financial impact for the States of providing Legal Aid to support those wishing to appeal to the MHCRT.

vi) Safeguarding

3.27 Whilst drafting the Capacity Law, the Committee also gave consideration to providing clear statutory powers which would permit safeguarding on a more robust basis and protect vulnerable persons aged 18 and over. To that end, the Committee has included an enabling power in the Law which would allow:

(a) the institution of safeguarding enquiries and safeguarding vulnerable persons reviews,

(b) the establishment of a body to help and protect vulnerable persons in the Bailiwick or any part thereof,

(c) the disclosure, and sharing, of information for the purposes of safeguarding vulnerable persons, and

(d) specified persons to enter premises and require the provision of information or the production of documents where necessary for any safeguarding enquiry or safeguarding vulnerable persons review.

3.28 Although the matter of safeguarding was not included within the scope of the 2016 Policy Letter, the need to establish more robust measures for adult safeguarding has been set out by the Committee as part of the Policy & Resource Plan on a number of occasions, in particular, in relation to the 'Regulatory and Support Policy' Priority Area[5].

3.29 For example, in the Committee's most recent submission approved by the States in June 2019, the C*f*HCS highlighted that it would be considering ways to introduce, in statute, an Adult Safeguarding Board to facilitate multi-agency strategic oversight of adult safeguarding risk on the Island. The provisions drafted within the Capacity Law will go some way to supporting this objective.

3.30 However, in order to provide further clarity on how the supporting Ordinance would be developed in policy terms, a separate Policy Letter will be prepared in due course to describe how these provisions would be fulfilled at an operational level.

4. Potential financial implications for the MHCRT and Legal Aid

4.1 In March 2016, the States resolved:

[5] Policy & Resources Committee – 'Policy & Resource Plan 2018 Review and 2019 Update' – Billet d'État IX of 2019

"4) To note the potential impact on the Legal Aid budget, and to direct the Committee for Health and Social Care to report to the States on this issue when the implications are clearer and before the legislation is presented to the States of Deliberation for approval."

4.2 The Protective Authorisation Scheme (see iv) above), and the appeals mechanism inherent within the Scheme to the MHCRT, has been identified as the primary area within the framework of the Capacity Law where it is recommended that Legal Aid should be available[6]. The Committee recommends that this is done so on the basis of mirroring the arrangements that have been established following the introduction of the 2010 Law[7], where the States agreed that Legal Aid should be extended to those appealing against detention and other related decisions in order to respect human rights requirements.

4.3 The Committee has discussed this recommendation with the Committee *for* Employment & Social Security (C*f*ESS), which has political oversight for the GLAS. A letter of comment from the C*f*ESS is appended to this Policy Letter (**Appendix 1**).

4.4 Paragraphs 4.5 to 4.37 which follow provide further background information to support this recommendation, together with an estimate of the expected number of additional appeal cases to the MHCRT each year and the associated additional financial cost.

Background to the work of the GLAS

4.5 The GLAS provides free or reduced cost legal advice and assistance to people with limited means who could not otherwise afford the cost of an Advocate and is available for criminal and civil matters[8]. The Administrator is an independent statutory official and has full discretion to grant or refuse Legal Aid within the terms of the scheme which the States prescribes. There are three forms of Legal Aid funding:

- **Detention form** – these are used to provide advice and assistance from an Advocate to persons who are detailed in police or other lawful custody. All such advice and assistance is provided free of charge to the detainee.

[6] It is not considered appropriate for Legal Aid to be available to individuals wishing to make applications or otherwise litigate in relation to Lasting Powers of Attorney, which allows their wishes to be recorded in the event that they may lose capacity in the future.
[7] Billet d'État IV of 2013
[8] "Legal Aid – Frequently asked questions about Legal Aid in the Bailiwick of Guernsey" is available from: http://guernseyroyalcourt.gg/CHttpHandler.ashx?id=78075&p=0

- **Green form** – these are issues for preliminary advice and assistance from an Advocate. Applications, are, if appropriate, means tested by the Advocate. 'Green forms' provide two hours of advice and assistance but can be extended usually for a further two hours.

- **Full certificate** – these are issued for court cases and for public law appeals cases (such as cases heard by the MHRT). Applications are, if appropriate, means tested by GLAS (based on household income and allowable expenses) and merit tested by the Advocate (based on legal opinion and cost/benefit analysis) but automatically approved if there is a real risk of a custodial sentence in criminal cases.

4.6 Whilst eligibility for 'full certificate' advice is usually 'means and merits' tested, most appeals to the MHRT and in respect of some applications to the court[9] made under the Children's Law, are provided without an assessment of means due to the human rights issues involved.

4.7 In such cases, Legal Aid is usually provided automatically regardless of both the financial circumstances of the applicant and the merits of the case.

4.8 It was acknowledged by the States that, irrespective of an individual's financial circumstances and the strength of their case, there were important legal reasons for ensuring that those detained under the 2010 Law were able to challenge their detention should they wish to do so, and to ensure that there were no barriers to doing so. This is, however, subject to exceptional circumstances which point to the necessity for an applicant to be subject to a means test where this is reasonable and in conformity with Human Rights obligations.

Proposed extension of Legal Aid in relation to the Capacity Law

4.9 As set out above, the proposed Capacity Law will, if approved, introduce new provisions that will establish robust legal safeguards to protect individuals where it is determined (in accordance with the legislation) that they no longer have capacity to make their own decisions.

4.10 There is one area – the introduction of the Protective Authorisation Scheme – where it is considered that the principles currently being applied for Legal Aid in respect of the Mental Health Law would equally apply to the Capacity Law. If the Capacity Law is approved, the remit of the MHRT (to become the MHCRT) will be expanded to also hear those cases where an individual, or most likely their Representative, objects to the arrangements for their care to meet this requirement.

[9] The CYCT does not attract Legal Aid funding unless there are exceptional circumstances.

Protective Authorisation Scheme and appeals to the MHCRT

4.11 The Capacity Law will introduce a Protective Authorisation Scheme to authorise the detention of people who lack capacity. This is designed to safeguard the rights of people who lack capacity to consent to the arrangements for their care, which comprise restrictions on their freedom of movement and autonomy, which would amount to a deprivation of their liberty (described as a "serious restriction of a person's personal rights"). As above, the role of Capacity Professional will also be introduced to oversee the authorisation process.

4.12 Tables 1 and 2 below set out how it is expected that an individual would access Legal Aid under the proposed Capacity Law for appeals made to the MHCRT.

4.13 Table 3 describes a scenario that would not be eligible for Legal Aid.

Table 1: Example of how Legal Aid may support a person under the Capacity Law to take a challenge to a Protective Authorisation to the MHCRT

Person's situation	Suggested Legal Aid Provision
i) Mrs A is living in her own home but has been diagnosed with dementia. She is becoming very forgetful and her family are concerned about how she is coping. A social worker visits and assesses Mrs A to lack capacity with regard to her need for assistance. It is agreed in discussion with her family, in her best interests, that she would benefit from carers visiting to help her during the day.	No Legal Aid assistance needed at this stage.
ii) Over the following months, Mrs A becomes increasingly forgetful and refuses help from her carers. She is found wandering in the night without appropriate clothing. Her social worker assesses Mrs A to lack capacity with regard to her accommodation, care and treatment needs as she is not aware of the risks she faces in her own home. A best interests decision is taken to admit Mrs A to a care home.	No Legal Aid assistance needed at this stage.

Person's situation	Suggested Legal Aid Provision
iii) As part of the assessment for Mrs A's admission to the care home, the social worker considers whether she will be subject to a serious restriction of her personal rights, and therefore needs authorisation under the Protective Authorisation Scheme. The assessment concludes that the arrangements for Mrs A's care at the care home will require a Protective Authorisation. The Authorisation is approved by the Capacity Professional.	No Legal Aid assistance needed at this stage.
iv) Mrs A is admitted to the care home but she is clearly not happy staying there and starts asking to go home. Under the Protective Authorisation, her daughter has been named as her Representative. Under the Capacity Law, Mrs A has the right to challenge the Protective Authorisation in the Mental Health and Capacity Review Tribunal, supported by her Representative. Mrs A's daughter (as Representative) contacts a legal representative to discuss whether to make an application to the Tribunal to challenge the deprivation of her mother's liberty.	The legal representative[10] will consider all the relevant documents (Protective Authorisation, mental capacity assessments and care plans), Mrs A's views and those of her Representative[11]. The legal representative agrees that, as Mrs A or their Representative on their behalf is objecting to remaining in the care home, she has the right of legal challenge. Mrs A's case will be eligible for Legal Aid to make this challenge.
v) The MHCRT is scheduled to meet within 28 days. The legal representative ensures that all necessary documents (mental capacity assessments, care plans, Protective Authorisation, statements from Mrs A and/or her Representative) are made available to the Tribunal.	Mrs A's case will be eligible for Legal Aid.

[10] "Legal Representative" refers to Advocate, barrister or solicitor approved by the Guernsey Legal Aid Service to represent people before the Mental Health and Capacity Review Tribunal

[11] An individual or their Representative will receive the support they require from an Advocate to review their case initially with financial assistance from Legal Aid.

Person's situation	Suggested Legal Aid Provision
vi) The MHCRT meets. Mrs A's legal representative attends the Tribunal with Mrs A's Representative (for the Protective Authorisation). There is no requirement for Mrs A to attend the Tribunal. The social worker will be required to provide a report. The Capacity Professional will be required to attend. The purpose of the Tribunal hearing is to consider whether there is a less restrictive option available which could safely and effectively meet Mrs A's needs and what is in her best interests. The Tribunal will consider whether it is necessary for her to remain at the care home.	Mrs A's case will be eligible for Legal Aid for the hearing.
vii) The Tribunal hearing concludes that it is in Mrs A's best interests to stay at the care home. The Protective Authorisation remains in place, as previously granted, although the Tribunal has the right to add or amend any conditions.	The legal representative's role ends once the decision has been delivered to Mrs A.

Table 2: Example of how Legal Aid may support a Representative, under the Protective Authorisation Scheme, to bring a challenge to the arrangements for the person's (subject of a Protective Authorisation) care

Person's situation	Suggested Legal Aid Provision
i) Mr B has a severe learning disability and has been admitted to a care home, due to concerns about his behaviour at home and the care provided by his father (as his main carer). The decision was made by his social worker following a best interests meeting, during which his father objected to this decision. Mr B, due to his communication difficulties, was not able to express his views about the care home.	No Legal Aid assistance needed at this stage.

Person's situation	Suggested Legal Aid Provision
ii) As Mr B is subject to a serious restrictions of his personal rights in the care home and, as his father is objecting to these arrangements, a Capacity Professional completes the Capacity, Contrary Decision and Best Interests assessments and oversees the Mental Health and Eligibility assessments. The Protective Authorisation is granted. Mr B's father is named as his son's Representative. Once the Authorisation is granted, Mr B's father is able to apply to the Mental Health and Capacity Review Tribunal to challenge the arrangements for his son's care at the care home. He contacts a legal representative to discuss the current situation with his son.	The legal representative will consider all the relevant documents (mental capacity assessments, Protective Authorisation and care plans), Mr B's views and those of his Representative[12]. The legal representative agrees that, as Mr B is objecting to his son staying in the care home, he has the right of legal challenge. Mr B's father, as Mr B's Representative, will be eligible for Legal Aid to make this challenge.
iii) The Mental Health and Capacity Review Tribunal is scheduled to meet as specified in the Rules of Court. The legal representative ensures that all necessary documents (mental capacity assessments, care plans, Protective Authorisation, statements from Mr B's father) are made available to the Tribunal.	Mr B's case will be eligible for Legal Aid.
iv) The Mental Health and Capacity Review Tribunal meets. Mr B's legal representative attends the Tribunal with Mr B's father and Representative (for the Protective Authorisation). There is no requirement for Mr B to attend the Tribunal. The social worker will be required to provide a report. The Capacity Professional will be required to attend. The purpose of the Tribunal hearing is to consider Mr B's views, whether there is a less restrictive option available which could safely and effectively meet Mr B's needs and what is in his best interests. The Tribunal will consider whether it is necessary for him to remain at the care home.	Mr B's case will be eligible for Legal Aid for the hearing.

[12] An individual or their Representative will receive the support they require from an Advocate to review their case initially with financial assistance from Legal Aid.

Person's situation	Suggested Legal Aid Provision
v) The Tribunal hearing concludes that it is in Mr B's best interests to stay at the care home. The Protective Authorisation remains in place, as previously granted, although the Tribunal has the right to add or amend any conditions.	The legal representative's role ends once the decision has been delivered to Mr B and his Representative.
vi) Although the Tribunal has ruled that Mr B should remain in the care home, he is showing signs of unhappiness and distress and he is refusing to eat. His father continues to express his unhappiness about his son's continued detention in the care home. He goes to see the legal representative again.	Considering all the facts and the complexity of the situation, the legal representative advises that there are grounds for appeal to the Royal Court. The legal representative prepares the application and represents Mr B's father for the hearing. Legal Aid for this stage of the appeals process is subject to a separate application to the GLAS and to a 'means and merits' test. The legal representative must certify that the merits test is met for financial assistance to be provided.
vii) The Royal Court makes a decision about whether Mr B should remain in the care home. The decision of the Court is final and there is no further route for challenge unless there is a material change in Mr B's circumstances.	Legal Aid for the hearing is available for this stage subject to the 'means and merits' test above being satisfied.

Table 3: The following situations will not be eligible for Legal Aid

Person's situation	Legal Aid Provision
i) A person wishes to make a Lasting Power of Attorney	The person may wish to take legal advice but this will not fall under Legal Aid.
ii) An application is made to the Tribunal to resolve an issue regarding a person's capacity to make a particular decision, for example with regard to medical treatment or how best to meet P's needs.	Unless this decision relates to a Protective Authorisation, there is no requirement for legal representation. Legal Aid would not apply.

Person's situation	Legal Aid Provision
iii) Situations where a person is in receipt of a privately funded care package in their own home, but without any States involvement.	Even if they are subject to significant restrictions, unless the States are involved (either in provision of care or due to safeguarding matters) Protective Authorisation will not apply and therefore Legal Aid will not be required.

4.14 The proposals for the Scheme, including the granting of a Protective Authorisation, have been developed to ensure that they are compliant with the right to liberty and security under Article 5 of the European Convention on Human Rights ("the ECHR"), which states:

> "5.1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law" and
>
> "5.4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

4.15 When the Policy Council reported to the States in February 2013[13] with proposals for extending Legal Aid to those individuals appealing to the Tribunal, it was acknowledged that such cases were likely to involve vulnerable people who may not have the ability, for many possible reasons, to represent themselves before the MHRT without legal assistance.

4.16 Where the particular circumstances of a case are such as to lead to the deprivation of a person's liberty, Legal Aid is granted automatically to the applicant, enabling them to have the services of a lawyer, or suitably qualified person, to represent themselves before the Tribunal.

4.17 It was also acknowledged that such proceedings may be complex and would consider potentially wide-ranging issues, including patients challenging expert medical evidence about them. In approving an extension of Legal Aid for such appeals, it was acknowledged that it was vital to ensure that an individual's right to appeal are fully protected and that processes are fully compliant with Article 6 of the ECHR, which enshrines the right to a fair trial. In order to be compliant,

[13] Policy Council – "Guernsey Legal Aid Service – Legal Aid Funding of Mental Health Review Tribunals and Public Law Children Cases" - Billet d'État IV of 2013

any person deprived of liberty must be afforded the right to challenge this in court.

4.18 In considering an extension of these arrangements to the Capacity Law, and given the likely nature of these cases, it is considered appropriate for the individual's case to be eligible for Legal Aid, acknowledging that this may be dealt with and applied for by an appointed Representative on behalf of the individual who has lost capacity.

The number of Protective Authorisations and appeals

4.19 It has been difficult to determine, in the circumstances set out above, how many Protective Authorisations will be granted and how potential appeal cases will arise when the Capacity Law is introduced. However, understanding the number of Protective Authorisations that are likely to be issued goes some way to helping to determine how many appeals would be made and how many cases would become eligible for Legal Aid.

i) Islanders living in care home settings who lack capacity

4.20 As a starting point for determining the number of people who may require a Protective Authorisation, the number of people receiving care in a registered EMI bed in care homes on the Island was considered as being those most likely to require a Protective Authorisation. There are 155 registered EMI beds. In addition, there are 52 long-term beds on HSC's 'Lighthouse' wards; a further 14 beds in Alderney for patients with needs that may require a Protective Authorisation, and a further 38 people with a learning disability accommodated by HSC in the community. This equates to 259 individuals, which is used as a baseline figure for the number of Protective Authorisations that may be granted.

4.21 In England and Wales, it has been determined that of the 181,785 completed applications of Deprivation of Liberty Safeguards made in 2017-2018, the proportion of challenges (appeals) made to the Court of Protection was approximately **2.5% of the cases authorised**.

4.22 On this basis, applying a 2.5% appeals rate to the above number of people living in a range of care settings in the Bailiwick, would result in an expectation of the number of appeals of 6-7 cases each year.

4.23 Whether these cases will arise every year based on this analysis is difficult to determine, as this will depend on the number of people entering into the care home sector each year. Due to the limited capacity in terms of number of beds available this will, in turn, be reliant on some individuals leaving the sector.

ii) Islanders living in the community who lack capacity

4.24 A Protective Authorisation may also be necessary for Islanders with some health conditions who live in the community. For example, it is estimated that there are approximately 1,250 people living with dementia on the Island.

4.25 In England and Wales there are estimated to be 850,000 people living with dementia. Considering the number of Protective Authorisations in England and Wales and extending this analysis to the Bailiwick, suggests that it is likely that about 200 people living with dementia may require a Protective Authorisation and that potentially less than 5 individuals (2.5%) would challenge this.

4.26 It is difficult to separate this out from i) above, as some individuals may be living in a care home setting and may have already been taken into account in the above figures.

4.27 In addition to the above, there may also be individuals admitted as an inpatient to the Princess Elizabeth Hospital who may also be subject to a Protective Authorisation, which may result in an appeal to the Tribunal. Although data is not readily available to support this view, the number of people admitted to the PEH who would require a Protective Authorisation over and above the numbers already taken into account in (i) and (ii), and who would wish to appeal such an authorisation, are expected to be very low.

4.28 It is therefore suggested that, in addition to (i) above, it could be expected that a further 5-8 cases would result in an appeal to the Tribunal.

4.29 Whilst it is possible to use the experience in England and Wales as indicative of the number of likely appeals, it is also possible that the recommendation for a less formal appeals route through a Tribunal, rather than a Court, may result in proportionately more appeals coming forward in the Bailiwick.

4.30 On this basis and accepting the many assumptions which have been used to arrive at this figure, it is estimated in (i) and (ii) above that in the region of 450-500 Protective Authorisations may be granted each year in the Bailiwick. Assuming that the experience locally mirrors that of England and Wales, using a 2.5% appeals rate, it is estimated that in the region of **12-15 appeal cases** in respect of a Protective Authorisation may become eligible for Legal Aid.

Financial implications

Additional expenditure – Legal Aid

4.31 With respect to the Legal Aid provided to those appealing a decision to the MHRT, an initial allowance of two hours per case is currently available (2019:

£334) and court costs are also met, where relevant. The maximum allowance available is 10 hours per case, at a cost of £167 per hour, which includes the attendance of a legal professional at the Tribunal hearing. This brings the maximum funding available per case to £1,670.

4.32 The number of appeals cases to the MHRT, each of which receive Legal Aid, are set out in Table 4 below:

Table 4: Appeal hearings to the MHRT supported by Legal Aid

Year	Number of appeal cases to the MHRT
2018	16
2017	20
2016	7

4.33 In proposing an extension of Legal Aid to those challenging a Protective Authorisation on the same basis as the appeals to the Mental Health Review Tribunal, for the anticipated maximum 15 cases each year, it is expected that the additional cost to Legal Aid would be in the region of **£25,000 per annum**, calculated at a maximum cost for 10 hours of assistance per case.

4.34 For completeness, the Committee has also considered whether it is likely, when LPAs are introduced by the Capacity Law, that there might be an increase in applications made to the Royal Court in relation to life-sustaining treatment decisions, e.g. where there may be a disagreement with medical advice to halt or change such treatment by an individual's representative or appointed guardian. Currently such cases would be dealt with by the Royal Court under the inherent jurisdiction, but these cases are extremely infrequent.

4.35 The Capacity Law will introduce the means for individuals to appoint an attorney to act on their behalf by way of a health and welfare LPA. In the circumstances where there was a disagreement in respect of life-sustaining treatment decisions, it would be appropriate for Legal Aid assistance to be available to enable an attorney to take such a case to the Royal Court. However, as the number of cases is extremely low, and as Legal Aid assistance would currently be available in such circumstances, there is expected to be little to no net financial impact of such cases to the GLAS.

Additional expenditure – MHCRT Tribunal

4.36 In addition to the above, it is also important to note the additional costs associated with the Tribunal function that would arise from an increased caseload. Each case heard by the MHRT currently costs £4,000 - £5,000. This

includes the MHRT Panel's remuneration for preparation and attendance at the hearing, a medical pre-assessment of the patient, together with travel and accommodation costs.

4.37 Extending the current arrangements for the MHRT to the Protective Authorisation Scheme for 15 additional cases could be expected to increase Tribunal expenditure by in the region of **£75,000 per annum**.

4.38 The Committee *for* Health & Social Care considers that it would be challenging to subsume this additional cost for the Tribunal within its existing General Revenue budget allocation and therefore additional budget to enable the MHRT to administer and convene to hear these additional appeals and to provide Legal Aid will be requested as part of the annual budget process.

4.39 The Policy & Resources Committee notes that the MHRT has indicated that these additional cases, based on anticipated numbers, could be accommodated within the current structure, membership and arrangements for the MHRT, for which there is a provisional weekly rota to hear cases as they arise.

4.40 Experience from England and Wales suggests increasing numbers over time, as general awareness of the provisions of the Law has increased, which may be mirrored locally. It is also possible that the number of Protective Authorisations, and therefore the associated number of potential appeals and associated costs will increase over time in line with the ageing demographic.

4.41 Given the number of assumptions that have been required to calculate the potential number of cases and the associated financial implications for the GLAS, the number of cases each year will be kept under review, to ensure that the impact of these new arrangements are understood fully and can be monitored and reported over time.

5. Resourcing the implementation of the Law

5.1 The Capacity Law, upon enactment, will introduce new processes designed to safeguard the interests of individuals who lack capacity. Care has been taken to ensure that the Law offers the necessary safeguards and builds upon the existing processes already in place to manage cases relating to the Mental Health Law, whilst not being overly bureaucratic and unwieldy. Whilst there will be new processes that will need to be adopted by organisations in the community, for example, by residential and nursing care homes, it is expected that the majority of the resource requirements will fall to Health & Social Care.

5.2 The 2016 Policy Letter from the former HSSD highlighted that it planned to absorb the costs of implementation of this legislation from within its existing budget. It acknowledged that additional resources would be required to provide

advocacy support; to train Best Interests Assessors (to be known as Capacity Professionals under the Law); for general administration, staff training, and for an implementation Project Manager.

5.3 Now the Law has been drafted, the Committee has given further consideration to the resource requirements that may arise.

5.4 For example, the Law will introduce the new role of Capacity Professional to oversee the Protective Authorisation process and to act as an independent reviewer of cases, including particularly complex cases, as well as assessing certain cases where there may be an appeal to the MHCRT. It is proposed that social workers, occupational therapists, nurses and psychologists should have the opportunity to train as a Capacity Professional to enhance understanding within the Service and to support completion of the necessary assessments. However, it is likely that one role will be designated as a central point of contact, to oversee cases and to provide advice and supervision.

5.5 The Protective Authorisation Scheme will also require a level of general administration, as cases will need to be allocated and resources will also be required to complete the authorisations. This will be an added responsibility for HSC. It is expected that, over time, the processes arising from the legislation will become 'business as usual' within HSC, particularly within the Adult Community Services Team, which includes mental health services, adult disability services and community health and well-being teams.

5.6 It may become necessary to recruit some temporary resource to oversee aspects of the introduction of the legislation at an operational level and to provide some support to establishing the required administrative processes that will arise from the Law.

5.7 In addition, there will be a requirement to provide additional training for the MHRT members. In total, it is estimated that the costs of implementing the Law could be up to £75,000.

5.8 The Committee has made budgetary provision to supplement its internal expertise with additional specialist external input to develop the Code of Practice and to develop a series of training sessions for its staff in readiness for the enactment of the legislation. Whilst it will make every effort to introduce the changes to comply with the Law as far as possible without additional resources to uphold the earlier commitment made by HSSD, it also recognises the significance and importance of the legislation and the need to be sufficiently prepared for the enactment of the Law.

5.9 This will become clearer as the detailed Code of Practice is developed and, if necessary, the Committee will request one-off funding from the Budget Reserve in order to adequately resource the implementation of the legislation.

Proposed development of an Advocacy Service

5.10 The 2016 Policy Letter highlighted the need for advocacy services to be developed to support the Capacity legislation. This is also a matter that has been raised previously in relation to the Mental Health & Wellbeing Plan.

5.11 During 2019, the Committee completed a detailed mapping, gap and issue analysis of mental health and wellbeing services in Guernsey and Alderney[14]. This work has identified a number of gaps in services between primary and secondary mental health care and was the subject of an amendment to the Policy & Resource Plan in June 2019 by Deputies Soulsby and Tooley[15]. The amendment referred to the need to build on a range of complementary services to include, for example, signposting to services and activities, access to a programme of social prescribing, peer support, mental health advocacy and support for people experiencing low to moderate amounts of stress or distress. This will also support the aims of the disability frameworks resting with Adult Community Services.

5.12 The amendment did not commit the States to allocate any additional financial resources at that time, which it was agreed would be subject to the relevant business case (or cases) subsequently being approved through the Budget process.

5.13 The Capacity Law will introduce the role of Independent Capacity Representatives (ICRs) to represent the interests of those who lack capacity and who do not have family or friends to offer such support. It is anticipated that ICRs would have a role in respect of both the Protective Authorisation Scheme and the legislation in general, for example, in respect of decisions taken for medical treatment, a change of accommodation or where there may be safeguarding concerns. This further enhances the need for an advocacy service to be developed.

5.14 As the Committee would not be able to resource this new service development from within its existing resources, it is appropriate to bring this to the attention of the States. In preparation for the introduction of the legislation, the Committee will further investigate the possibility of working with related Third

[14] This is available from the States of Guernsey website - Mental Health and Wellbeing Plan

[15] Policy & Resources Committee – 'Policy & Resource Plan – 2018 Review and 2019 Update' – Amendment 12 Billet d'État IX 2019

Sector organisations to scope out how an advocacy service could be delivered in partnership. It is suggested that there is the potential for such a service to support both the requirements of the Capacity Law and address the shortfall in advocacy services identified by the gap analysis of mental health and wellbeing services.

5.15 This is an opportunity to fulfil the aspirations of the Partnership of Purpose and to consider how the Third Sector may support the delivery of these aims.

5.16 Acknowledging that this aspect is under development and requires further detailed consideration, Proposition 5 asks the States to note that the C*f*HSC will report back to the States with proposals for the introduction of an advocacy service and before any financial resources are committed to introducing such a service. This may form part of a future Committee update to the Policy & Resource Plan or as part of the Budget process.

6. Consultation and engagement

6.1 A period of targeted engagement on the draft legislation took place over the summer of 2019. This involved a wide range of stakeholders, including representatives from the residential and nursing care home sector; the Guernsey Bar, Third Sector organisations, charities and voluntary groups and other health and social care bodies, including the medical practice groups and the Medical Specialist Group.

6.2 This allowed the Committee, at an early stage, to seek valuable feedback on the practical application of some of the provisions within the draft Law for those in the community who will have operational responsibility for the relevant issues arising from the legislation. In particular, this engagement has informed the drafting of the Capacity Law and some of the language was adjusted to reflect the preferences of the consultees.

6.3 The Committee is planning a further series of events to update those stakeholders and to enhance general awareness of the Law before it comes into effect.

7. Conclusion

7.1 The Capacity Law has been developed with the principal purpose of empowering people to make decisions for themselves wherever possible.

7.2 Careful consideration has been given to ensure that the new provisions that will be introduced by the legislation are those that would most effectively assist and

protect members of the community in the Bailiwick and are sufficiently robust and respectful of the human rights of those who lack capacity.

7.3 The C*f*HSC considers that the supplementary policy matters set out in Section 3 of this Policy Letter are consistent with the original policy intentions for the legislation and asks the States to agree to their inclusion within the Projet de Loi.

7.4 The Committee is also of the view that in line with the arrangements in place for appeals bought forward under the Mental Health Law, 2010, Legal Aid should be available to an individual or their appointed Representative to appeal decisions made under the Protective Authorisation Scheme. It recognises the funding implications of doing so, but also acknowledges the value of having such a legal framework in place, which must meet human rights obligations.

7.5 Most of the resource implications arising from the Law will fall within Health & Social Care and, as described in Section 5, efforts will be made to establish new processes arising from the Law within existing resources. The Committee recognises the value of the support from private and third sectors organisations to implement the legislation and of exploring a partnership approach to the development of an advocacy service.

7.6 The Committee recommends to the States to approve the Propositions to which this Policy Letter is attached.

8. Compliance with Rule 4

8.1 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.

8.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications. She has advised that there is no reason in law why the Propositions should not to be put into effect.

8.3 In accordance with Rule 4(3), the Committee has included Propositions which request the States to note that there will be an additional requirement for funding associated for the MHCRT, in due course, and to provide Legal Aid to those wishing to appeal. Further information is provided in section 4.

8.4 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.

8.5 Deputy Tindall wishes to record her dissent with the proposal in Paragraph 3.7 to establish a registration system for LPAs in relation to property and financial affairs through H.M. Greffier.

8.6 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee *for* Health & Social Care to protect, promote and improve the health and wellbeing of individuals and the community.

8.7 Also in accordance with Rule 4(5), the Committee has carried out targeted engagement in the community with those who will most closely be involved in implementing the legislation. The feedback received has been taken into account during the drafting of the Capacity Law.

Yours faithfully

H J R Soulsby
President

R H Tooley
Vice-President

R G Prow
D A Tindall
E A McSwiggan

R H Allsopp, OBE
Non-States Member

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Deputy H R Soulsby
President
Committee *for* Health & Social Care
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Date: 08 January 2020

By email

Dear Deputy Soulsby

Letter of comment: 'Capacity Law' – Supplementary policy matters and potential financial implications arising from the appeals process

The Committee *for* Employment & Social Security has considered the Committee *for* Health & Social Care's policy letter entitled "'Capacity Law' – Supplementary policy matters and potential financial implications arising from the appeals process".

The Committee supports the propositions and intention of the policy letter, recognising that it contributes to the aims of the Disability and Inclusion Strategy. While the proposals will generate some additional costs for the Guernsey Legal Aid Service, the Committee recognises the importance of empowering individuals who may lack capacity to make their own decisions, and ensuring that they are able to appeal decisions made under the Protective Authorisation Scheme. A part of that is providing them with access to Legal Aid, so that they have appropriate representation at Tribunals, and if necessary, in the Courts, which complies with human rights requirements.

The Committee is grateful for the opportunity to comment on the policy letter and hopes that the States supports the propositions.

Yours sincerely

Deputy Michelle Le Clerc
President

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* HEALTH & SOCIAL CARE

'CAPACITY LAW' - SUPPLEMENTARY POLICY MATTERS AND POTENTIAL FINANCIAL IMPLICATIONS ARISING FROM THE APPEALS PROCESS

The President
Policy & Resources Committee
Sir Charles Frossard House
La Charroterie
St Peter Port

20th January, 2020

Dear Sir,

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee *for* Health & Social Care (C*f*HSC) requests that the propositions contained in its policy letter entitled "'Capacity Law' – Supplementary Policy Matters and Potential Financial Implications Arising from the Appeals Process', dated 20th January, 2020 be considered at the States' meeting to be held on 26th February, 2020.

This request is made on the basis that agreement of the States to the matters outlined in the policy letter will provide a clear policy direction to inform the legislative drafting in these areas. Most importantly, keeping to this timetable will allow the Capacity (Bailiwick of Guernsey) Law to return for consideration by the States during this political term.

This workstream is an important part of the Disability and Inclusion Strategy and has been the Committee's top legislative priority. The C*f*HSC is therefore keen to progress this matter in the timeliest way.

Yours faithfully,

H J R Soulsby
President

R H Tooley
Vice-President

R G Prow
D A Tindall
E A McSwiggan

R H Allsopp, OBE
Non-States Member

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* HOME AFFAIRS

SEXUAL OFFENCES LEGISLATION: SUPPLEMENTARY POLICY MATTERS

The States are asked to decide: -

Whether, after consideration of the Policy Letter entitled "Sexual Offences: Supplementary Policy Matters" dated 6th January 2020, of the Committee for Home Affairs, they are of the opinion to:

1. agree to the inclusion in the projet de loi entitled "the Sexual Offences (Bailiwick of Guernsey) Law, 2020" the offences set out in this Policy Letter including -

    i. specific offences in relation to complainants under 13, as set out in section 3.3.1 of the report;

    ii. breach of trust offences to protect 16 or 17 year old complainants, set out in section 3.4.1;

    iii. an offence of sexual communication with a child, as set out in section 3.5.1;

    iv. an offence of possession of extreme pornographic images, as set out in section 3.6.1;

    v. an offence of malicious disclosure of private sexual photographs, as set out in section 3.6.3;

    vi. specific offences to deal with "upskirting" and voyeurism more generally, as set out in section 3.7;

    vii. offences in relation to the possession of paedophile materials and child sex dolls as set out in section 3.8.

2. direct the preparation of the necessary legislation to give effect to the foregoing.

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) if 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

SEXUAL OFFENCES LEGISLATION: SUPPLEMENTARY POLICY MATTERS

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

6th January 2020

Dear Sir

1 Executive Summary

1.1 The purpose of this supplementary Policy Letter is to request further policy approval in relation to the draft Sexual Offences (Bailiwick of Guernsey) Law, 2020 ("the draft Law"). During the drafting process, further offences have been proposed and changes have been made from the recommendations which were originally approved on the basis of the then Home Department's Policy Letter of 10th May 2011 ("the 2011 Policy Letter")[1].

1.2 Whilst the proposals contained within the 2011 Policy Letter primarily considered the UK Sexual Offences Act 2003 ("the 2003 Act")[2] the Committee *for* Home Affairs (''The Committee'') has had due regard to relevant legislative developments throughout the British Islands and around the world in the intervening period.

2 Background

2.1 The 2011 Policy letter detailed proposals which sought to modernise and reform the sexual offences legislation in the Bailiwick. The recommendations included:

- To modernise and reform sexual offences legislation to provide a clear and coherent framework of offences; and
- To formalise and extend measures already in place to protect the public and reduce the risk posed to vulnerable members of the community.

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1 Article IX of Billet D'État XIII of 2011

2 UK Sexual Offences Act 2003

2.2 Work initially focused on the second of these two work streams, proposals which would protect the public and reduce the risk posed to vulnerable members of the community. This resulted in the drafting and implementation of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013[3]. The legislation put in place a robust system for the registration of sex offenders and introduced a range of preventative civil orders which would protect the public by reducing the risk posed by those offenders and preventing the commission of further sexual offences. The implementation of this Law in 2015 ensured that the people of the Bailiwick were afforded the same level of protection as exists in other similar jurisdictions providing authorities with the statutory powers to track, manage and monitor those convicted of sexual offences.

2.3 The draft Law will provide appropriate modern substantive legislation to criminalise inappropriate sexual behaviour. However, it should be emphasised that, in the meantime, prosecutions have continued to take place under the current provisions as before.

2.4 Although the draft Law will introduce more targeted sexual offences legislation, the public should be assured that it is not the case that defendants have been able to escape from prosecution as more general offences have been used to ensure that criminal behaviour has been prosecuted.

3 The draft Sexual Offences (Bailiwick of Guernsey) Law, 2020

3.1 The subsequent focus has been on the development of the draft Law which updates (and occasionally translates into English) the current Bailiwick sexual offences legislation. Although the 2003 Act was used as a starting place, the equivalent Scottish sexual offences legislation has also been examined to ensure that the most appropriate provisions were included. Further sexual offences have been introduced in England and Wales since the 2011 Policy letter and it has therefore been necessary to examine whether they should also be included in the draft Law.

3.2 In preparing the draft Law it has therefore been necessary to be both cognisant of the issues that have arisen as a result of continuing societal changes and look at the amendments made to the 2003 Act since the drafting of the 2011 Policy Letter to ensure that these are appropriately captured in the draft Law.

3.3 Non-consensual offences against children under 13

3.3.1 In the proposals in the 2011 Policy Letter, the then Home Department (''The Department'') carefully considered the approach of the 2003 Act in relation to

[3] Sex Offenders and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2013

non-consensual offences committed against children under 13. As set out at paragraph 24-27 of the 2011 Policy Letter, the Department did not wish to introduce strict liability offences where defendants could be found guilty of rape even where they were a similar age to a complainant under 13 who could not consent in law but did consent in fact. However, the Department wished to alleviate the position of young complainants giving evidence by introducing improved court procedures which would allow e.g. a previously recorded interview to stand as their evidence in chief and a live-link to be used so that the complainant did not have to enter the courtroom, see Part VIII of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013)[4]. As drafting has continued and after the consultation took place, the Committee has re-considered whether the fair labelling of offences should prevail over concerns for young complainants and now proposes that specific offences should be introduced in relation to complainants under 13. Where one of the non-consensual offences in Chapter IV of the draft Law is alleged to have been committed against a complainant under 13 (e.g. rape, assault by penetration, sexual assault or sexual coercion), lack of consent will not need to be proved before the defendant can be convicted under an offence in Chapter V of the draft Law. Other offences and avenues (such as the Child Youth and Community Tribunal) would still be available to allow the most appropriate response and the Committee is confident that appropriate discretion will be exercised by the Law Officers when prosecuting cases such as these.

3.4 Abuse of position of trust

3.4.1 As set out at paragraph 32-37 of the 2011 Policy Letter, the then Department did not at that time propose that specific offences should be introduced where consensual sexual activity had taken place between an adult and a 16 or 17 year old where that adult was in a position of trust towards the younger complainant. The rationale for this decision was based on the fact that the young person could consent in law and did so in fact, and that the adult who was in breach of trust could be dealt with e.g. by disciplinary or employment procedures. On reflection, the Committee considers that such procedures would be insufficient to adequately protect 16 or 17 year old complainants and therefore proposes that equivalent offences to those found in sections 16-19 of the 2003 Act should be introduced in the Bailiwick. Accordingly, chapter VIII of the draft Law deals with these offences.

3.5 Grooming

3.5.1 Further consideration has been given to acts of grooming, especially after comments made (by the Youth Commission) during the consultation. The so-called “grooming” offence set out in section 15 of the 2003 Act in fact only

[4] Sex Offenders and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2013

criminalises meeting a child after the grooming has taken place. A further offence of sexual communication with a child was inserted into the 2003 Act as section 15A, coming into force in England and Wales on 3rd April 2017. The draft Law therefore includes the new offence of sexual communication with a child at section 26. However, it was not felt that this would necessarily deal with all types of grooming and the Committee has therefore considered legislation in other jurisdictions which would prohibit the act of grooming itself, particularly the offence of grooming for sexual conduct with a child under 16 (contrary to section 49B of the Crimes Act 1958[5] of the Australian State of Victoria, introduced by the Crimes Amendment (Grooming) Act 2014)[6]. Accordingly, section 27 has been included in the draft Law, which criminalises communication by a person over 18 with a child under 16 (or a person with responsibility for that child) with the intention of facilitating the child's engagement in or involvement with a sexual offence.

3.6 Extreme pornography and revenge pornography

3.6.1 Although the 2003 Act included offences in relation to child pornography, it did not make provision regarding adults in pornographic images. Section 63 of the Criminal Justice and Immigration Act 2008[7] introduced the offence of possession of extreme pornographic images, which portray in an explicit and realistic way acts which threaten a person's life or might result in serious injury to a person's anus, breasts or genitals, acts which include sexual interference with a corpse and acts of sexual intercourse with an animal. This offence was later widened to include so-called “rape porn” showing non-consensual sexual penetration of a person's vagina, anus or mouth by another person's penis or another item.

3.6.2 The Committee has closely monitored the proposals in the British Islands in relation to extreme pornography (including “rape porn”) and proposes that the possession of such materials should be prohibited at section 59.

3.6.3 Further conduct which has been featured in the media has been revenge pornography where a person maliciously discloses private sexual photographs of an ex-partner without their consent and with intent to cause them distress. Section 33 of the Criminal Justice and Courts Act 2015 criminalises this behaviour in England and Wales, and the Committee proposes that the draft Law should also include an equivalent offence at section 65.

3.7 Voyeurism and upskirting

3.7.1 Section 67 of the 2003 Act prohibits voyeuristic behaviour in relation to private

[5] Crimes Act 1958
[6] Crimes Amendment (Grooming) Act 2014
[7] Criminal Justice and Immigration Act 2008

acts i.e. observing, operating equipment in order to observe or recording images of another person's genitals, buttocks or underwear whilst that person is carrying out certain activities in private e.g. using a lavatory or a changing room. The Sexual Offences (Scotland) Act 2009[8] also criminalised this behaviour but additionally included specific offences in relation to children which did not require lack of knowledge to be proved.

3.7.2 In line with the introduction of non-consensual offences committed against children under 13, the Committee proposes to introduce distinct offences of voyeurism in relation to children under 13 (for which the child's lack of knowledge does not need to be proved) and in relation to other complainants (for which lack of knowledge must still be proved). These offences are found at sections 94 and 95.

3.7.3 In addition to the more general offences set out above, the issue of upskirting has also been considered by the Committee, given the passing of the Voyeurism (Offences) Act 2019[9] in the UK. This Act introduced specific offences to the 2003 Act to criminalise the practice of upskirting, i.e. using equipment to see, or record images of, another person's genitals, buttocks or underwear under that person's clothing without consent.

3.7.4 Although this behaviour can be prosecuted under other offences, the Committee proposes that similar offences are introduced to deal with this conduct, which are found at sections 94 and 95.

3.8 Possession of paedophile materials and child sex dolls

3.8.1 The Serious Crime Act 2015[10] introduced a new offence of possession of a paedophile manual, which is defined to include any item that contains advice or guidance about abusing children sexually. In order to prevent such items from being lawfully possessed in the Bailiwick, the Committee proposes to include this offence as section 72 of the draft Law.

3.8.2 In addition, so-called child sex dolls, which are realistic dolls of babies and children manufactured or modified to allow others to simulate sex acts on them, have reportedly been brought into the British Islands. The Committee is concerned that such dolls do not satisfy the sexual desire of those who use them (as is sometimes claimed), but instead stimulate it. There is no specific offence in England and Wales but, whilst importation legislation prohibits the entry of these dolls into the Bailiwick, the Committee considers that the draft Law should include a simple possession offence at section 73 to remove the need to identify

[8] Sexual Offences (Scotland) Act 2009
[9] Voyeurism (Offences) Act 2019
[10] Serious Crime Act 2015

how they arrived in the Islands.

4 Compliance with Rule 4

4.1 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.

4.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications. She has advised that there is no reason in law why the Propositions should not to be put into effect / other.

4.3 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.

4.4 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee relating to crime prevention and law enforcement.

4.5 Also in accordance with Rule 4(5), the Committee consulted with Guernsey Police, Probation Service, the Bailiff's Office, the Committee *for* Health & Social Care, the Committee *for* Education, Sport and Culture, the Children's Convenor, the Criminal Bar, the Guernsey Bar, the Guernsey Association of Charities, the States of Alderney and Sark Chief Plea.

Yours faithfully

M M Lowe
President

M P Leadbeater
Vice-President

V S Oliver
P R Le Pelley
J C S F Smithies

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE AND STATES' TRADING SUPERVISORY BOARD

STATES' TRADING SUPERVISORY BOARD – SUCCESSION PLANNING

The States are asked to decide:-

Whether, after consideration of the policy letter 'States' Trading Supervisory Board – Succession Planning' dated 20 January, 2020, they are of the opinion:-

1. To agree that the Rules of Procedure of the States of Deliberation and Their Committees should be amended with immediate effect as follows –

(a) for Rule 16.(6), substitute:

"16. (6) On a proposition to elect members of a Committee (other than members of the States' Trading Supervisory Board who are not sitting members of the States), the Presiding Officer shall first invite the President of the Committee concerned, and thereafter other Members, to propose eligible candidates. Candidates must be proposed and seconded. Nobody shall speak about a candidate at that stage; and if no more candidates are proposed and seconded than there are vacancies the Presiding Officer shall put the election of the candidate(s) to the vote without speeches. If there are more candidates than vacancies the Presiding Officer shall invite each proposer to speak, for not more than three minutes in respect of each candidate proposed by that person; and each candidate to speak, for not more than three minutes, before voting takes place. No other member shall be entitled to speak.",

(b) immediately after Rule 16.(6) insert the following paragraph :

"(7) On a Proposition to elect members of the States' Trading Supervisory Board who are not sitting Members of the States, the President of the States' Trading Supervisory Board shall have the exclusive right to propose eligible candidates and the Presiding Officer shall invite the President of the States' Trading Supervisory Board and no other Member to propose eligible candidates (who must then be seconded) and to speak, for not more than three minutes in respect of each such candidate. The Presiding Officer shall thereafter put the election of the candidate(s) to the vote without further speeches.",

(c) re-number existing paragraph (7) of Rule 16 as paragraph (8), and

(d) for Rule 37.(1), substitute:

"37. (1) The term of office of all Presidents and members of all Committees (excluding members of the States' Trading Supervisory Board who are not sitting members of the States) shall expire at the end of a States' term. Where an office is required to be filled by a sitting Member of the States the said office shall be deemed to have been vacated upon the office holder ceasing to be a sitting Member of the States.

(2) The term of office for members of the States' Trading Supervisory Board, who are not sitting members of the States, shall expire at the end of the December of any year in which the end of a States' term occurs.",

(e) re-number existing paragraphs (2) to (7) of Rule 37 as paragraphs (3) to (8),

(f) in Rule 46.(3), for "37(3)" substitute "37(4)".

2. To direct the States' Trading Supervisory Board to report back to the States no later than the 16th December 2020 States' Meeting with its proposals to either retain or replace one or both of its Non-States' Members.

3. To direct the States' Trading Supervisory Board, subject to the States' approval of the proposed changes to the Rules and the resultant establishment of the principle to extend the terms of office for the STSB's Non-States' Members, to report back to the States no later than the 26th May 2021 States' Meeting with its longer term succession planning proposals for the STSB beyond 2020. These could include a limit on the number of terms served by an individual Non-States' Member (as is the practice of the incorporated entities) and/or varying the periods of office to stagger the appointment cycle, thereby reducing the possibility that all members of the Board would be required to stand down in close succession in the future.

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

POLICY & RESOURCES COMMITTEE AND STATES' TRADING SUPERVISORY BOARD

STATES' TRADING SUPERVISORY BOARD – SUCCESSION PLANNING

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

20 January, 2020

Dear Sir

1 Executive Summary

1.1 The purpose of this policy letter is to make recommendations to the States regarding the succession planning arrangements for the States' Trading Supervisory Board (STSB) over the 2020 election period and at the start of each new political term.

1.2 The proposals outlined below are intended to ensure a degree of continuity for the STSB as it acts as if it were a Board of Directors for the States' unincorporated trading concerns and commercial interests, thereby helping to assure their efficient management, operation and maintenance during the pertinent period.

2 Background

2.1 The STSB was established as an entirely new Committee of the States in May, 2016.

2.2 At the outset of the 2016-2020 political term, the Rules of Procedure of the States of Deliberation and Their Committees (the Rules) provided that the minimum requirements for the membership of the STSB should include: a President who shall be a sitting member of the States; at least one other sitting Member of the States; and, at least two other Members who shall not be sitting Members of the States.

2.3 The specific inclusion of Non-States' Members in the membership requirements had been predicated on the need to ensure that the STSB was able to recruit

the appropriate skills and experience required to fulfil its role as shareholder of the incorporated trading assets and, in overseeing them, to ensure the efficient management, operation and maintenance of the unincorporated businesses. In the case of the latter, the STSB would effectively act as the Board of Directors for those businesses. The expectation was that those members who were not States' Members would have skills in connection with corporate governance, board and shareholder responsibilities, risk management, operational efficiency and performance review and have a commercial, legal and/or financial background. In contrast to the Non-States' Members appointed to Principal Committees, the Non-States' Members of the STSB would be voting members of the Board.

2.4 Following consideration of a policy letter from the Policy & Resources Committee (P&RC) in September, 2016[1], the States subsequently agreed that the number of Non-States' Members included in the composition of the STSB should be two. This decision was based on a recommendation from the P&RC which had been determined following a review of the correct skills mix that would be required of the political and non-political STSB members.

2.5 The States also agreed to appoint Mr Stuart Falla MBE and Mr John Hollis to the Non-States' Member positions. At that time, Mr Falla and Mr Hollis completed the membership of the STSB alongside the two States' Members.

2.6 Subsequently, the membership of the STSB was increased following the States' approval of a Requête in July, 2018[2], which resulted in an amendment to the Rules to increase the number of States' Members to two in addition to the President.

2.7 As a result of the above decisions, the composition of the STSB currently includes three States' Members and two Non-States' Members.

2.8 Under the current Rules, the terms of office of all five members of the STSB will expire at the end of the current political term.

3 Terms of Office - Context for Change

3.1 Since its inception, the STSB has kept under regular review and development the arrangements around its governance to ensure that it can fulfil its mandate effectively and meet the expectations that were set out in the former States' Review Committee's (SRC) policy letters on the organisation of the States'

[1] Billet d'État XXIII of 2016 – Policy & Resources Committee – Constitution and Membership of the States' Trading Supervisory Board

[2] Billet d'État XIX of 2018 – Requête – Amendment to the Constitution of the States' Trading Supervisory Board

affairs.

3.2 The SRC's policy letter of July, 2015[3], drew a distinction between the role of the STSB in respect of the incorporated and unincorporated trading assets. The former are made up of Guernsey Electricity, Guernsey Post, the Aurigny Group and Jamesco 750 Limited and, in their case, the STSB's role is to act as shareholder. The latter include Guernsey Ports, States Works, Guernsey Dairy, Guernsey Waste and Guernsey Water and the SRC's policy letter clearly envisaged that the STSB's role here would be to act as if it was the Board of Directors and this is how the STSB has approached its work. The P&RC and the STSB consider that herein lies a clear distinction between the role of the STSB and that of the Principal Committees, the mandates for which are more clearly focused on delivering their respective operational functions and advising on, developing and implementing the policies and duties within their remit.

3.3 A particular focus of the STSB has been on ensuring that effective succession planning arrangements are in place for its businesses, both incorporated and unincorporated, at Board and management level. Good succession planning is recognised widely in corporate governance codes as a key contributor to the long term-success of businesses: helping to maintain a degree of continuity that ensures the effective ongoing operation of the business and the delivery of its strategy.

3.4 As such, the STSB has worked with the incorporated businesses to ensure that succession planning arrangements have been put in place for their respective Boards of Directors. However, in the case of the unincorporated businesses where the STSB itself acts as the Board of Directors, the political cycle means that it is unable to provide similar succession planning arrangements.

3.5 In the context of the above, the P&RC and the STSB consider that, in a good corporate environment, it would be almost unimaginable that a business would consciously allow its entire Board of Directors to step down simultaneously as this scenario would present significant risks to its successful operation. However, as it presently stands, this is what will happen following the 2020 General Election.

4 Proposal for Change

4.1 The P&RC and the STSB have reviewed the potential opportunities which might be available to mitigate the risks set out in section 3 above.

4.2 Both the Committee and the Board acknowledge that it is unavoidable that the

[3] Billet d'État XII of 2015 – States' Review Committee – The Organisation of States' Affairs – Second Policy Letter

terms of office for the States' Members of the STSB will end with the political term. However, they consider that this need not be the case for the Non-States' Members.

4.3 With this in mind, the P&RC and the STSB are proposing a change to the Rules to extend the terms of office of the STSB's Non-States' Members for a short period beyond the end of the 2016-2020 political term and, at most, no later than 31st December, 2020. This approach would enable the following:

- a degree of continuity in the Board to be maintained as the States moves from one political term to the next and the STSB awaits the election of its States' Members;

- an opportunity for the newly elected States' Members of the STSB to then review the Board's required skills mix and determine whether the existing Non-States' Members help to fulfil that or whether the time is right to refresh that part of its membership with new Non-States' Members; and,

- in the event that new Non-States' Members are deemed as being required, time to undertake a transparent and public recruitment process for these positions (noting that the existing Non-States' Members were appointed after such a process).

Having undertaken such a review, the STSB would be required to report back to the States no later than the December States' Meeting following the General Election with its proposals to either retain or replace one or both Non-States' Members.

4.4 Under the current Rules, it is the President, P&RC, who has the exclusive right to propose the election of Non-States' Members of the STSB. The arrangements proposed above envisage that this right should in future rest with the President, STSB, either by proposing the retention of the existing Non-States' Members or the appointment of new ones. This is because any nominations put forward would be determined following an analysis by the STSB of the skills' mix needed by the Board and, where new Non-States' Members are deemed as being necessary, an open recruitment process. Consequently, the STSB would be best placed to make recommendations to the States, rather than the P&RC. This could be achieved through a change to the Rules and would be consistent with the arrangements in relation to the Principal Committees, which are responsible for the recruitment and nomination of their own Non-States' Members.

4.6 The proposed change to the current nominations process would also be

consistent with the 2018 revisions to the Rules[4] that enabled the President, STSB to nominate States' Members for appointment to the Board. It would also help to reinforce that the STSB is accountable to the States, not the P&RC.

4.7 It is stressed that, should a change to the Rules as set out in paragraph 4.4 above be agreed, the ultimate authority to approve or reject the proposals regarding Non-States' Member appointments would remain with the States' Assembly.

4.8 In proposing the above amendments to the Rules, the P&RC and the STSB are cognisant of the fact that the revised arrangements would create a period between the end of the current political term and the election of a new President and political Board members to the STSB, during which the Board's membership would be comprised solely of Non-States' Members. However, in accordance with Rule 40(4), which provides that '*The members forming the quorum of the States' Trading Supervisory Board shall include at least 2 members who are members of the States',* the Non-States' Members comprising the STSB during this period would not, in the absence of political membership, be able to make any decisions pertaining to matters which fell within the Board's mandate.

4.9 Should the STSB be required to make an urgent decision during the period it is inquorate, the Board, like any other States' Committee/Board, would be constituted as per the provisions of Rule 40 (7), which provides that when a Committee is inquorate, the insufficiency of members shall be replaced by member/s of the States chosen in the following order: members of the P&RC according to their length of service in the States; Presidents of Principal Committees according to their length or service in the States; Presidents of other Committees according to their lengths of service in the States; and other Members according to their length of service in the States.

4.10 The amendments proposed by the P&RC and the STSB are not intended to alter the arrangements set out in paragraph 4.9. They are to ensure that the STSB will continue to be able to utilise the experience and knowledge of the Non-States' Members to provide advice, guidance and support to the unincorporated trading companies over the election period and until such a time as the STSB is again fully constituted and has had the opportunity to review its skills' mix and, if required, undertake a recruitment process for new Non-States' Members.

4.11 It is noted that the Board's two existing Non-States' Members, Mr Falla and Mr Hollis, have confirmed that, should the States agree to the above-mentioned amendments to the Rules, they would be willing to continue as members of the STSB for a short period beyond the 2020 General Election to provide a degree

[4] Billet d'État XIX of 2018 – Requête – Amendment to the Constitution of the States' Trading Supervisory Board

of continuity in accordance with the provisions of paragraph 4.3 above.

4.12 The Committee and Board have also given consideration to the longer term succession planning arrangements for the STSB beyond 2020. It is noted that, subject to the States' approval of the proposed changes to the Rules and the resultant establishment of the principle to extend the terms of office for the STSB's Non-States' Members, the STSB will review the long term arrangements and report back to the States with associated proposals. It is envisaged that these arrangements could include a limit on the number of terms served by an individual Non-States' Member (as is the practice of the incorporated entities) and/or varying the periods of office to stagger the appointment cycle, thereby reducing the possibility that all members of the Board would be required to stand down simultaneously in the future.

5 Changes to Rules of Procedure

5.1 In order to effect these changes, the following amendments are required to the Rules of Procedure of the States of Deliberation and Their Committees.

5.2 To facilitate the extension of the terms of office for Members of the STSB who are not sitting Members of the States to the December following a General Election, it is proposed: to amend existing Rule 37.(1) so that it reads as indicated below; to insert a new paragraph ((2)) of Rule 37 (also see below); and, to make a number of consequential changes to the numbering of existing Rules:

37. (1) The term of office of all Presidents and ***~~all the~~*** *members of all Committees* ***(excluding members of the States' Trading Supervisory Board who are not sitting members of the States)*** *shall expire at the end of a States' term. Where an office is required to be filled by a sitting Member of the States the said office shall be deemed to have been vacated upon the office holder ceasing to be a sitting Member of the States.*

37. (2) The term of office for members of the States' Trading Supervisory Board who are not sitting members of the States shall expire by the end of the December of any year in which the end of a States' term occurs.

5.3 To transfer the responsibility for proposing candidates to be members of the STSB who are not sitting Members of the States from the P&RC to the STSB, it is proposed: to amend existing Rule 16.(6), so that it reads as indicated below; to insert a new paragraph ((7)) immediately after paragraph (6) of Rule 16 (also see below); and, to renumber the existing, subsequent paragraphs accordingly:

16. (6) On a proposition to elect members of a Committee (other than members of the States' Trading Supervisory Board who are not sitting members of the States), the Presiding Officer shall first invite the President of the Committee

concerned, and thereafter other Members, to propose eligible candidates. ***~~On a proposition to elect members of the States' Trading Supervisory Board who are not sitting members of the States, the President of the Policy & Resources Committee shall have the exclusive right to propose eligible candidates and the Presiding Officer shall invite the President of the Policy & Resources Committee and no other Member to propose eligible candidates.~~*** *Candidates must be proposed and seconded. Nobody shall speak about a candidate at that stage; and if no more candidates are proposed and seconded than there are vacancies the Presiding Officer shall put the election of the candidate(s) to the vote without speeches. If there are more candidates than vacancies the Presiding Officer shall invite each proposer to speak, for not more than three minutes in respect of each candidate proposed by that person; and each candidate to speak, for not more than three minutes, before voting takes place. No other member shall be entitled to speak.*

16.(7) On a Proposition to elect members of the States' Trading Supervisory Board who are not sitting Members of the States, the President of the States' Trading Supervisory Board shall have the exclusive right to propose eligible candidates and the Presiding Officer shall invite the President of the States' Trading Supervisory Board and no other Member to propose eligible candidates (who must then be seconded) and to speak, for not more than three minutes in respect of each such candidate. The Presiding Officer shall thereafter put the election of the candidate(s) to the vote without further speeches.

6 Compliance with Rule 4

6.1 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.

6.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications. She has advised that there is no reason in law why the Propositions should not to be put into effect.

6.3 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 P&RC and the STSB.

6.4 In accordance with Rule 4(5), the Propositions relate to the duties of the STSB to ensure the efficient management, operation and maintenance of any States' unincorporated trading concerns and commercial interests which the States have resolved to include in the mandate of the Board.

Yours faithfully

G A St Pier
President, P&RC

P T R Ferbrache
President, STSB

L S Trott
Vice-President, P&RC

J C S F Smithies
Vice-President, STSB

A H Brouard
Member, P&RC

J Kuttelwascher
Member, STSB

J P Le Tocq
Member, P&RC

S J Falla MBE
Non-States Member, STSB

T J Stephens
Member, P&RC

J C Hollis
Non-States Member, STSB

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY

UPRATING POLICY FOR STATES PENSION

The States are asked to decide:

Whether, after consideration of the policy letter entitled 'Uprating policy for States pension', dated 20th January 2020, they are of the opinion:

1. To rescind resolution 1 on Article VIII of Billet d'État XVIII of 2015, setting the guideline for the annual uprating of the old age pension (soon to be renamed "States pension").

2. To approve that the guideline for the annual uprating of the old age pension/States pension, is an increase of RPIX plus one third of the real increase in median earnings.

3. To set, from 1st January 2021, the contribution rates for employers at 6.9%, as set out in Table 5 of that policy letter.

4. To set, from 1st January 2021, the contribution rates for employees at 6.8%, as set out in Table 5 of that policy letter.

5. To direct the Committee *for* Employment & Social Security to report back to the States no later than the last quarter of 2021, with further proposals to secure the financial sustainability of the Guernsey Insurance Fund.

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

The above propositions have been submitted to 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* EMPLOYMENT & SOCIAL SECURITY

UPRATING POLICY FOR STATES PENSION

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

20th January 2020

Dear Sir

1. Executive summary

1.1. Having considered a policy letter entitled 'Benefit and contribution rates for 2016'[1], the States of Guernsey resolved:

> "3. That the Committee [*for* Employment & Social Security] be directed to review the guideline for the annual uprating of statutory old-age pensions no later than 2020, having regard to progress made in establishing supporting policies to enhance personal pension provision and the actuarial projections for the Guernsey Insurance fund at that time".

1.2. This policy letter seeks to fulfil the above resolution and to set a baseline for the uprating of the old age pension (soon to be formally renamed "States pension", the term used hereafter), which future Committees can use as a starting point when preparing the annual uprating report.

1.3. After reviewing a variety of options and their potential impact on the longevity of the Guernsey Insurance Fund ("the Fund"), the Committee *for* Employment & Social Security ("the Committee") is proposing that the guideline uprating policy will be annual increases of RPIX + ⅓ of the difference between RPIX and the annual change in median earnings (hereafter referred to as "the ⅓ uprating policy"). In the event that the median earnings increase

[1] Billet d'État XVIII of 2015, Article 8, Resolution 3

is less than the RPIX increase, then RPIX alone would be used. This is in line with the uprating policy that has been used for several years now.

1.4. In order to improve the funding position of the Fund, the Committee is also proposing that, with effect from 1st January 2021, contribution rates should increase by 0.3% and 0.2% for employers and employees respectively. Based on core assumptions, this will not be sufficient to offset the projected long-term funding shortfall. However, it will partially offset it until such time that a more thorough review can provide a better projection of long term funding requirements.

2. Introduction

2.1. Over the years, annual increases to the States pension have varied considerably. In many years, increases have been proportionate to some measure of inflation and/or median earnings increases, but in some years the uprating has been untethered from these measures in response to the economic circumstances of the day. Every year it is important to consider the correct uprating policy in light of current economic circumstances. Those circumstances include both the financial hardship of those relying on the States pension, and the financial hardship of the working age population, who will have to support the additional cost. As a result it is most accurate to call this proposal a guideline. The intention is that, should the Committee decide to deviate from this in any given year, it should provide reasons for doing so in the annual uprating report. A decision to change the guideline is one which should be supported with more detail than is usually contained in the annual uprating report.

2.2. The present guideline is that the pension should be increased every year by RPIX + ⅓ of the difference between RPIX and the increase in median earnings. This has been the case for a number of years. The October 2015 uprating report for 2016 benefit and contribution rates, proposed that this guideline was formally established, and that from 2025, a policy of uprating by RPIX only would be adopted[2]. This policy letter asks the States to reconsider this guideline in light of the Committee's concerns that this conservative uprating policy will ultimately result in increased pensioner poverty and inconsistent and unpredictable uprating in future.

2.3. The Committee is aware that actuarial reviews provide the best evidence of the sustainability of the Fund. In the case of the Guernsey Insurance Fund, the reviews are produced at 5-yearly intervals. The next review, covering the period 2015 to 2019, and with 60-year forward projections, is expected to be available in late 2020. In the next political term, the Committee may wish to

[2] Billet d'État XVIII of 2015, Article 8, Resolution 1

review the uprating guidance in light of these forthcoming projections. However, at present, the Committee is of the view that it is appropriate to set a guideline based on the best information available internally, having built on the last review undertaken by the Government Actuary's Department (GAD).

3. Background

3.1. When considering pension increases, two metrics are often considered. The first is the movement in inflation (RPIX or RPI) and the second is the movement in median earnings. Broadly speaking, these two uprating indices represent two different ideals of what the pension should achieve. By following RPIX, the increases should keep pace with the cost of living and the pension should represent the same buying power for essential goods and services. Alternatively, by following median earnings increases, the pension should keep pace with the experience of the working population. This means that the pension should retain its value relative to the income of the wider population, and the difference in the quality of life between the retired and non-retired population should remain stable (disregarding the impact of any private or occupational pensions).

3.2. The application of an uprating policy which is based on a point between RPIX and median earnings increase is perhaps best explained by way of an example. A calculation using an uprating policy of RPIX + ⅓ of the real increase median earnings is shown in the table below.

Table 1 – Example: calculating an uprating policy of RPIX +⅓ of the real increase in median earnings

	Rate	**Notes**
RPIX	2.0%	
Median earnings increase	6.0%	
Real median earnings increase	4.0%	Median earnings increase (6%) minus RPIX (2%).
⅓ of real median earnings increase	1.3%	This is always rounded to one decimal place.
Uprating	**3.3%**	**RPIX (2%) + ⅓ of real median earnings increase (1.3%)**

3.3. Historically, median earnings increases have been greater than RPIX increases. However, in recent years this effect has diminished, to the point where RPIX has sometimes exceeded median earnings increases. Based on the assumption that median earnings will at least partially recover, it is projected that a model of uprating based on median earning increases would be a more expensive option and result in the Fund depleting more quickly.

3.4. The difference between the two metrics can be quite stark. Table 2 below shows the impact of applying these policies over a 50 year horizon, effectively one working life. The table assumes that RPIX is equal to 2.5% per annum over the long term and that the median earnings increase is an additional 1.5% per annum, which is in line with the base projections used in the last actuarial report, for the period 2010-2014 inclusive.

Table 2 – Illustrative pension rates based on alternative uprating policies

	2020	**2030**	**2040**	**2050**	**2060**	**2070**
RPIX	£222.58	£284.92	£364.72	£466.88	£597.64	£765.03
Median earnings increase	£222.58	£329.47	£487.70	£721.92	£1,068.61	£1,581.81

3.5. The effect of this policy can, to a certain extent, be seen by comparing the UK Basic State Pension to the Guernsey States pension. From 1980 until 2010, the UK strictly followed a policy of inflation-based uprating. Meanwhile, Guernsey followed a more variable method, which in many years factored in at least an element of earnings-based increases. In November 1980, the full UK Basic State Pension was £27.15 per week for a single person, and in 2010 it was £97.65. The full Guernsey States pension was £27.00 in November 1980, and £174.65 in 2010. This demonstrates how, over less than one working lifetime, a purely inflation-based uprating policy could leave pensioners in a significantly worse position than if the policy was linked partly or fully to the increase in earnings.

3.6. To provide some historical context, Table 3 overleaf shows the increases applied in previous years, along with the accompanying reason or reference to the policy applied.

Table 3 – Historic pension uprating policies approved by the States

Year of increase	Percentage increase	Policy
2020	2.3%	RPIX + ⅓ of real median earnings Increase
2019	2.4%	RPIX only (median earnings increase was less than RPIX)
2018	2.8%	RPIX only (median earnings increase was less than RPIX)
2017	0.8%*	RPIX + ⅓ of real median earnings increase
2016	1.7%	RPIX + ⅓ of real median earnings increase
2015	2.1%	RPIX only
2014	2.1%	RPIX only
2013	3.6%	RPIX + 0.5%
2012	3.6%	RPIX + ½ the projected long term real median earnings increase
2011	2.9%	RPIX + 0.5% - this was lower than the policy of RPIX + ½ of projected long term real median earnings increase, which was the approved policy at the time.
2010	2.0%	0.7% under RPIX** but 3.3% above RPI, the measure used until that point. The less generous uprating was based on the economic conditions of the time.
2009	6.5%	RPI +1.0%
2008	6.0%	RPI +1.3%
2007	3.4%	RPI only – in light of economic concerns
2006	5.4%	RPI+ 0.8% - reduced from previous years in light of economic circumstances and draw down of the fund
2005	7.0%	RPI +2.5% - due to concerns about pensioner poverty
2004	7.4%	RPI +3.1% - due to concerns about pensioner poverty
2003	7.5%	RPI +4.2% - due to concerns about pensioner poverty

* 2017 benefit rates were later restated to a 1% increase, this was to reflect a change in the methodology for calculating median earnings. This was implemented through an uplift from 2018 onwards and was not backdated.

** From 2010, the States-approved measure of inflation used for uprating changed from RPI to RPIX.

3.7. In 2006 (the earliest year from which annual figures are available), the annual median earnings figure was £23,660. At the end of 2018, the figure was £33,622, which was an increase of approximately 42%. The RPIX increase over the same period was approximately 38%. In 2006, the full rate States pension was £146.50 and as of 1st January 2019, was £217.36, which was an increase of approximately 48%. This indicates that over the past 13 years, pension

increases have modestly exceeded the real terms increase in both median earnings and RPIX.

4. Impact of initiatives encouraging private savings

4.1. The propositions that the Committee has lodged regarding the establishment of a Secondary Pensions Scheme[3], if approved, will deliver significant improvements to retirement incomes, over time. This will be a great step forward for private pension saving, enabling far more people to take increased control over their retirement income. That said, the Secondary Pensions provisions are only part of the picture, and their full benefits will not be realised for many years, as it will take time for individuals' pension funds to build up.

4.2. As has been indicated in that policy letter, the Secondary Pensions Scheme is intended to reinforce existing retirement incomes[4], not to replace the States pension. For an individual with a lower quartile income contributing for their whole working life, the States pension is still projected to form around 50% their retirement income. In the case of a median earner, the States pension is projected to make up 40% of their retirement income.

4.3. Even with the combination of the States pension and the proposed Secondary Pensions Scheme, a person with a lower quartile income is only just likely to reach their target replacement rate of 80% of their income. This target replacement rate is the amount of income projected to be necessary for an individual to transition into a reasonably comfortable retirement. The Secondary Pensions Scheme will not be delivering extravagant retirement incomes. Instead, it is intended simply to be a comfortable retirement, when offered alongside the States pension.

4.4. The importance of the States pension is twofold. Firstly, it is re-distributive, which means that its value recognises the duration of participation, not the sum contributed to the Fund. This is vital to those who contribute long-term, but have lower incomes. If the States are to ensure that the most financially vulnerable have a reasonably secure retirement, there must be some kind of re-distributive effect. Providing for an adequate retirement on personal income alone is simply not viable for the lowest income households.

4.5. The second important point is that the States pension provides for those who, for reasons of circumstance, cannot contribute to a private pension. In many cases, working age individuals are not actively earning and are not able to

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[3] Billet d'État IV of 2020, Article 2

[4] Retirement income here refers to the income a person has when they are retired and of pensionable age. It mainly includes income from the States pension, private pensions and occupational pensions.

contribute to a private pension. Examples of this would be parental leave, unemployment or long-term sickness, being reasons which are either socially beneficial, or unavoidable. While these individuals are not working, contribution credits may preserve their entitlement to long-term benefits, such as the States pension, and prevent a gap forming in their contribution record.

5. Possible uprating policies

5.1. The Committee considered a number of options, including the following:

- RPIX only,
- RPIX + ⅓ of the real increase in median earnings until 2025 and thereafter RPIX only (This is the current States-approved policy),
- RPIX + ⅓ of the real increase in median earnings,
- RPIX + ½ of the real increase in median earnings, and
- Median earnings.

5.2. These options have been modelled internally and, therefore, may not be as accurate as those that would be produced via an external actuarial review. However the Committee is satisfied that they are sufficient for the setting of a guideline, which by its nature can be deviated from and should be reviewed as new information becomes available. These projections are based on an assumed median earnings increase of RPIX + 1%, which is 0.5% lower than the assumption used in the last actuarial projection. The reason for this is that over the past decade, the real increases in median earnings have been substantially lower than they were prior to 2000. This may be an anomaly, but if it is, it has continued for quite some time.

5.3. Table 4 overleaf indicates that, irrespective of the pension uprating option used, the Fund is projected to be exhausted unless contribution rates are increased. The exhaustion point of the Fund actually changes relatively little based on the uprating policy applied, which demonstrates just how rapidly Guernsey's demographics are due to change. The increases in contribution rates required to avoid the exhaustion of the Fund, would need to be applied immediately, in order to be effective, of course, depending on which uprating policy is approved, and the required minimum balance of the Fund. If increases in contribution rates are not made soon, then greater increases will need to be applied in the future. It should be noted that these figures are subject to a number of sensitivities, including population growth, life expectancy, median earnings increases and investment returns. It should also be noted that the cumulative effect of small differences in those sensitivities, could substantially improve or worsen the situation.

Table 4 – Projected impact on the Guernsey Insurance Fund of various uprating policies.

Policy option	Exhaustion of the Fund	Additional contribution rates for positive Fund balance in 2065	Additional contribution rates required to maintain two years of expenditure in the Fund
Current policy	2040	1.0%	1.3%
RPIX only	2042	0.7%	1.1%
⅓ earnings	2039	1.5%	1.8%
½ earnings	2038	1.9%	2.2%
Full earnings	2036	3.3%	3.6%

5.4. It should be noted that, the current States-approved policy is that a buffer of a minimum of two years of expenditure should be maintained in the Guernsey Insurance Fund[5]. The additional increase in contribution rates required to maintain this buffer is shown in the final column of Table 4 above.

6. Sustainability of the Fund

6.1. Cursory consideration of the matter would conclude that the most financially prudent approach would be to adopt an RPIX-only uprating policy. The Committee is of the opinion that this is not the case. A restrictive uprating policy leads to an undervalued pension and the marginalisation of those reliant on it. The end result is that, sooner or later, political pressure will build and the result will be a demand for a substantial increase over a short period of time. The value of the States pension can only diminish so far before it becomes unacceptable. Care must be taken to retain financial constraint while not pushing people into poverty.

6.2. When dealing with a long-term financial liability, minimising uncertainties is of great benefit. Planning to meet pension liabilities is much easier if consistency and predictability can be secured wherever possible. Accepting this from the outset will allow the States to consider reasonable funding levels, rather than going through the pain of contribution increases, only for further and more substantial increases to be levied when benefit rates are substantially increased once they prove to be unacceptable.

7. Proposals

7.1. Although the Committee would like to be able to recommend a generous uprating policy with a median earnings-based increase, it recognises that this is very unlikely to be financially achievable in light of other budgetary

[5] Billet d'État IV of 2015, Article 1, Resolution 9

pressures. It is proposed that the uprating guideline should be RPIX + ⅓ of the real increase in median earnings. This would be the same as the current policy, but removing the commitment to reduce to uprating the States pension by RPIX only from 2025[6]. The Committee is of the opinion that this is likely to be the optimum affordable option.

8. Funding and costs

8.1. The projections shown in Table 4 demonstrate that, based on core assumptions, contributions into the Fund would need to increase substantially in order to support even the least generous uprating policy. The Committee has said repeatedly throughout this political term that contribution rates will need to increase. It is a difficult reality to confront, but it is one which cannot be ignored.

8.2. Having regard to the fact that an actuarial review of the Fund will take place during 2020, and noting how carefully the sensitivities mentioned in paragraph 5.3 will need to be considered, the Committee does not believe it is advisable to rigidly base its uprating proposals on the additional contribution rates indicated in Table 4. It is quite possible that the new projections could present a different picture. Instead, the Committee is minded to take a smaller interim step, which will narrow the funding gap. Further steps can be taken in future years, once the report on the forthcoming actuarial review of the Fund is available to provide more accurate guidance.

8.3. The Committee is proposing that, with effect from 1st January 2021, the Class 1 contribution (which is comprised of employer and employee contributions) is increased by 0.5%. To achieve this, it is proposed that the employer's contribution will increase by 0.3% and the employee's contribution will increase by 0.2%. This is broadly in line with the current ratio for contributions to the Guernsey Insurance Fund, as set out in Table 5 below.

Table 5 – Proposed Contribution Rates from 2021

	Current Rates	Proposed Rates
Employer	**6.6%**	**6.9%**
Guernsey Insurance Fund	5.0%	5.3%
Guernsey Health Service Fund	1.6%	1.6%
Long-term Care Insurance Fund	-	-
Employee	**6.6%**	**6.8%**
Guernsey Insurance Fund	3.5%	3.7%
Guernsey Health Service Fund	1.3%	1.3%
Long-term Care Insurance Fund	1.8%	1.8%

[6] Billet d'État XVIII of 2015, Article 8, Resolution 1

8.4. The Committee is aware that there has been concern about the impact of contribution rate increases on self-employed and non-employed people, particularly since the corporate tax reforms of 2008 and the consequent increases in upper earnings limits. The 2015 Personal Tax, Pensions and Benefits Review[7] resulted in a number of States Resolutions which require the Committee to pay particular attention to the equitability of the rates charged for these contributors. The impacts of increases in contribution rates, and the increases in the upper earnings limits are felt all the more by self-employed and non-employed people, as there is no employer to share the cost with.

8.5. In view of the foregoing, the Committee considers it appropriate to leave the contribution rates for self-employed and non-employed people unchanged.

8.6. If the States approves the propositions, the increases would come into effect on 1st January 2021, as part of the annual process of uprating benefit and contribution rates. This should provide adequate time for the States to make appropriate adjustments to systems and legislation, as well as allowing businesses time to plan and prepare.

8.7. It is estimated that the additional 0.5% on the Class 1 contribution rates will provide income of approximately £6m per annum to the Guernsey Insurance Fund.

8.8. The increase in the employer's contribution rate will have a cost to the States in their role as employer. It is estimated that the additional cost to General Revenue will be £600,000 per annum.

8.9. The increase in the employee's contribution rate will also have a cost to the States under income support. This is because the assessment of a claimant's income takes account of earnings after deduction of social security, tax and pension contributions. It is estimated that the additional cost to General Revenue for income support will be £100,000 per annum.

9. Consultation

9.1. During the drafting of this policy letter, the Committee has consulted with the Policy & Resources Committee. It is understood that the Policy & Resources Committee will support the proposition concerning the uprating policy, but will oppose the propositions which seek to increase contribution rates.

9.2. The Committee has also consulted with the Law Officers regarding the legal implications and legislative drafting requirements resulting from the propositions set out in this policy letter.

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[7] Billet d'État IV of 2015, Article 1

10. Conclusion

10.1. Having re-examined the uprating policy for the States pension, the Committee has concluded that the most appropriate balance in the interests of contributors, pensioners, and public funds, is to maintain the current uprating policy of RPIX plus one third of the real increase in median earnings, but removing the obligation to reduce this to an increase of RPIX only from 2025. The Committee makes this recommendation in the knowledge that the improvement in people's retirement incomes through the Secondary Pensions Scheme, presuming approval by the States, will not be substantial until people's accounts have accumulated over 20 years or more. Until such time as the Secondary Pensions Scheme does begin to have a material effect, the Committee would not support an uprating policy restricted to RPIX only.

10.2. The Committee has included in this policy letter a recommendation to increase the Class 1 contribution rate for social insurance contributions by 0.5%, with 0.3% being paid by the employer and 0.2% being paid by the employee. This proposal would take effect from 1st January 2021. The Committee makes this recommendation in the belief that the forthcoming actuarial review of the Guernsey Insurance Fund, and any other associated fiscal reviews, will inevitably find that a contribution rate in excess of that amount is required for the long-term sustainability of the Fund. Given that belief, the Committee takes the view that the earlier that initial 0.5% can be applied, the more effective it will be.

10.3. The Committee's propositions accord with the Committee's purpose:

> "To foster a compassionate, cohesive and aspirational society in which responsibility is encouraged and individuals and families are supported through schemes of social protection relating to pensions, other contributory and non-contributory benefits, social housing, employment, re-employment and labour market legislation."

10.4. In particular, the propositions are aligned with the priorities and policies set out in the Committee's Policy Plan, which was approved by the States in June 2017 (Billet d'État XII, Article 1). The Committee's Policy Plan is aligned with the States objectives and policy plans.

10.5. In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that propositions 1, 2, 5 and 6 have the unanimous support of the Committee. Propositions 3 and 4, concerning increases in contribution rates, are supported by a majority of the Committee, with Deputy Shane Langlois dissenting.

Yours faithfully

M K Le Clerc
President

S L Langlois
Vice-President

J A B Gollop
E A McSwiggan
P J Roffey

M J Brown
Non-States Member

A R Le Lièvre
Non-States Member

P.2020/14

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

REQUÊTE

DETERMINING THE BEST MODEL FOR SECONDARY EDUCATION

The States are asked to decide:-

Whether, after consideration of the Requête dated 28th January, 2020 they are of the opinion:-

1. To direct the Committee *for* Education, Sport & Culture not to enter into any contractual obligations on behalf of the States or continue with any associated procurement processes for implementation of any elements of the 1 school on 2 sites plan as approved by the States on 6th September 2019;

2. To direct the Committee *for* Education, Sport & Culture to prepare a report before the end of the term of the current States, that must include a comprehensive comparison of the structure and implementation of the 1 school on 2 sites plan with other viable models of non-selective educational delivery in Guernsey previously presented to and considered by the Committee, for consideration by the Committee *for* Education, Sport & Culture as constituted after the 2020 General Election ("the newly constituted Committee") and to direct the newly constituted Committee to revert to the States before the end of 2020 with a Policy Letter and suitable Propositions to implement what it believes to be the best model for secondary education in Guernsey.

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.

STATES OF DELIBERATION

of the

ISLANDS OF GUERNSEY

REQUÊTE

DETERMINING THE BEST MODEL FOR SECONDARY EDUCATION

THE HUMBLE PETITION of the undersigned Members of the States of Deliberation sheweth that:

1) On 19th January 2018 the States of Deliberation decided to pursue the 1 school on 2 sites model without being presented with a detailed plan for its implementation.

2) The approved policy direction agreed on the 6th September 2019 was again done without full details of the planned implementation being presented.

   The policy requires an investment of approximately £157m with the central policy being to deliver education in Guernsey in 1 school on 2 sites, using the current Les Beaucamps and St Sampson's High Schools.

   It is envisaged that the schools will increase in size from the current approximate level of 600-700 students to approximately 1,400 students. The 2 sites will deliver education for children in the States school system from ages 11- 18 years old.

3) Since the approval by a majority of States Members of the proposed model in September 2019, the Policy & Resources Committee, under delegated Authority, has granted permission, in December 2019, for the Committee *for* Education Sport & Culture to go out to tender for the construction of the 2 new schools. Concurrently, the Committee *for* Education, Sport & Culture submitted their building plans for approval to the Development and Planning Authority.

4) The submission of building plans subsequent to the policy approval on 6th September and the publishing of relevant details such as Traffic Impact Assessments, along with an invitation to tender have drawn a considerable amount of attention from stakeholders, including Douzaines, members of the public, teachers and support staff, teaching Unions and parents, who have expressed serious concerns.

   The government process for capital bids, the results of teaching Union surveys, community queries, and formal questions in the States of Deliberations have

highlighted serious inadequacies of detail around the plans for inter alia, managing traffic, transition modelling for teachers and students, space allocation, sports facilities, overcrowding, parking, impact of larger school in the community, transport and disaster recovery.

5) Numerous incremental changes to the plans made in isolation to reactively address the different concerns of numerous stakeholders risk the majority-approved plan from September 2019 becoming a very different one in implementation from what was originally proposed, with the added probability of significant cost overruns.

6) What is required is proper consideration of the delivery of education in an informed and evidenced manner with comprehensive details of the structure and implementation of viable non-selective models presented for comparison and consideration.

   As there is an Election in June 2020, the newly elected States of Deliberation and Committee for Education, Sport and Culture will be largely responsible for implementing and financing these plans. Your Petitioners believe that it is essential that they be given the opportunity to subject the 1 school on 2 sites to further rigorous review and challenge and be allowed to assess whether the final proposals balance costs and benefits and therefore use of public resources in a way that creates and maximises public value and the greatest benefits for students.

   In the circumstances of increased stakeholder challenge, your Petitioners believe that it is essential the newly convened Committee and States of Deliberation be allowed to make this determination prior to proceeding further with the 1 school on 2 sites model. Thus, avoiding the potential for significant additional costs if the new States of Deliberation were to choose another model for implementing non-selective education.

7) The Petitioners request that such consideration be delivered in a report which must include a comprehensive comparison of the structure and implementation of the 1 school on 2 sites against other viable non-selective models of educational delivery in Guernsey. For the purposes of transparency and accountability it is essential for States Members to be presented with research in totality for them to be able to make an informed decision regarding what will lead to the best outcomes for the Island.

8) If the Propositions set out in the Prayer to this Petition are approved, your Petitioners believe that a delay of one year in implementation of the 1 school on 2 sites model may be anticipated. This they believe is an acceptable delay to ensure that the correct decision is made considering the 50 year design life of the buildings to be constructed should that model proceed.

Your Petitioners have therefore requested from the Committee *for* Education, Sport & Culture, estimates of the costs associated with a one year delay in implementation, in accordance with the requirements of Rule 4(3) of the Rules of Procedure, and they await the receipt of that information from the Committee.

9) Your Petitioners seek a moratorium on the awarding of all contracts or procurement relating to the implementation of the current policy until after the then newly constituted Committee for Education, Sport and Culture has presented a properly detailed Policy Letter to the then newly constituted States for their consideration and approval with associated Propositions. Both to enable proper consideration of the finalised detailed proposals, but also to enable the new States of Deliberation, who will oversee its implementation and financing, to decide if they support them.

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

1. To direct the Committee *for* Education, Sport & Culture not to enter into any contractual obligations on behalf of the States or continue with any associated procurement processes for implementation of any elements of the 1 school on 2 sites plan as approved by the States on 6th September 2019;

2. To direct the Committee for Education, Sport & Culture to prepare a report before the end of the term of the current States, that must include a comprehensive comparison of the structure and implementation of the 1 school on 2 sites plan with other viable models of non-selective educational delivery in Guernsey previously presented to and considered by the Committee, for consideration by the Committee for Education, Sport & Culture as constituted after the 2020 General Election ("the newly constituted Committee") and to direct the newly constituted Committee to revert to the States before the end of 2020 with a Policy Letter and suitable Propositions to implement what it believes to be the best model for secondary education in Guernsey.

AND YOUR PETITIONERS WILL EVER PRAY

GUERNSEY

The original signed copy of this Requête is held at the Greffe and is available to view on request

A C Dudley-Owen

J A B Gollop

M M Lowe

C P Meerveld

R G Prow

J C S F Smithies

L C Queripel

This 28th day of January 2020

P.2020/8

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

REQUÊTE

ENSURING THAT A POLICY LETTER ON THE POLICY GOVERNING 5G TECHNOLOGY IS DEBATED BY THE STATES ASSEMBLY

The States are asked to decide:-

Whether, after consideration of the Requête dated 20th January, 2020, they are of the opinion:-

1. To direct the Committee *for* Economic Development to present a policy letter to the States of Deliberation no later than the end of the current political term, detailing its recommended policy on 5G technology, including specific reference to the licence conditions and criteria.

OR, only if Proposition 1 shall have fallen,

2. To direct the Committee *for* Economic Development to present a policy letter to the States of Deliberation no later than the end of 2020, detailing its recommended policy on 5G technology, including specific reference to the licence conditions and criteria.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

REQUÊTE

ENSURING THAT A POLICY LETTER ON THE POLICY GOVERNING 5G TECHNOLOGY IS DEBATED BY THE STATES ASSEMBLY

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

1. In June 2018, the Committee *for* Economic Development ("the Committee") published its first ever telecommunications strategy, The Future of Telecoms. The strategy states:

   "The three key objectives are:

   1. Provision of Fibre to business districts within 2-3 years
   2. Provision of high quality residential broadband to all residential properties within 2-3 years
   3. Provision of next generation mobile technology in line, or earlier than the UK"

2. With specific regard to the third objective, next generation mobile, the strategy explains:

   "Planning and standardisation activities for 5th generation (5G) mobile networks is already underway and all of the big Telecoms Infrastructure providers have active 5G research and development projects, and early technology trials are underway at numerous locations around the world."

3. Your Petitioners note that the telecommunications strategy has been neither debated nor endorsed by the States of Deliberation, although there has long been an expectation that there will be a chance to debate the issue. At the time that The Future of Telecoms was published on the official website for the States of Guernsey in June 2018, the public was informed that:

   "A further Policy Letter on the implementation of that strategy will be submitted to the States in 2019."

4. In November 2018, the Channel Islands Competition & Regulatory Authorities ("CICRA") hosted a 5G summit involving government officials, senior telecoms industry and digital sector leaders, and experts from the UK "to discuss and

debate opportunities for the Channel Islands as the advent of 5G technology draws nearer".

5. In December 2018 the Committee published some FAQs on 5G in response to increasing public interest in the issue. Concerns expressed by the community focused on a variety of different aspects of 5G. These include (but are not limited to): questions around the relative costs and benefits of 5G; issues around cybersecurity, data protection and privacy; and potential health and environmental impacts, especially those relating to non-ionising radiation, as well as queries around the scope, transparency and accountability of ICNIRP, the organisation whose guidelines inform our health and safety standards.

6. In January 2019, the Committee's lead for Digital, Deputy Dudley Owen, wrote a letter that was published in Guernsey Press. It was written in response to a number of letters from members of the public on the issue. Deputy Dudley Owen's letter reiterated the fact that 5G would be debated by the States in 2019:

> "During 2019, the Committee *for* Economic Development will publish a policy letter, to be debated by the States, which will set out the next stage of the telecommunications strategy. Central to that is the roll-out of 5G."

7. In April 2019, the Committee requested that CICRA launch a draft 'statement of intent' consultation process with telecoms companies and other interested parties to understand their views on the spectrum requirements and the proposed licencing process required to help meet those objectives, especially in relation to the rollout of 5G technology. This consultation took place during May and June 2019.

8. In June 2019, the Committee updated the P&R Plan with regards to digital connectivity, a States-approved policy priority, as follows:

> "<u>Digital connectivity and infrastructure</u>
> In summer 2018 the Committee *for* Economic Development published a telecommunications strategy following consultation and engagement with the public and private sector in the island. The States of Guernsey's Economic Development Strategy confirmed that the implementation of the telecommunications strategy was a critical priority, and resources have been prioritised to develop a government and regulatory framework to deliver the objectives of the strategy and to foster investment in the infrastructure required. A policy letter will be debated by the States' Assembly in 2019."

9. In September 2019, the States was informed in statement by the President of the Committee:

> "The Committee has now had the opportunity to consider the feedback from that consultation and will be providing an update to States members on next steps within the next few weeks."

10. In October 2019, a document called 'Future of Telecoms Strategy – update for States members' was emailed to deputies by an officer on behalf of the Committee. This update announced that a policy letter was no longer required. The Committee argued that this was because it had become apparent through the consultation that the move towards 5G would be incremental, using existing 4G networks to deliver '4G+' and then variables of 5G, rather than a new, single standalone 5G network. The Committee argued that because of this evolutionary approach it would "not be practical to seek a single licence for the issuance of suitable spectrum in initial 5G deployments". However, the Committee confirmed that the roll out of a full island-wide 5G network remains a core objective, anticipating that the full deployment of the standalone version of 5G will take place post 2022.

11. The update confirmed that the Committee intends "to direct CICRA to issue licences to allow telecoms operators access to appropriate spectrum to facilitate the initial evolutionary deployment of 5G", and that licences will be subject to clear conditions and criteria on security, health and safety, planning requirements, network speed and a commitment on deployment timescale and Bailiwick coverage.

12. Your Petitioners note that, although there had been a lot of public interest in the issue, including a high profile community-led campaign focused on the anticipated States debate, the Committee did not publicly communicate its decision that it would no longer be bringing a policy letter to the States. Neither did it take the opportunity to confirm to the public (as per the update for States members) that 5G trials would be starting imminently.

13. In November 2019, 5G trials commenced. The Committee's lead for Digital, Deputy Dudley Owen, announced:

> "The trials will be an opportunity to gain first-hand local experience of the new technology before a wider roll-out is commenced."

14. Your Petitioners are of the firm opinion that 5G technology is an important policy area that should be debated by the States Assembly before any wider rollout is commenced.

15. The Telecommunications (Bailiwick of Guernsey) Law 2001 provides that the Guernsey Competition and Regulation Authority (GCRA) ("the Authority") may grant licences for operators in the Bailiwick. The duties of the Authority are contained in the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001. The States of Deliberation gave the Authority powers under the Law to set and determine the standards against which licences are granted.

16. In 2006, the States approved an Amendment to the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 that allows the States to provide directions to the Authority in a number of areas:

> "(1A) The States may, on the recommendation of the Commerce and Employment Department made after consultation with the Director General, and without prejudice to the provisions of subsection (1), by Ordinance give the Director General directions of a strategic or general nature including, without limitation, directions concerning the priorities to be taken into account by him in the exercise of his functions and powers in respect of any utility service."

17. In September 2011, the Commerce and Employment Department brought a policy letter titled 'Review of Utility Regulation', which looked at all areas in the Authority's mandate and made various observations and recommendations. One relevant observation was as follows:

> "Whilst the Director General has performed his statutory duties in accordance with the legislative requirements, it could be said that the States have not provided sufficient clarity on their general and strategic objectives. […] [T]here is scope for the States to provide greater clarity in certain areas where it considers this necessary."

18. Pursuant to this policy letter, the States agreed to adopt the Six Principles for Economic Regulation, the first of which is Accountability. The definition for Accountability begins as follows:

> "independent regulation needs to take place within a framework of duties and policies set by the democratically accountable States of Deliberation."

The fourth principle is Coherence, the definition of which begins as follows:

> "regulatory frameworks should form a logical part of the States of Guernsey's broader policy context, consistent with established priorities"

19. The report forming the basis for (and appended to) that policy letter, A Review of Guernsey's Utility Regulatory Regime, carried out by the Regulatory Policy Institute in 2010 states:

> "a number of important challenges lie ahead for the States and for the regulatory framework in telecoms. Most important among these will be the development of an appropriate policy and regulatory approach with respect to the rollout of new technologies and next-generation network infrastructure."

20. Your Petitioners contend that in the decade since that observation was made, the need for an appropriate policy and regulatory approach with respect to the rollout of new technologies and next-generation infrastructure is more urgent than ever. Your Petitioners note that the Committee already has the vast majority of the information it needs to pull together a policy letter on 5G, as it has already written a telecommunications strategy, seen the results of CICRA's consultation with industry and is in the process of developing licence conditions and criteria.

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

1. To direct the Committee *for* Economic Development to present a policy letter to the States of Deliberation no later than the end of the current political term, detailing its recommended policy on 5G technology, including specific reference to the licence conditions and criteria.

OR, only if Proposition 1 shall have fallen,

2. To direct the Committee *for* Economic Development to present a policy letter to the States of Deliberation no later than the end of 2020, detailing its recommended policy on 5G technology, including specific reference to the licence conditions and criteria.

AND YOUR PETITIONERS WILL EVER PRAY

GUERNSEY

This 20th day January, 2020

H L de Sausmarez

L B Queripel

V S Oliver

J S Merrett

M J Fallaize

E A McSwiggan

S L Langlois

P.2019/143

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

REQUÊTE

SUSPENSION OF CARRYING OUT OF WORKS FURTHER TO PROPOSALS FOR THE PARTIAL REMOVAL OF THE ANTI-TANK WALL IN THE EASTERN PART OF PEMBROKE BAY (L'ANCRESSE EAST) AND THE MANAGED RE-ALIGNMENT OF THE COASTLINE IN THAT AREA AND ESTABLISHMENT OF A MORATORIUM PERIOD OF 10 YEARS DURING WHICH TIME SUITABLE MAINTENANCE IS UNDERTAKEN TO PROVIDE STABILITY TO THE WALL

The States are asked to decide:-

Whether, after consideration of the Requête dated 27th November, 2019, they are of the opinion:-

1. To agree that the carrying out of any works to implement the managed re-alignment of the coastline at L'Ancresse East as set out in Section 7 of the Policy Letter of the Committee *for the* Environment & Infrastructure dated 18th August 2017 and described in Section 6, Volume 1 of the report "Guernsey Coastal Defences" prepared by Royal Haskoning Dhv further to the Resolution of the States made at their meeting on 29th September 2017 be suspended.

2. To agree that the period of suspension shall be 10 years from the date of this Resolution or such shorter period as the States may at any future time by resolution determine.

3. To direct the Committee *for the* Environment & Infrastructure to arrange for implementation of a maintenance schedule as proposed in Recital 6.

4. In the event of a failure of the wall, resulting in the ingress of the sea onto the common, to direct the Committee *for the* Environment & Infrastructure to revert to the States with proposals for minimising any damage to the common, which may include a proposal for managed re-alignment in accordance with the Resolution of the States of 29th September 2017 referred to in Recital 1.

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

REQUÊTE

SUSPENSION OF CARRYING OUT OF WORKS FURTHER TO PROPOSALS FOR THE PARTIAL REMOVAL OF THE ANTI-TANK WALL IN THE EASTERN PART OF PEMBROKE BAY (L'ANCRESSE EAST) AND THE MANAGED RE-ALIGNMENT OF THE COASTLINE IN THAT AREA AND ESTABLISHMENT OF A MORATORIUM PERIOD OF 10 YEARS DURING WHICH TIME SUITABLE MAINTENANCE IS UNDERTAKEN TO PROVIDE STABILITY TO THE WALL.

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

1. At their meeting on 29th September, 2017 the States of Deliberation resolved as follows –

   "1. To endorse the proposal to implement the managed re-alignment ("Option 7b") of the coastline at L'Ancresse East as set out in Section 7 of this Policy Letter and described in Section 6, Volume 1 of the report "Guernsey Coastal Defences" prepared by Royal Haskoning Dhv."[1]

2. The managed re-alignment ("Option 7b") referred to in the above recited Resolution involves the removal of 130 metres of anti-tank wall in the Eastern part of Pembroke Bay, construction of rock armour groynes and creation of a managed realignment of the beach head in the area at an estimated cost of £1,000,000.

3. On 6th November 2018 the Committee for the Environment & Infrastructure submitted a planning application in connection with the works described in order that the scope of any required Environmental Impact Assessment (EIA) could be determined. Advice on the required EIA is awaited and the works now appear unlikely to commence before the summer of 2020.

4. Your Petitioners recognise that the integrity of the section of wall that will be effected by the proposed works will gradually decline if no works are carried out. They further recognise that some maintenance should be carried out in order to ensure that it is kept safe. However they are of the view that the carrying out of the totality of the works comprised in "Option 7b" will, amongst other things, detract significantly from the attractiveness of the area. In particular your Petitioners believe that the construction of the rock armour groynes on what is a pristine beach area will not prove

[1] See item 11 on Billet d'État No. XVIII of 2017.

to be visually attractive, and there are substantial risks that the envisaged re-alignment of a bay within a bay may not occur.

5. In the current circumstances your Petitioners believe that there is merit in agreeing to suspend implementation of Option 7b for a period of at least 10 years, unless the States at any future time by resolution determine otherwise.

6. If suspension of implementation of Option 7b were agreed, your Petitioners believe that maintenance should be undertaken to provide stability to the wall to give the optimum chance of the wall remaining intact for the 10 year period referred to in Recital 5. This is envisaged to involve work, as undertaken at panels 4 and 5 in 2018, to fill the voids in the wall and provide reinforcement to the toe of the wall. There will be the requirement to spend in the short term in the region of £100,000 at panels 8 and 9 to undertake similar work as carried out at panels 4 and 5. In addition it would be prudent to add additional rock armour to the toe of panels 4 and 5 as the previous work was undertaken with a short design life. The only other panel of concern at the moment is panel 11 which may require a similar spend during the moratorium period. It would be prudent to have a maintenance budget of £200,000 set aside and taken from the Minor Capital Allocation for Coastal Repairs budget to cover the estimated cost of any maintenance programme. It should be remembered that the addition of further heavier rock armour to panels 4 and 5 and the new heavier rock armour to panels 8 and 9 will of course be available and is needed, for the managed re-alignment (Option 7b) if it does go ahead in the future.

7. The option to suspend implementation of Option 7b, do no maintenance and intervene only in the event of a health and safety issue arising or a significant failure in the wall causing damage to the common was considered by your Petitioners. Adopting such an option would involve the enhanced risks of a breach in the wall occurring and damage caused by the ingress of the sea onto and erosion of areas of the common. In addition, any failure in the wall in those circumstances would then make access and repair more difficult. Although not the Petitioners favoured solution as detailed in Recital 6, it would in the opinion of the Petitioners nonetheless be in preference to the managed re-alignment (Option 7b) described in Recital 1.

8. Your petitioners acknowledge that if there is a failure of the wall, resulting in damaging ingress of the sea onto the common, this issue should revert to the States to decide whether to revert to managed re-alignment (Option 7b) or another course of action.

9. Your petitioners confirm that the Propositions set out below have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.

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

1. To agree that the carrying out of any works to implement the managed re-alignment of the coastline at L'Ancresse East as set out in Section 7 of the Policy Letter of the Committee *for the* Environment & Infrastructure dated 18th August 2017 and described in Section 6, Volume 1 of the report "Guernsey Coastal Defences" prepared by Royal Haskoning Dhv further to the Resolution of the States made at their meeting on 29th September 2017 be suspended.

2. To agree that the period of suspension shall be 10 years from the date of this Resolution or such shorter period as the States may at any future time by resolution determine.

3. To direct the Committee *for the* Environment & Infrastructure to arrange for implementation of a maintenance schedule as proposed in Recital 6.

4. In the event of a failure of the wall, resulting in the ingress of the sea onto the common, to direct the Committee *for the* Environment & Infrastructure to revert to the States with proposals for minimising any damage to the common, which may include a proposal for managed re-alignment in accordance with the Resolution of the States of 29th September 2017 referred to in Recital 1.

AND YOUR PETITIONERS WILL EVER PRAY
GUERNSEY

This 27th day of November 2019

Deputy A.H. Brouard
Deputy T.J. Stephens
Deputy N.R. Inder
Deputy L.B. Queripel
Deputy P.T.R. Ferbrache
Deputy A.C. Dudley Owen
Deputy R.G. Prow

The original signed copy of this Requête is held at the Greffe
and is available to view on request.