



# BILLET D'ÉTAT

WEDNESDAY, 26<sup>th</sup> APRIL, 2023

VI  
2023

## *ELECTIONS AND APPOINTMENTS*

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# BILLET D'ÉTAT

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

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I hereby give notice that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY the 26<sup>th</sup> APRIL, 2023**, to consider the items listed in this Billet d'État which have been submitted for debate.

R. J. McMAHON  
Bailiff and Presiding Officer

The Royal Court House  
Guernsey

4<sup>th</sup> April, 2023

## ***APPOINTMENTS LAID BEFORE THE STATES OF DELIBERATION***

### **APPOINTMENT OF CHAIRMAN AND TWO ORDINARY MEMBERS OF THE GUERNSEY COMPETITION AND REGULATORY AUTHORITY**

In accordance with paragraph 1(4A) of Schedule 1 to the Guernsey Competition and Regulatory Authority Ordinance, 2012, as amended, the following appointments by the Committee *for* Economic Development, to the Guernsey Competition and Regulatory Authority (GCRA), are laid before the States of Deliberation:

- Mr. John Curran as chairman from 1<sup>st</sup> March 2023

Following a period as Interim Chairman of the GCRA, Mr. Curran has been appointed as permanent chairman for a period of 4 years until 28<sup>th</sup> February 2027.

The Committee *for* Economic Development has concluded that Mr. Curran is suitable to be chairman of the Guernsey Competition and Regulatory Authority and an outline of his credentials is below:

A former Chief Executive of GCRA, Mr Curran led the integration of the Guernsey and Jersey regulators in 2010. He was Director General of the Guernsey Office of Utility Regulation from January 2005 before being asked to also head up the Jersey Competition & Regulatory Authority (JCRA) in 2010.

John is currently a Non-Executive Director of the Channel Islands Financial Ombudsman and of the Guernsey Data Protection Authority. He is Chairman of the Guernsey Employment Trust.

- Mr George Ritchie as ordinary member from 1<sup>st</sup> March 2023

Mr. Ritchie has been appointed as an ordinary member for a period of 4 years until 28<sup>th</sup> February 2027.

The Committee *for* Economic Development has concluded that Mr. Ritchie is suitable to be an ordinary member of the Guernsey Competition and Regulatory Authority and an outline of his credentials is below:

Mr Ritchie is a highly accomplished senior executive, with over 12 years' experience operating at board level.

After an early legal career in private practice and government service, Mr Ritchie joined BT in 1995 as a regulatory, competition and public law lawyer. Starting in the consumer-facing part of BT, as telecoms regulation moved upstream, Mr Ritchie's career followed with it, enabling him to undertake the full gamut of telecoms regulatory and behavioural competition law work.

He was Chief Counsel Competition & Regulation for BT Wholesale from 2003 to 2009 and for BT Group from 2009 to 2017.

In 2017 Mr Ritchie helped negotiate BT's Commitments to make Openreach an independent subsidiary. He was then appointed Commitments Assurance Director, responsible for monitoring BT's compliance with the Commitments and accountable to the BT Compliance Committee (BTCC), a BT Group plc Board Committee, and Ofcom.

In 2020, Mr Ritchie secured BT Board approval to the BTCC taking on responsibility for monitoring BT's Consumer Fairness commitments. He retired from BT in 2022 after Ofcom announced it was satisfied the Openreach governance arrangements were fully embedded.

- Ms Hilary Jennings as Ordinary member from 1<sup>st</sup> March 2023

Ms. Jennings has been appointed as an ordinary member for a period of 4 years until 28<sup>th</sup> February 2027.

The Committee *for* Economic Development has concluded that Ms. Jennings is suitable to be an ordinary member of the Guernsey Competition and Regulatory Authority and an outline of her credentials is below:

Hilary Jennings is a Board Member of the UK Regulatory Policy Committee and an independent consultant specialising in competition, regulation and market access policies.

Her core work over the last 25 years has been providing best practice advice to competition authorities and government departments, particularly in emerging economies, and working with organisations such as the European Commission, the OECD and the World Bank. She previously held senior roles at the OECD and the UK's Office of Fair Trading (now the CMA), as well as in the private sector.

The States of Deliberation have the power to annul these appointments.

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE *for* ECONOMIC DEVELOPMENT**

**APPOINTMENT OF THE GUERNSEY DIRECTOR OF CIVIL AVIATION (DCA)**

The States are asked to decide:-

Whether, after consideration of the policy letter entitled “Appointment of the Guernsey Director of Civil Aviation (DCA)” dated 9<sup>th</sup> March 2023, they are of the opinion:-

1. In accordance with Part 1, paragraph 2 of The Aviation (Bailiwick of Guernsey) Law, 2008, to agree to appoint Mr John Nicholas as Director of Civil Aviation for a period of three years with immediate effect.

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE *for* ECONOMIC DEVELOPMENT**

**APPOINTMENT OF THE GUERNSEY DIRECTOR OF CIVIL AVIATION (DCA)**

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

9<sup>th</sup> March, 2023

Dear Sir

**1      Executive Summary**

- 1.1 Under Part 1, paragraph 2 of The Aviation (Bailiwick of Guernsey) Law, 2008 (“the Law”), “The States shall, on the recommendation of the Committee (*for Economic Development*) appoint the Director of Civil Aviation in accordance with Schedule 1, and the provisions of that Schedule shall have effect”.
- 1.2 Schedule 1 (1) of the Law states that “The Committee may only recommend that a person be appointed as Director of Civil Aviation if it is satisfied that the person – a) is suitably qualified and competent to carry out the function, and b) is a fit and proper person to do so”.
- 1.3 The Committee *for* Economic Development (“the Committee”) recommends that the States of Deliberation appoint Mr John Nicholas as Guernsey Director of Civil Aviation Chair for a term of three years with immediate effect. This follows Mr Nicholas’ successful completion of a 6-month probationary period as Acting Director of Civil Aviation.

**2      Appointment of the Director of Civil Aviation**

- 2.1 Mr Nicholas is a highly experienced aviation regulator having worked in a number of senior roles within the UK Civil Aviation Authority (CAA) for almost 20 years, including Head of Applications & Approvals and also as Head of Approvals & Engineer Licensing respectively.
- 2.2 John has also worked in the commercial operations environment, as Principal

Consultant for consultancy, Baines Simmons.

- 2.3 Mr Nicholas was Technical Director of UK-based airline, CargoLogicAir.
- 2.4 Experienced in the setup, development and management of all aspects of aviation regulatory requirements, Mr Nicholas holds a Master of Business Administration (MBA), a Diploma in Management Studies and a UK CAA Part 66 Licence.

### **3 Term of Office**

- 3.1 The Committee recommends the appointment of Mr Nicholas as Director of Civil Aviation for a term of three years with immediate effect. Thereafter, the Committee will return to the States with a recommendation for the re-appointment of Mr Nicholas or the appointment of a successor.

### **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.
- 4.3 In accordance with Rule 4(3), the Committee has included Propositions which request the States to approve the appointment of Mr John Nicholas as Director of Civil Aviation for a period of three years, in accordance with Part 1, paragraph 1 (2) and Schedule 1, paragraph 1 of The Aviation (Bailiwick of Guernsey) Law, 2008.
- 4.4 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.
- 4.5 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee with respect to competition regulation.

Yours faithfully

N R Inder  
President



S J Falla  
Vice-President

A Kazantseva-Miller  
N G Moakes  
S P J Vermeulen

A. Mancini  
A Niles  
Non-States Members

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE *for* ECONOMIC DEVELOPMENT**

**APPOINTMENT OF THE PUBLIC TRUSTEE FOR A FURTHER TERM**

The States are asked to decide:-

Whether, after consideration the policy letter entitled “Appointment of the Public Trustee for a Further Term”, dated 13<sup>th</sup> March, 2023, they are of the opinion:-

1. In accordance with paragraph 1(2) of the Public Trustee (Bailiwick of Guernsey) Law, 2002, to agree to appoint Mr Luis Gonzalez as Public Trustee for a further period of one year, commencing 1<sup>st</sup> May 2023 and ending on 30<sup>th</sup> April 2024.

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE *for* ECONOMIC DEVELOPMENT**

**APPOINTMENT OF THE PUBLIC TRUSTEE FOR A FURTHER TERM**

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

13<sup>th</sup> March, 2023

Dear Sir

**1      Executive Summary**

- 1.1      The Public Trustee, Mr Luis Gonzalez, was appointed as the Public Trustee by the States of Deliberation in May 2018 for a term of 5 years ending in April 2023.
- 1.2      The Committee *for* Economic Development (“the Committee”) recommends that the States of Deliberation appoint Mr Luis Gonzalez as Public Trustee for a further term of one year, from May 1<sup>st</sup> 2023 until April 30<sup>th</sup> 2024.

**2      Appointment of the Public Trustee**

- 2.1      Mr Gonzalez is an experienced lawyer who qualified in 1985 and has worked in a variety of jurisdictions including Guernsey since 1999, as well as in the UK and Jersey. He was a director at Investec where he provided senior support in trust and litigation matters and spent nine years as a director and managing director at Rothschild Trust.
- 2.2      Mr Gonzalez has held the position of Public Trustee since May 2018.

**3      Term of Office**

- 3.1      Under paragraph 1(4) of the Law, “The Public Trustee shall hold office for a term not exceeding five years and a person may, on the recommendation of the Committee... be appointed to that office by the States for more than one term of office”.
- 3.2      The Committee recommends the re-appointment of Mr Gonzalez as Public

Trustee for a further term of one year. Thereafter, the Committee will return to the States with a recommendation for the appointment of a successor.

#### **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.
- 4.3 In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the above has the unanimous support of the Committee.
- 4.4 In accordance with Rule 4(2), the Propositions relate to the duties of the Committee with respect to finance sector development.

Yours faithfully

N R Inder  
President

S J Falla  
Vice-President

A Kazantseva-Miller  
N G Moakes  
S P J Vermeulen

A Mancini  
A Niles  
Non-States Members

## ***STATUTORY INSTRUMENTS LAID BEFORE THE STATES***

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

No. 85 of 2022

### **THE ENVIRONMENTAL POLLUTION (PRESCRIBED OPERATIONS) (FEES) (AMENDMENT) REGULATIONS, 2022**

In pursuance of section 8 of the Environmental Pollution (Guernsey) Law, 2004, "The Environmental Pollution (Prescribed Operations) (Fees) (Amendment) Regulations, 2022", as amended, made by the Director of Environmental Health and Pollution Regulation on 28<sup>th</sup> November, 2022, are laid before the States.

#### **EXPLANATORY NOTE**

These Regulations make amendments to the Environmental Pollution (Prescribed Operations) (Fees) Regulations, 2019 ("the 2019 Regulations") in consequence of the coming into force of the Environmental Pollution (Water Pollution) Ordinance, 2022 ("the Water Pollution Ordinance").

The amendments add a new Part IIA to provide for the fees payable for specified applications in relation to licences for discharges into water for the carrying on of which a licence is required under the Environmental Pollution (Guernsey) Law, 2004 ("the Law") and the Water Pollution Ordinance ("prescribed water pollution operations").

The new inserted regulation 5A sets out the fees to accompany specified applications in relation to a licence for a prescribed water pollution operation and regulation 5B sets out the annual licence fee for such an operation.

Consequential amendments are made to regulations 6 to 8 of the 2019 Regulations which adjust the application and annual licence fees payable where a person carries on more than one type of prescribed operation. Consequential amendments are also made to regulation 11 (interpretation) of the 2019 Regulations to amend certain definitions and add new definitions relating to prescribed water pollution operations.

These Regulations came into force on 28<sup>th</sup> November, 2022.

No. 86 of 2022

### **THE ENVIRONMENTAL POLLUTION (PRESCRIBED OPERATIONS) (EXEMPTIONS) (AMENDMENT) REGULATIONS, 2022**

In pursuance of section 13 (3) of the Environmental Pollution (Guernsey) Law, 2004, "The Environmental Pollution (Prescribed Operations) (Exemptions) (Amendment) Regulations, 2022", as amended, made by the Director of Environmental Health and Pollution Regulation on 28<sup>th</sup> November, 2022, are laid before the States.

## EXPLANATORY NOTE

These Regulations amend regulation 2 of the Environmental Pollution (Prescribed Operations) (Exemptions) Regulations, 2019 which provides an exemption from the requirement, under the Environmental Pollution (Guernsey) Law, 2004, to hold a licence for certain operations already required to be licensed or which are exempt from licensing under the Food and Environment Protection Act 1985 as extended to the Bailiwick of Guernsey.

Regulation 1 extends the current exemption to discharges into water required to be licensed under section 1 of the Environmental Pollution (Water Pollution) Ordinance, 2022 which are also licensed under the Food and Environment Protection Act 1985 ("FEPA") as extended to Guernsey. The current exemption also already excludes operations which are exempt from the licensing requirement under FEPA. This is to avoid the need for regulation under two regimes.

These Regulations came into force on 28<sup>th</sup> November, 2022.

No. 115 of 2022

### **THE PLANT HEALTH (AMENDMENT OF TRANSITIONAL PROVISION) (GUERNSEY) (NO.2) REGULATIONS, 2022**

In pursuance of Article 108 of Preserved Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants, and all other powers enabling it in that behalf, hereby makes the following Regulations "The Plant Health (Amendment of Transitional Provision) (Guernsey) (No.2) Regulations, 2022" made by the Committee for the Environment and Infrastructure on 19<sup>th</sup> December 2022 are laid before the States.

## EXPLANATORY NOTE

These Regulations amend the transitional provision in regulation 6 of the Plant Health (Brexit) (Amendment) (Guernsey) Regulations, 2020, which makes transitional provision in relation to phytosanitary certificates to accompany certain plants and plant products imported into Guernsey from EU Member States. The provision extends the transitional provision relating to plants etc. from the EU to 30<sup>th</sup> June, 2023. This is consistent with proposals to extend the equivalent transitional provision in Great Britain.

These Regulations came into force on 31<sup>st</sup> December 2022.

No. 8 of 2023

### **THE LENDING, CREDIT AND FINANCE (DESIGNATED JURIDICTION) REGULATIONS, 2023**

In pursuance of section 85 (c) of The Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022, "The Lending, Credit and Finance (Designated Jurisdiction) Regulations, 2023", made by the Policy and Resources Committee on 31<sup>st</sup> January, 2023, are laid before the States.

## EXPLANATORY NOTE

These Regulations designate the United Kingdom as an equivalent jurisdiction for the purposes of section 10(3) of the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 thereby enabling UK licensed entities who have given notice to the Guernsey Financial Services Commission to undertake credit business within the Bailiwick without being separately licensed by the Commission.

These Regulations came into force on the 31<sup>st</sup> January, 2023.

No. 10 of 2023

### **THE PLANT HEALTH (PRESERVED PHYTOSANITARY CONDITIONS REGULATION) (AMENDMENT) (GUERNSEY) REGULATIONS, 2023**

In pursuance of Article 108 of Preserved Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants, and all other powers enabling it in that behalf, "The Plant Health (Preserved Phytosanitary Conditions Regulation) (Amendment) (Guernsey) Regulations, 2023" made by the Committee for the Environment and Infrastructure on 30<sup>th</sup> January 2023 are laid before the States.

## EXPLANATORY NOTE

These Regulations make further amendments to the Annexes to the Preserved Phytosanitary Conditions Regulation (PPCR) which has effect in Guernsey as preserved EU law.

The amendments are made to align with amendments made in Great Britain, as, from the end of 2020, Guernsey has been part of a Great Britain and Crown Dependency market in plants and plant products.

Part I of the Regulations amends Annex 2 to remove entry 35A (*Thekospora minima* (Arthur) Sydow & P. Sydow [THEKMI]) from the list of Guernsey quarantine pests (regulation 2); that pest is added instead to Annex 4 (list of Guernsey regulated non-quarantine pests) (see regulation 3). The opportunity has also been taken in regulation 4 to make a minor amendment to Annex 7 consistent with a previous amendment made in Great Britain. It is considered that these measures require prompt implementation and are therefore subject to an earlier commencement date of 30<sup>th</sup> January, 2023.

Part II of the Regulations adds several pests to the list of provisional Guernsey quarantine pests in Annex 2A of the PPCR (see regulation 5).

It also amends Annex 7 to the PPCR (which relates to special requirements applying on import of plants etc. into Guernsey). Those amendments include extending requirements for certain plants etc., to those originating from EU Member states, Liechtenstein and Switzerland, amending certain requirements to ensure that the pest free area is named on the phytosanitary certificates in relation to *Agrilus planipennis* Fairmaire ("emerald ash borer")

and clarifying that the pest free area or place/site of production (as appropriate) must be named on the phytosanitary certificates in relation to *Xylella* (see regulation 6).

Amendments are also made to Annex 11, Part A of the PPCR (list of plants etc. and respective third countries of origin or dispatch, which may not be introduced into Guernsey unless accompanied by a phytosanitary certificate); those amendments correct the name of the genus *Chrysanthemum* L. on phytosanitary certificates) and add *Pinus* L and *Pseudotsuga menziesii*, which are host plants of the pathogen *Fusarium circinatum* ("pitch pine canker"), to the Annex.

Parts I and III of these Regulations shall come into force on 30<sup>th</sup> January, 2023, and Part II on 3<sup>rd</sup> May, 2023.

No. 12 of 2023

#### **THE PAROCHIAL ELECTIONS (ST SAVIOUR) REGULATIONS, 2023**

In pursuance of Articles 54(4) and 77C of the Reform (Guernsey) Law, 1948<sup>a</sup> and all other powers enabling it in that behalf, "The Parochial Elections (St Saviour) Regulations, 2023" made by the States' Assembly & Constitution Committee on 9<sup>th</sup> February, 2023, are laid before the States.

#### **EXPLANATORY NOTE**

These Regulations prescribe the date for the election of two Douzeniers in the Parish of St Saviour on the 24<sup>th</sup> April, 2023.

These Regulations came into force on the day they were made, 9<sup>th</sup> February, 2023.

No. 14 of 2023

#### **THE BOARDING PERMIT FEES ORDER, 2023**

In pursuance of section 17 of the Tourist Law, 1948, "The Boarding Permit Fees Order, 2023", made by the Committee for Economic Development on 28<sup>th</sup> February, 2023, are laid before the States.

#### **EXPLANATORY NOTE**

This Order prescribes the fees payable by an applicant for a boarding permit valid during the period 1st April 2023 to 31st March 2024.

This Order comes into force on the 1st April, 2023.



No. 15 of 2023

**THE INCOME TAX (PENSION AMENDMENTS) (GUERNSEY) REGULATIONS, 2023**

In pursuance of section 203A of the Income Tax (Guernsey) Law, 1975, as amended, "The Income Tax (Pension Amendments) (Guernsey) Regulations, 2023" made by the Policy & Resources Committee on 1<sup>st</sup> March 2023, are laid before the States.

**EXPLANATORY MEMORANDUM**

These Regulations prescribe, for the purposes of sections 153A(1) and 157CA(1), the amount of funds or other capital which is to be considered equivalent to the annual guaranteed minimum aggregate retirement income specified in those sections which an individual must have in order to be able to unlock a triviality payment from their approved pension or annuity scheme exceeding £50,000 (but not exceeding the maximum triviality payment of £100,000).

These Regulations come into force on the 1<sup>st</sup> April, 2023.

No. 16 of 2023

**THE LIQUOR LICENSING (FEES) REGULATIONS, 2023**

In pursuance of section 84(4) of the Liquor Licensing Ordinance, 2006, the Liquor Licensing (Fees) Regulations, 2023 made by the Committee for Home Affairs on 6 March 2023, is laid before the States.

**EXPLANATORY NOTE**

These Regulations amend Schedule 4 of the Liquor Licensing Ordinance, 2006 which sets the relevant fees for liquor licences etc.

These Regulations come into force on 1<sup>st</sup> June 2023.

The full text of the legislation can be found at: <http://www.guernseylegalresources.gg>

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**THE INCOME TAX (GUERNSEY) (APPROVAL OF AGREEMENT WITH QATAR)**  
**ORDINANCE, 2023**

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 Qatar) Ordinance, 2023", and to direct that the same shall have effect as an Ordinance of the States.

**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 Government of Guernsey and the Government of the State of Qatar for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on the 22<sup>nd</sup> February, 2013, the Protocol having been signed at Doha on the 21<sup>st</sup> day of June, 2022.



**The Income Tax (Guernsey)**  
**(Approval of Agreement with Qatar)**  
**Ordinance, 2023**

**THE STATES**, in exercise of the powers conferred on them by section 75C of the Income Tax (Guernsey) Law, 1975<sup>a</sup>, 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 Government of Guernsey and the Government of the State of Qatar for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on the 22<sup>nd</sup> February, 2013, the Protocol having been signed at Doha on the 21<sup>st</sup> day of June, 2022.

**Citation.**

2. This Ordinance may be cited as the Income Tax (Guernsey) (Approval of Agreement with Qatar) Ordinance, 2023.

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<sup>a</sup> Ordres en Conseil Vol. XXV, p. 124; section 75C was inserted by section 5 of Order in Council No. XVII of 2005 and the Law has been otherwise amended.

**Commencement.**

3. This Ordinance shall come into force on the 1<sup>st</sup> May, 2023.

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**PROJET DE LOI**

Entitled

**THE EMPLOYMENT AND EQUAL OPPORTUNITIES SERVICE (GUERNSEY) LAW, 2023**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Employment and Equal Opportunities Service (Guernsey) Law, 2023", and to authorise the Bailiff to present a most humble petition to His Majesty praying for His Royal Sanction thereto.

**EXPLANATORY MEMORANDUM**

This Projet establishes the office of the Director of the Employment and Equal Opportunities Service. The Projet also confers functions on, and transfers functions to, the holder of that office, the Director. As the Director has been assigned functions under the Prevention of Discrimination (Guernsey) Ordinance, 2022, it is intended that this Projet comes into force at the same time as that Ordinance, that is 1st October 2023.

Part I establishes the office of the Director, deals with the Director's appointment and term of office and confers powers on the Committee to make a temporary appointment to the office if it is vacant. Section 2 establishes the independence of the Director from the Committee and the States, and sections 3 and 4 make provision for the Director's salary and staff. Section 6 enables the Director to appoint a Deputy to act during any period in which the Director is unavailable. Sections 7 and 8 concern reporting and accounting responsibilities.

Section 9 sets out the general and statutory functions of the Director, and section 10 transfers functions from the Committee to the Director from other related employment enactments. Section 11 confers some ancillary powers on the Director, including the power to require documents from a person.

Part II concerns confidentiality (both in relation to documents required by the Director, and providing that the Director must treat documents received as confidential). Section 17 provides for a right of appeal for any person directly affected by a decision of the Director to the Royal Court. The remainder of the Part concerns proof of documents, record keeping and service.

Sections 22 to 26 concern offences and penalties. A failure to provide documents or information to the Director under section 11 enables the Director, following representations, to impose a discretionary financial penalty. Such a failure is not in itself an offence (unless the document is false, deceptive or misleading in a material particular).

Sections 27 to 32 concerns general miscellaneous and procedural matters, including the making of subordinate legislation, interpretation provisions and commencement.

The Schedule sets out the consequential and related amendments.

# PROJET DE LOI

ENTITLED

## **The Employment and Equal Opportunities Service (Guernsey) Law, 2023**

ARRANGEMENT OF SECTIONS

PART I

OFFICE OF THE DIRECTOR

*Establishment of Office of the Director*

1. Establishment of Office of the Director.
2. Independence of the Director.
3. Salary of Director.
4. Appointment of staff.
5. Delegation of functions.
6. Appointment of Deputy Director.
7. Reports.
8. Financial and accounting provisions.
9. Functions of Director.
10. Transfer of statutory functions to Director.
11. Ancillary powers of Director.
12. Power of Director to apply for directions.
13. Fees payable to the Director.

PART II

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14. Duty of confidentiality not broken by disclosure to Director.



15. Confidentiality.
16. Legal professional privilege, protection from self-incrimination and data protection.
17. Appeals.
18. Exclusion of liability.
19. Proof of documents.
20. Retention of copies of records in electronic form.
21. Service of notices and documents.

*Offences and penalties*

22. Offences.
23. Criminal liability of officers.
24. Defence of due diligence.
25. Discretionary financial penalty.
26. Representations prior to financial penalty.

*Ordinances, regulations etc*

27. Power to amend Law.
28. Regulations: consultation with Director.

*Miscellaneous*

29. Interpretation.
30. Extent.
31. Citation.
32. Commencement.

SCHEDULE CONSEQUENTIAL AND RELATED AMENDMENTS

# PROJET DE LOI

ENTITLED

## **The Employment and Equal Opportunities Service (Guernsey) Law, 2023**

THE STATES, in pursuance of their Resolution of the 17<sup>th</sup> July 2020<sup>a</sup>, have approved the following provisions which, subject to the Sanction of His Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

### PART I

#### OFFICE OF THE DIRECTOR

##### *Establishment of Office of the Director*

##### **Establishment of Office of the Director.**

1. (1) The Committee shall establish an office to be known as the Office of the Director of the Employment and Equal Opportunities Service ("**the Office of the Director**").

(2) The holder of that office will be known as the Director of the Employment and Equal Opportunities Service (the "**Director**").

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<sup>a</sup> Article XV of Billet d'État No. XV of 2020.

(3) Except as provided in subsections (4), (5) and (6), the Director shall be appointed by the States, after recommendation by the Committee.

(4) In the event that the office of Director is vacant at any particular time, the Committee may appoint a person to be the Director on a temporary basis which temporary appointment will end when either -

- (a) an appointment is made by the States under subsection (3),
- (b) the temporary appointment is terminated by the Committee under subsection (8), or
- (c) at the expiration of a period of six months from the time the temporary appointment was made,

whichever is the earlier.

(5) Save for section 6, the provisions of this Part apply to a person appointed as Director under a temporary appointment as they apply to the Director.

(6) For the avoidance of doubt, the same person who has been appointed as Director under a temporary appointment may subsequently be appointed by the States under subsection (3).

(7) The following persons may not hold the office of Director -

- (a) members of the States or of the States of Election, or
- (b) members of the Employment and Discrimination Panel.

(8) The appointment of the Director -

- (a) may be periodic or for a fixed term,
- (b) is subject to such terms and conditions as the Committee may from time to time think fit, and
- (c) may be varied or terminated at any time by the States, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment.

(9) The Director must, subject to the terms and conditions of the Director's appointment, exercise the functions assigned or transferred to the Director by or under this Law and any other enactment.

(10) For the purposes of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>b</sup> -

- (a) the Office of the Director is a public office, and
- (b) the Director is an office holder.

**Independence of the Director.**

2. (1) Subject to subsection (2), the Director is not subject to directions of any kind from any Committee or member of the States as to the manner in which the Director is to exercise the Director's functions under any enactment.

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<sup>b</sup> Ordres en Conseil Vol. XXXIII, p. 478; this enactment has been amended.

(2) When carrying out the functions of the Director, the Director must take into account -

- (a) any relevant guidance given by resolution of the States on the recommendation of the Committee of a general or specific nature, and
- (b) any code of practice or guidance issued by the Committee under any of the employment and equal opportunities enactments.

(3) Before making a recommendation to the States under subsection (2)(a) or issuing a code of practice or guidance under the employment and equal opportunities enactments, the Committee must consult with the Director in connection with the reasons for and the nature of the recommendation, code of practice or guidance.

(4) For the avoidance of doubt, nothing in this Law affects the Committee's mandated responsibilities, including but not limited to for the development and implementation of States' policies relating to equality and social inclusion, employment relations, labour market legislation and practices and industrial relations.

### **Salary of Director.**

3. (1) The Director will be paid such salary or fees and other allowances as the Committee may decide.

(2) The Committee must ensure that adequate resources are provided to the Director so that the Director can carry out the functions of the Director created or arising under this Law or any other enactment.

**Appointment of staff.**

4. (1) The Director may, subject to the approval of the Committee -

(a) appoint such officers, and

(b) appoint and instruct such other persons,

on such terms and conditions (whether as to remuneration, expenses, pensions or otherwise) as the Director thinks necessary for the exercise of the Director's functions.

(2) For the avoidance of doubt, any officer or other person appointed by the Director under this section who is also an employee will be a civil servant and therefore subject to the recruitment processes of the States.

**Delegation of functions.**

5. (1) The Director may, by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any of the Director's functions to be exercised in the Director's name by any person named or described in the instrument, other than this power of delegation.

(2) A function exercised by a delegate pursuant to an arrangement made under this section is for all purposes exercised by the Director, and every decision taken or other thing done by a delegate pursuant to such arrangement has the same effect as if taken or done by the Director.

(3) An arrangement under this section for the exercise of a function by a delegate -

(a) may be varied or terminated at any time by the Director, but without prejudice to anything done

pursuant to the arrangement or to the making of a new arrangement,

(b) does not prevent the exercise of the function by the Director while the appointment subsists.

(4) This section and section 6 are without prejudice to the provisions of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991.

**Appointment of Deputy Director.**

6. (1) Without prejudice to sections 4 and 5, the Director may, subject to such terms and conditions as the Director thinks fit, appoint any person as Deputy Director with authority to exercise the Director's functions during any period during which the Director is unavailable.

(2) If the Director has not appointed a Deputy Director under subsection (1) and the Director becomes unavailable, the Committee may, subject to such terms and conditions as the Committee thinks fit, appoint a person as Deputy Director with authority to exercise the Director's functions during the period during which the Director is unavailable.

(3) A function exercised by a Deputy Director is for all purposes exercised by the Director, and every decision taken or other thing done by a Deputy Director pursuant to an appointment has the same effect as if taken or done by the Director.

(4) Unless the contrary intention appears, a reference in this Law to "**Director**" includes a reference to an appointed Deputy Director exercising the Director's functions.

- (5) An appointment of a Deputy Director under this section -
- (a) may be varied or terminated at any time by the Director or the Committee, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment,
  - (b) does not prevent the exercise of the function by the Director while the appointment subsists.

**Reports.**

7. (1) Whenever the Committee directs, the Director must submit to the Committee a report on the exercise of the Director's functions in such form and in respect of such period as the Committee may specify.

- (2) The Committee -
- (a) must submit a report made by the Director under subsection (1) to the States, and
  - (b) may at the same time or at any other time submit its own report to the States on the exercise by the Director of the Director's functions.

**Financial and accounting provisions.**

8. (1) All fees, civil penalties and similar sums received by the Director in the exercise of the Director's functions must be paid by the Director to the Committee for the general revenue account of the States.



(2) Subsection (1) does not apply if and to the extent that the Committee directs otherwise.

(3) The Director must -

- (a) keep proper accounts and proper records in relation to those accounts, and
- (b) submit to the Committee, whenever the Committee may direct but not less than once in any 12 month period, a statement of account giving a true and fair view of the state of affairs of the Office of the Director.

*Functions and powers of the Director*

**Functions of Director.**

9. (1) The functions of the Director are referred to in this Law as "**general functions**" and "**statutory functions**".

(2) The general functions of the Director are -

- (a) to promote equal opportunities and work towards the elimination of discrimination,
- (b) to improve employment relations and work towards the elimination of unlawful employment practices,
- (c) to publicise practices which the Director considers to be good in the fields of employment, equal opportunities, disability and inclusion,

- (d) to assist in the resolution of employment disputes,
  - (e) where the Committee requests, to provide the Committee with reports, advice, information and assistance on any matter connected with the promotion of equal opportunities, the elimination of discrimination or employment issues,
  - (f) to prepare and submit to the Committee, either at the request of the Committee or of the Director's own motion, recommendations and schemes for measures (including the revision of legislation) that may support or promote any of the functions of the Director, and
  - (g) all such other functions as are provided for by Ordinance of the States.
- (3) The statutory functions of the Director are -
- (a) the functions transferred to the Director by section 10, and
  - (b) any functions assigned to the Director, or to the Employment and Equal Opportunities Service, by or under any enactment, including under the Prevention of Discrimination (Guernsey) Ordinance, 2022<sup>c</sup> and the

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<sup>c</sup> Ordinance No. XVIII of 2022.

functions assigned by that Ordinance include but are not limited to -

- (i) the provision of pre-complaint conciliation services under section 41 and of conciliation services under section 47,
- (ii) the bringing of proceedings under Part IX,
- (iii) the issue of non-discrimination notices under section 60 and the establishment and maintenance of a register of non-discrimination notices under section 64,
- (iv) the imposition of financial penalties under section 61, and
- (v) the service of information notices under section 65.

(4) For the avoidance of doubt, where the Committee appoints the Director to a position, or authorises the Director in any behalf, by or under any enactment, the functions of that appointment or authorisation are statutory functions assigned to the Director by or under an enactment.

(5) The Director must carry out the functions of the Director with fairness, impartiality and independence and in a manner that is timely, transparent, objective and consistent with the provisions of this Law and any other enactment.

**Transfer of statutory functions to Director.**

10. (1) The following functions that would, apart from this section, be exercisable by the Committee, or an officer of the Committee, are transferred to the Director -

(a) under the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005<sup>d</sup> -

(i) the countersigning of agreements under section 41(2)(b),

(ii) the provision of conciliation services under section 43,

(iii) the issue of non-discrimination notices under section 55,

(iv) the maintenance of a register of non-discrimination notices under section 57,

(v) the power to obtain information under section 58, and

(vi) the requirement to keep records of proceedings before the Tribunal under section 66,

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<sup>d</sup> Ordinance No. XXXI of 2005; this enactment has been amended.

- (vii) the requirement to cooperate with the Tribunal under section 67,
- (b) under the Minimum Wage (Guernsey) Law, 2009<sup>e</sup> -
  - (i) the provision of conciliation services under section 11, and
  - (ii) the power to appoint officers under section 13,
- (c) under the Employment Protection (Guernsey) Law, 1998<sup>f</sup> -
  - (i) the countersigning of agreements under section 19(3)(c),
  - (ii) the provision of conciliation services under section 20,
  - (iii) the requirement to keep records of proceedings before the Tribunal under section 38, and
  - (iv) the requirement to cooperate with the Tribunal under section 39.

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<sup>e</sup> Order in Council No. I of 2010; this enactment has been amended.

<sup>f</sup> Ordres en Conseil Vol. XXXVIII, p. 239; this enactment has been amended.

(2) For the purpose of the exercise of the functions transferred to it by this section the Director is subject to all of the duties previously imposed on the Committee.

(3) The Schedule (consequential and related amendments) has effect.

**Ancillary powers of Director.**

11. (1) The Director may do anything that appears to the Director to be necessary for, or expedient to, the exercise of the Director's functions including, without limitation, power -

- (a) to require the production of or otherwise obtain such documents, accounts and information from such persons and within such periods and at such times and intervals as the Director thinks fit,
- (b) to require any person to provide an explanation of any document, accounts or information,
- (c) to require any person to provide any additional information known to that person which might reasonably be needed,
- (d) subject to any provision to the contrary in this Law or any other enactment, to publish information, guidance, reports and other documents,

- (e) to appoint any person or body to provide advice in relation to the exercise of any of the Director's functions, and
- (f) to request advice from His Majesty's Procureur in relation to the exercise of any of the Director's functions.

(2) For the purposes of exercising the Director's functions the Director may enter into any contract.

**Power of Director to apply for directions.**

12. (1) The Director may, if the Director believes it would assist in the proper performance of the Director's functions, apply to the Royal Court for directions, or for a determination of any question of fact, law or procedure, in such manner as may be prescribed by order of the Royal Court.

(2) On an application under subsection (1) the Royal Court may make such order on such terms and conditions as it thinks fit.

(3) Where the Director makes an application under subsection (1) in respect of a matter, the Director may delay the doing of any thing required by this Law in respect of that matter, pending the outcome of that application.

(4) An appeal from an order of the Royal Court under this section lies, with leave of the Royal Court or the Court of Appeal, to the Court of Appeal on a question of law.

(5) Section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>8</sup> (powers of a single judge) applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

**Fees payable to the Director.**

13. (1) The Committee may prescribe -
- (a) the fees payable (whether generally or in any particular case) in respect of the exercise of the Director's functions,
  - (b) the interest payable in the event of default in the due payment of fees, and
  - (c) the persons by whom such fees and interest are to be payable.

(2) For the avoidance of doubt, fees may be payable in respect of any service provided, work undertaken or time expended by the Director or any person when carrying out the Director's functions.

(3) The Director may refuse to exercise the Director's functions in any particular case if the fees payable have not been paid.

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<sup>8</sup> Ordres en Conseil Vol. XVIII, p. 315; this enactment has been amended.



PART II  
GENERAL PROVISIONS

**Duty of confidentiality not broken by disclosure to Director.**

14. Subject to section 16, a requirement imposed by section 11 has effect despite any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

**Confidentiality.**

15. (1) Any document or information which relates to the business or affairs of any person and which is acquired by the Director in carrying out the functions of the Director must be treated as confidential.

(2) Any document or information communicated to the Director by a Committee of the States must, if that Committee so requests, be treated as confidential.

(3) The Director must not disclose or cause or permit the disclosure of any confidential document or information except in accordance with the provisions of this Law, any other enactment or any rule of law.

(4) Subject to section 16, any document or information which is confidential under subsection (1) or (2) may be disclosed -

- (a) with the consent of the person to whom the document or information relates and, if different, the person or Committee from whom it was acquired,
- (b) to the extent that it appears to the Director to be necessary -

(i) in relation to the investigation, detection or prevention of crime, to an officer of police or a customs officer, or

(ii) to comply with an order of a court or tribunal.

(5) Any person who discloses or causes or permits the disclosure of any document or information in contravention of this section is guilty of an offence and liable -

(a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both, or

(b) on summary conviction, to a fine of up to level 5 on the uniform scale, to imprisonment for a term not exceeding three months, or to both.

**Legal professional privilege, protection from self-incrimination and data protection.**

16. Nothing in this Law -

(a) authorises a disclosure, in contravention of the provisions of the Data Protection (Bailiwick of Guernsey) Law, 2017<sup>h</sup>, of personal data, or

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<sup>h</sup> Order in Council No. VI of 2018; this enactment has been amended.

- (b) limits a right to decline to produce or deliver documents or other information to the Director on the ground of -
  - (i) legal professional privilege, or
  - (ii) any rule against self-incrimination.

**Appeals.**

17. (1) Without prejudice to any specific right of appeal in any enactment, a person directly affected by a decision of the Director may appeal to the Court to set aside or modify that decision.

- (2) The grounds of appeal under this section are that -
  - (a) the decision was ultra vires or there was some other error of law,
  - (b) the decision was unreasonable,
  - (c) the decision was made in bad faith,
  - (d) there was a lack of proportionality, or
  - (e) there was a material error as to the facts or as to the procedure.
- (3) An appeal under this section must be instituted -
  - (a) within a period of two months immediately following the date of the Director's decision,

- (b) by summons served on the Director stating the grounds and material facts on which the appellant relies.

(4) The Director may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application, the Court may -

- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just, and

the provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007<sup>i</sup>.

(5) On an appeal under this section the appellant shall have the burden of proof and the final right of reply.

(6) On an appeal under this section the Court may -

- (a) set the decision aside and, if the Court considers it appropriate to do so, remit the matter to the Director with such directions as the Court thinks fit, or

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<sup>i</sup> O.R.C. No. IV of 2007; this enactment has been amended.

(b) confirm the decision, in whole or in part.

(7) On an appeal under this section against a decision of the Director, the Court may, on the application of the appellant or the Director or of its own volition, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

(8) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

(9) In this section, the "**Court**" means the Royal Court sitting as an Ordinary Court.

**Exclusion of liability.**

18. Save -

(a) as provided by section 15(5), or

(b) in the case of the breach by the Director of any contract entered into under section 11(2),

no liability is incurred by -

(i) the Director, including any person appointed as the Director under a temporary appointment,

(ii) any person to whom the Director has delegated any function,

(iii) any person appointed as Deputy Director under section 6, or

- (iv) any officer or servant of the Director,

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of their functions under this Law, unless the thing was done or omitted to be done in bad faith.

**Proof of documents.**

19. (1) In any legal proceedings (including proceedings under this Law) subsection (2) applies in relation to any document purporting to be -

- (a) issued by or on behalf of the Director, or
- (b) signed by the Director, by any of the Director's officers or servants or by any person to whom the Director has delegated authority to sign documents of that description.

(2) The document -

- (a) will be received in evidence,
- (b) unless the contrary is proved, is deemed -
  - (i) to be the document which it purports to be, and
  - (ii) to have been issued by or on behalf of the Director or, as the case may be, to have been signed by the person by whom it purports to have been signed, without proof of the

signatory's identity, signature or official capacity, and

(c) is evidence of the matters stated in that document.

**Retention of copies of records in electronic form.**

20. (1) Documents received by or issued by or on behalf of the Director under or for the purposes of this Law (including documents in electronic form or sent by electronic means) may, if a copy of the document is retained in electronic form, be destroyed by the Director -

(a) in the case of a document in electronic form and sent by electronic means, at any time, and

(b) in any other case, on the expiration of a period of three years following the date of the document's receipt or issue, as the case may be.

(2) This section is without prejudice to -

(a) any other provision of this Law (or any regulations made under it) relating to documents in electronic form or sent by electronic means, and

(b) the Electronic Transactions (Guernsey) Law, 2000<sup>j</sup>.

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<sup>j</sup> Order in Council No. VIII of 2000; this enactment has been amended.

**Service of notices and documents.**

21. (1) Any document other than a summons to be given or served under the provisions of or for the purposes of this Law may be given to or served on -

- (a) an individual ("A"), by being delivered to A, or by being left at, or sent by post to, A's usual or last known place of abode, or by being transmitted to A's relevant electronic address,
- (b) a body corporate with a registered office in Guernsey, by being left at, or sent by post to, that office, or by being transmitted to its relevant electronic address,
- (c) a body corporate without a registered office in Guernsey, by being left at, or sent by post to -
  - (i) its principal or last known principal place of business in Guernsey, or
  - (ii) if there is no such place, its registered office or principal or last known principal place of business elsewhere, or by being transmitted to its relevant electronic address,
- (d) an unincorporated body -
  - (i) by being given to or served on any partner, member of the committee or other similar governing body, director or other similar officer in accordance with subsection (a), or



- (ii) by being left at, or sent by post to -
    - (A) the body's principal or last known principal place of business in Guernsey, or
    - (B) if there is no such place, its principal or last known principal place of business elsewhere, or
  - (iii) by being transmitted to its relevant electronic address,
- (e) the Director or the Committee -
- (i) by being left at, or sent by post to, its respective principal office in Guernsey, or
  - (ii) by being transmitted to its relevant electronic address.
- (3) In this section -
- (a) **"relevant electronic address"** means an electronic address -
    - (i) with which, in the reasonable opinion of the sender, the person concerned has a personal, business or other connection, and

(ii) a document transmitted to which is likely to come to the attention of the person concerned, and

(b) "**transmitted**" means transmitted by email or other similar means which produce or enable the production of a document containing the text of the communication.

(4) If a person notifies the Director of an address, or an electronic address, for service within Guernsey for the purposes of this Law, any document to be given to or served on that person may be given or served by being left at, or sent by post, or transmitted to that address or electronic address, as the case may be.

(5) If service of a document cannot, after reasonable enquiry, be effected under this section, the document may be served by being published in La Gazette Officielle on two occasions respectively falling in successive weeks, and a document served under this subsection is sufficient if addressed to the person for whom it is intended.

(6) Subsections (1), (3) and (4) are without prejudice to any other lawful method of service.

(7) Despite the provisions of this section and of any other rule of law in relation to the service of documents, no document to be given to or served on the Director, the Committee or any other Committee of the States of Guernsey under or for the purposes of this Law will be deemed to have been given or served until it is received.

(8) This section is without prejudice to the Electronic Transactions (Guernsey) Law, 2000.

*Offences and penalties*

**Offences.**

22. (1) A person is guilty of an offence if that person does any of the following for purposes connected with the provisions of this Law -

- (a) makes a statement that the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (c) produces or causes to be produced, any information or document which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (d) recklessly produces, or recklessly causes or permits to be produced, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,
- (e) wilfully alters, suppresses, conceals or destroys a document required to be produced under section 11, or

- (f) intentionally delays or obstructs the Director in the exercise of any power conferred by this Law.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the uniform scale, imprisonment for a term not exceeding three months, or both.

**Criminal liability of officers.**

23. (1) This section applies to any offence under this Law.

(2) If an offence committed by a body corporate is proved -

- (a) to have been committed with the consent or connivance of an officer of the body, or
- (b) to be attributable to any neglect on the part of such an officer,

the officer as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(3) In this section "**officer**", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(4) For the purposes of this section, a person is deemed to be a director of a body corporate if that person is a person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act.

(5) Where an offence under this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body or any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

**Defence of due diligence.**

24. In any proceedings for an offence under section 22 or 23 it is a defence for the accused to prove (for the avoidance of doubt, on a balance of probabilities) that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by the accused and by any person under the control of the accused.

**Discretionary financial penalty.**

25. (1) Where the Director is satisfied that a person has, without reasonable excuse, failed to answer any question, furnish any information or produce any document when required to do so under section 11 within the specified time period (if any), the Director may (subject to the provisions of this section and section 26) impose on that person a financial penalty in respect of the failure of such amount as the Director considers appropriate, but not exceeding £10,000.

(2) In deciding whether or not to impose a penalty under this section, and, if so, the amount thereof the Director must take into consideration the following factors -

- (a) whether the failure was brought to the attention of the Director by the person concerned,
- (b) the seriousness of the failure,
- (c) whether or not the failure was inadvertent,
- (d) what efforts, if any have been made to rectify the failure and to prevent a recurrence,
- (e) the potential financial consequences to the person concerned and to third parties of imposing a penalty, and
- (f) the penalties imposed by the Director under this section in other cases (if any).

(3) Any financial penalty imposed under this section is recoverable as a civil debt.

(4) Where the Director proposes to impose a financial penalty, the Director must notify in writing the person on whom the penalty is to be imposed of -

- (a) the proposed penalty, and the reasons for the same,

- (b) the date on which it is proposed, subject to sections 17 and 26, to impose the penalty, which must not be less than 21 days after the date of the notice, and
- (c) that person's right to make written representations to the Director under section 26.

(5) Where the Director imposes a financial penalty, the Director must -

- (a) issue to the person on whom the penalty is being imposed notice of the penalty, and
- (b) include in the notice a statement of the right of appeal under section 17.

(6) No financial penalty may be imposed on a person under this section in circumstances where a discretionary financial penalty has already been imposed on the person by the Director under any other enactment (including, but not limited to, section 61 of the Prevention of Discrimination (Guernsey) Ordinance, 2022) in respect of the same facts or circumstances.

**Representations prior to financial penalty.**

26. (1) The person on whom a notice is served under section 25(4) may make written representations to the Director concerning the proposed financial penalty within 14 days of the date of the notice.

(2) If the person in question exercises their right under subsection (1) the Director -

- (a) must consider their representations, and
- (b) may decide to -
  - (i) impose the penalty,
  - (ii) impose a penalty in a lesser amount,
  - (iii) withdraw the penalty, or
  - (iv) postpone the date for imposing the penalty,

but in any event the Director must inform that person of the decision in writing, and the Director's reasons for the same, before the date on which the financial penalty is imposed or would otherwise have been imposed.

(3) Without prejudice to section 17(7), and for the avoidance of doubt, where the Director has imposed a financial penalty under section 25 the Director may not seek to recover payment of that penalty until -

- (a) two months immediately following the date of the notice of the penalty issued under section 25(5)(a), or
- (b) if an appeal is instituted within that period, the final determination, or withdrawal, of that appeal,

and for the purposes of this subsection, an appeal shall be deemed not to have been finally determined until the expiration of the time allowed for the institution of an appeal to the Court of Appeal under the Court of Appeal (Guernsey) Law, 1961 or until the determination of any such appeal instituted within that time.



*Ordinances, regulations etc*

**Power to amend Law.**

27. (1) The States may by Ordinance -
- (a) amend sections 9, 10, 11, 29 and the Schedule, where it appears to the States to be necessary or expedient to do so for the purpose of -
    - (i) enabling the Director more effectively to perform any of the Director's functions,
    - (ii) providing for additional general functions of the Director under section 9(2)(g),
    - (iii) providing for any functions under the employment and equal opportunities enactments to be transferred to the Director, including in order to reflect any change to those enactments, or
    - (iv) achieving the objectives of the Prevention of Discrimination (Guernsey) Ordinance, 2022,
  - (b) make such provision as they think fit for the purpose of carrying the provisions of this Law into effect.
- (2) For the avoidance of doubt, an Ordinance may include, without limitation -

- (a) subject to subsection (3), provision as to the creation and punishment of offences in respect of contraventions of the Ordinance,
- (b) provision as to the creation of new duties, obligations, liabilities, remedies, penalties, sanctions and other consequences, and
- (c) provision repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law.

(3) The power conferred by subsection (2) to make provision as to the creation and punishment of offences does not include power -

- (a) to provide for offences to be triable only on indictment,
- (b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008<sup>k</sup>, or
- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

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<sup>k</sup> Order in Council No. XVIII of 2009; this enactment has been amended.

**Regulations: consultation with Director.**

28. (1) The Committee must consult with the Director before making any regulations under this Law, but a failure so to consult shall not invalidate any regulations made under this Law.

(2) Any regulations made under this Law must be laid before a meeting of the States as soon as possible after being made; and will, if at that or the next meeting the States resolve to annul the regulations, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

*Miscellaneous*

**Interpretation.**

29. (1) In this Law, unless the context requires otherwise -

"**the Committee**" means the Committee for Employment and Social Security,

"**Royal Court**" means the Royal Court sitting as an Ordinary Court,

"**Director**": see section 1,

"**electronic address**": see section 21,

"**Employment and Discrimination Panel**" means the Employment and Discrimination Panel established under section 1 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005<sup>1</sup>,

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<sup>1</sup> Ordinance No. XXX of 2005; this enactment has been amended.

"**prescribed**" means prescribed by regulations of the Committee,

"**relevant electronic address**": see section 21,

"**transmitted**": see section 21,

"**the Tribunal**" means the Employment and Discrimination Tribunal established under section 2 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005,

(2) In this Law, "**employment and equal opportunities enactments**" means -

- (a) the Prevention of Discrimination (Guernsey) Ordinance, 2022,
- (b) the Employment Protection (Guernsey) Law, 1998,
- (c) the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005,
- (d) the Minimum Wage (Guernsey) Law, 2009,
- (e) the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993<sup>m</sup>,

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<sup>m</sup> Ordres en Conseil Vol. XXXIV, p. 267; this enactment has been amended.

- (f) the Maternity and Adoption Leave (Guernsey) Ordinance, 2016<sup>n</sup>,
- (g) the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005, and
- (h) the Conditions of Employment (Guernsey) Law, 1985<sup>o</sup>.

**Extent.**

30. This Law extends to the Islands of Guernsey, Herm and Jethou.

**Citation.**

31. This Law may be cited as the Employment and Equal Opportunities Service (Guernsey) Law, 2023.

**Commencement.**

32. This Law will come into force on the day appointed by regulations of the Committee; and different dates may be appointed for different provisions and for different purposes.

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<sup>n</sup> Ordinance No. III of 2016; this enactment has been amended.

<sup>o</sup> Ordres en Conseil Vol. XXIX, p. 42; this enactment has been amended.

## SCHEDULE

Section 10(3)

### CONSEQUENTIAL AND RELATED AMENDMENTS

#### **Consequential and related amendments.**

1. (1) The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 is amended as follows -

- (a) in sections 21(3), 22(6), 23(2), 24(3) and 38(2)(a), for "Committee" substitute "Director",
- (b) in section 41(2)(b), for "an officer of the Committee" substitute "the Director",
- (c) in section 43 -
  - (i) in subsection (1) for "Committee, which shall" substitute "Director, who shall",
  - (ii) for subsection (1)(a) and (b) substitute -
    - "(a) use best endeavours to settle the complaint by giving such advice and assistance as the Director thinks necessary or expedient or by conciliation, and
    - (b) remit the complaint to the Secretary -

- (i) if in the Director's opinion, the complaint cannot be settled by the methods set out in paragraph (a), or
  - (ii) in any case, if the complaint is not settled within six weeks of being transmitted to the Director (or, if an application for further time has been made under section 39(1)(b), within six weeks of final disposal of that application), unless in the Director's opinion conciliation or negotiations are in progress with a view to a settlement.",
  - (iii) in subsection (2), for "Where the Committee remits" substitute "Where the Director remits",
  - (iv) in subsection (3) for "Committee" substitute "Director", and
  - (v) in subsection (4), for "Committee or any member or officer thereof" substitute "Director or any officer thereof".
- (d) in section 55 -
  - (i) in each place that it occurs, for "Committee" substitute "Director",

- (ii) in subsection 5, for "it has first" substitute "the Director has first",
- (iii) in subsection 5(a) for "it is minded" substitute "the Director is minded" and for "it contemplates" substitute "the Director contemplates",
- (e) in section 56(7) in both places it occurs, for "Committee" substitute "Director",
- (f) in section 57 -
  - (i) in subsection (1) for "Committee" substitute "Director",
  - (ii) in subsection (2)(b), in both places it occurs, for "Committee" substitute "Director",
  - (iii) in subsection (3) for "Committee" substitute "Director",
  - (iv) in subsection (4) for "Committee" substitute "Director",
- (g) in section 58(1), in both places it occurs, for "Committee" substitute "Director",
- (h) in section 60(2)(b), for "Committee" substitute "Director",



(i) in section 62, after "of the Committee" insert "or the Director",

(j) in section 63(1), in the appropriate place insert -

""**Director**" has the same meaning as in the Employment and Equal Opportunities Service (Guernsey) Law, 2023,"

(k) in section 65(1), after paragraph (e) insert the following paragraph -

"(f) on the Director, by being left at, or sent by post or transmitted to, the principal offices of the Director in Guernsey,"

(l) in sections 65(2) and 65(5), after each occurrence of "the Tribunal" insert ", the Director",

(m) in section 66 for "Committee" substitute "Director",

(n) in section 67 -

(i) in the title, after "Committee" insert "and Director", and

(ii) for "The Committee and its members and officers shall, subject to the provisions of section 43(4)" substitute "The Committee and its members and officers and the Director and the Director's officers shall, subject in the case of the

Director and the Director's officers to the provisions of section 43(4)".

(2) The Minimum Wage (Guernsey) Law, 2009 is amended as follows -

(a) in section 11 -

(i) in subsection (1) -

(A) for "Committee, which shall use its best endeavours" substitute "Director, who shall use best endeavours", and

(B) for "it thinks necessary" substitute "the Director thinks necessary",

(ii) in subsection (2), in both places it occurs, for "Committee", substitute "Director",

(b) for section 13(1) substitute -

"(1) The Director may appoint officers to act for the purposes of this Law, and for the avoidance of doubt, the Director may be appointed as one such officer.",

(c) in section 32(1) -

(i) in the appropriate place insert the following definition -

""**Director**" has the same meaning as in the Employment and Equal Opportunities Service (Guernsey) Law, 2023," and

- (ii) in the definition of "**officer**", for "Committee" substitute "Director".

(3) The Employment Protection (Guernsey) Law, 1998 is amended as follows -

- (a) in section 16(2)(a), for "Committee" substitute "Director",

- (b) in section 19(3)(c), for "an officer of the Committee" substitute "the Director",

- (c) in section 20 -

- (i) in subsection (1) -

- (A) for "Committee which" substitute "Director who",

- (B) for paragraph (1)(a) substitute -

- "(a) use best endeavours to settle the complaint by giving such advice and assistance as the Director thinks necessary or expedient or by conciliation, and",

- (C) in paragraph (b)(i), for "its opinion" substitute "the Director's opinion",

- (D) in paragraph (b)(ii) for "transmitted to it" substitute "transmitted to the Director", and for "its opinion" substitute "the Director's opinion",
- (ii) in subsections (2) and (3), in each place it occurs, for "Committee" substitute "Director", and
- (iii) in subsection (4) for "Committee or any member or officer thereof" substitute "Director or any officer thereof",
- (d) in section 30A(2)(c) for "Committee" substitute "Director",
- (e) in section 33, after "of the Committee" insert "or the Director", and after "member or officer thereof" insert ", as the case may be",
- (f) in section 34(1), in the appropriate place insert -

""**Director**" has the same meaning as in the Employment and Equal Opportunities Service (Guernsey) Law, 2023,"

- (g) in section 37 -
  - (i) in subsection (1), after paragraph (e) insert the following paragraph -

- "(f) on the Director, by being left at, or sent by post or transmitted to, the principal offices of the Director in Guernsey,"
- (ii) in subsection (2), after "the Tribunal" insert ", the Director",
- (iii) in subsection (5), after "the Tribunal" insert ", the Director",
- (h) in section 38 for "Committee" substitute "Director", and
- (i) in section 39 -
  - (i) in the title, after "Committee" insert "and Director", and
  - (ii) for "The Committee and its members and officers shall, subject to the provisions of section 20(4)" substitute "The Committee and its members and officers and the Director and the Director's officers shall, subject in the case of the Director and the Director's officers to the provisions of section 20(4)".

(4) The Prevention of Discrimination (Guernsey) Ordinance, 2022 is amended as follows -

- (a) after subsection 61(5) insert -

"(6) No financial penalty may be imposed on a person under this section in circumstances where a discretionary financial penalty has already been imposed on the person by the Director under any other enactment (including, but not limited to, section 25 of the Employment and Equal Opportunities Service (Guernsey) Law, 2023) in respect of the same facts or circumstances."

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY**

**INTERIM UPDATING OF CONTRIBUTORY AND NON-CONTRIBUTORY BENEFIT RATES**

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled 'Interim Updating of Contributory and Non-contributory Benefit Rates', dated 13<sup>th</sup> March 2023, they are of the opinion:

1. To set the:
  - a) standard rates of contributory social insurance benefits,
  - b) contribution (co-payment) required to be made by the claimant of care benefit,
  - c) maximum weekly rates of long-term care benefit and respite care benefit,
  - d) income support requirement rates, limits of weekly income, personal allowances, and maximum rent allowances,
  - e) rates of family allowance, severe disability benefit and carer's allowance, and
  - f) payment tariffs under the Mesothelioma Compensation Scheme,as set out in Appendix 1 to the Policy Letter.
2. To note that benefit rates for 2024 will not be impacted by an interim increase to rates between July 2023 to December 2023.
3. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

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

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY**

INTERIM UPDATING OF CONTRIBUTORY AND NON-CONTRIBUTORY BENEFIT RATES

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

13<sup>th</sup> March 2023

Dear Sir

**1. Executive summary**

- 1.1. The Committee *for* Employment & Social Security ('the Committee') is responsible under its mandate for advising the States in relation to financial and social hardship. In January 2023, it was announced that inflation over the year ending 31<sup>st</sup> December 2022, as measured using the RPIX<sup>1</sup>, was 8.5%<sup>2</sup>. It was also announced that median earnings, as at 30<sup>th</sup> September 2022, were 0.9% lower in real terms than the year before<sup>3</sup>. These figures demonstrate that the cost of living is increasing faster than usual, and that wage rates have not kept pace with inflation.
- 1.2. The most recent increase to benefit rates, applied in January 2023, was based on the rate of RPIX inflation as at 30<sup>th</sup> June 2022 (this being 7.0%) as this was the latest inflation figure available at the relevant time. Therefore, the rates of benefits currently payable do not take account of the 2.9% increase in the price of goods and services experienced from 1<sup>st</sup> July to 31<sup>st</sup> December 2022. This is putting additional financial strain on Guernsey and Alderney households, many of which will struggle to meet their needs if benefit rates do not keep pace with inflation.

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<sup>1</sup> RPIX is 'core' inflation excluding mortgage interest payments.

<sup>2</sup> [Guernsey Quarterly Inflation Bulletin – December 2022](#).

<sup>3</sup> [Guernsey Annual Electronic Census Report](#).



- 1.3. The Committee is therefore proposing that benefits and associated limits and rates be increased by 2.9%<sup>4</sup> with effect from early July 2023. This will close some of the gap between the current rates payable and the current cost of essential goods and services.
- 1.4. The proposals set out in this Policy Letter are for an interim uprating of rates of most benefits funded from the Guernsey Insurance Fund, the Long-term Care Insurance Fund and General Revenue. This includes, but is not limited to, the States Pension, carer's allowance and income support.
- 1.5. The proposals seek to address the immediate cost of living crisis affecting Islanders. If approved, the new rates will apply from July to December 2023 only and represent a one-off, in-year cost. This will not have any impact on 2024 benefit rates, which will be calculated in the same way regardless of whether the proposals set out in this Policy Letter are approved by the States or not<sup>5</sup>. That is to say, the proposed rates for 2024 will be the same whether or not benefit rates increase from July 2023. The proposals in this Policy Letter simply function as an interim increase to assist Islanders who are reliant on benefits to make ends meet and maintain, rather than increase, their standard of living.
- 1.6. This Policy Letter does not replace the ordinary, annual uprating of all contributory and non-contributory benefits. The Committee will bring proposals to the States for consideration in respect of contributory and non-contributory benefit rates for 2024 in October and November 2023, respectively. These Policy Letters will set out, in greater detail, the usual information about claim numbers and expenditure.

## **2. Inflationary pressures in Guernsey**

- 2.1. The rate of core inflation (RPIX) has been increasing over the last year at an exceptional level. In January 2023, it was announced that inflation, as measured using the RPIX ('core' inflation excluding mortgage interest payments), for the year ending 31<sup>st</sup> December 2022 was 8.5%. This figure is 3.9 percentage points higher than for the year ending 31<sup>st</sup> December 2021.
- 2.2. Furthermore, from 2014 to 2020, inflation between July and December has been far lower than current levels, being between -1% and 0%.

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<sup>4</sup> The proposed uprating figure is 2.9%, rather than 1.5%. 1.5% is the difference between the published rates of RPIX inflation for the years ending 30th June 2022 and 31st December 2022. 2.9% is the increase in the RPIX from 1st July 2022 to 31st December 2022.

<sup>5</sup> Proposed benefit rates for 2024 will be calculated by applying the usual uprating formulas for contributory and non-contributory benefits to the rates payable from January 2023. If an interim increase were applied, it would not have any impact on these calculations.

- 2.3. Table 1 below sets out a quarter-by-quarter comparison of annual inflation figures from 2017 to 2022 (inclusive). It illustrates that the rates of inflation during 2022 have been exceptionally high.

**Table 1 – Comparison of annual inflation (RPIX) figures**

	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
<b>31<sup>st</sup> March</b>	2.9%	1.9%	2.1%	2.5%	1.7%	<b>5.9%</b>
<b>30<sup>th</sup> June</b>	2.8%	2.4%	1.9%	2.4%	2.3%	<b>7.0%</b>
<b>30<sup>th</sup> September</b>	2.4%	2.8%	2.0%	2.0%	3.3%	<b>8.0%</b>
<b>31<sup>st</sup> December</b>	2.5%	2.3%	2.4%	1.6%	4.6%	<b>8.5%</b>

- 2.4. In addition to high inflation, median earnings as at 30<sup>th</sup> September 2022 were 0.9% lower in real terms than the year before. By contrast, in September 2021, they were 2.5% higher in real terms. This reflects the reduced spending power that many Guernsey households are currently experiencing as they attempt to make ends meet.
- 2.5. Table 2 below sets out a quarter-by-quarter comparison of annual real-terms changes to median earnings. It illustrates that the recent reductions in Islanders' spending power are much greater than those experienced in previous years. Further, previous real-terms decreases in median earnings occurred when inflation was much lower.

**Table 2 – Comparison of annual real-terms median earnings changes**

	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
<b>31<sup>st</sup> March</b>	+0.6%	-0.5%	+1.3%	+0.9%	+1.7%	<b>+0.3%</b>
<b>30<sup>th</sup> June</b>	-0.1%	+0.3%	+0.4%	+0.6%	+2.9%	<b>-1.1%</b>
<b>30<sup>th</sup> September</b>	-0.2%	+0.4%	+0.7%	+0.5%	+2.5%	<b>-0.9%</b>
<b>31<sup>st</sup> December</b>	-0.5%	+0.8%	+0.6%	+0.6%	+2.1%	<b>N/A<sup>6</sup></b>

- 2.6. The Committee is mindful of the exceptional impact that the prevailing economic circumstances have had, and continue to have, on Islanders, especially those who are partially or wholly reliant on benefits.
- 2.7. In particular, the Committee recognises that recipients of benefits have already had to pay inflated prices for several months without this being reflected in the benefits they receive, because current rates were calculated using the rate of inflation as at 30<sup>th</sup> June 2022<sup>7</sup>. As a result, the Committee is of the view that something needs to be done urgently to address this.

<sup>6</sup> Figure not available at the time of writing.

<sup>7</sup> This is the standard practice for uprating benefits annually. When inflation is at more 'normal' rates, its effect on prices is not so stark, and the temporal gap generally does not have a marked effect

### **3. Emergency uprating in October 2022**

- 3.1. In September 2022, the States approved proposals for the emergency uprating of income support rates<sup>8</sup>. Income support requirement rates, the limits of weekly income, and maximum rent allowances were all increased by 5% from 7<sup>th</sup> October 2022 until 5<sup>th</sup> January 2023. These uprating figures did not inform 2023 benefit rates; they were interim changes to assist vulnerable households with the increasing cost of living.
- 3.2. The principle behind this Policy Letter is the same. However, it also seeks to assist people who are in receipt of benefits other than, or in addition to, income support. This includes, but is not limited to, pensioners, carers, and persons with severe disabilities.
- 3.3. The Committee is strongly of the view that it is necessary to implement interim uprating measures during times of notably high inflation, but it does not intend to routinely propose these exceptional measures when inflation returns to 'normal' levels.

### **4. Proposals for an interim uplift in benefits and related limits and rates**

- 4.1. The Committee is proposing that benefits and related limits and rates<sup>9</sup> are increased by 2.9% with effect from the first payment date in July 2023. This is in line with inflation between 1<sup>st</sup> July 2022 and 31<sup>st</sup> December 2022. However, it should be noted that some of the rates and limits have been adjusted by slightly less or more than this in order to arrive at a rounded figure or to be divisible by seven for those benefits calculated on a daily, rather than weekly, basis, in keeping with standard uprating policy.
- 4.2. The proposed new rates, to be effective from the first payment dates in July 2023, are set out in Appendix 1 to this Policy Letter.

#### Budget implications

- 4.3. The cost of the Committee's proposals is estimated to be in the region of £3.5m for the six months from July to December 2023. The majority of this (approximately £2.25m, or 64%) relates to the States Pension.

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on benefit recipients' standards of living. However, at times when inflation is high, the impact of this delay is felt much more keenly.

<sup>8</sup> Policy Letter from the Committee for Employment & Social Security entitled: 'Emergency Uprating of Income Support Rates' ([Billet d'État XIV, Article I](#)).

<sup>9</sup> These proposals do not relate to the Winter Fuel Allowance, school uniform and educational maintenance grants, or the annual limits for severe disability benefit, carer's allowance and family allowance.

- 4.4. Table 3 below sets out how the total forecasted cost is split between each funding source and benefit type.

**Table 3 – Forecast budgetary impact of conducting a mid-year uprating process**

Funded from	Benefit	Original 2023 budget (£)	Proposed 2023 budget (£)	Increase (£)
Guernsey Insurance Fund (GIF)	States Pension	154,750,000	156,995,000	2,245,000
	Death grant	500,000	505,000	5,000
	Bereavement benefit	1,550,000	1,570,000	20,000
	Incapacity benefit	11,160,000	11,320,000	160,000
	Sickness benefit	5,755,000	5,840,000	85,000
	Unemployment benefit	1,085,000	1,090,000	5,000
	Parental benefits	2,700,000	2,740,000	40,000
	Industrial injury benefit	260,000	265,000	5,000
	Industrial disablement benefit	560,000	570,000	10,000
	Industrial medical benefit <sup>10</sup>	140,000	140,000	-
	<b>Total GIF</b>	<b>178,460,000</b>	<b>181,035,000</b>	<b>2,575,000</b>
Long-term Care Insurance Fund (LTCIF)	Residential EMI care	5,685,000	5,765,000	80,000
	Residential care	6,975,000	7,075,000	100,000
	Nursing care	11,840,000	12,010,000	170,000
	<b>Total LTCIF</b>	<b>24,500,000</b>	<b>24,850,000</b>	<b>350,000</b>
General Revenue	Carer's allowance	3,100,000	3,145,000	45,000
	Severe disability benefit	5,650,000	5,730,000	80,000
	Family allowance	6,950,000	7,050,000	100,000
	Income support	49,700,000	50,020,000	320,000
	<b>Total General Revenue</b>	<b>65,400,000</b>	<b>65,945,000</b>	<b>545,000</b>
	<b>Total</b>	<b>268,360,000</b>	<b>271,830,000</b>	<b>3,470,000</b>

- 4.5. The Committee acknowledges that its proposals carry a financial impact, but Members are strongly of the opinion that it is the responsibility of the States

<sup>10</sup> Industrial medical benefit has not been increased because it relates to fees paid to doctors or other medical providers and is not a weekly cash benefit.

to support Islanders during this period of exceptional financial strain. Hardship is usually felt most acutely by the most vulnerable in society. In its Policy Letter entitled 'Non-contributory Benefit Rates for 2023'<sup>11</sup>, the Committee highlighted that children were a particularly at-risk group, noting that many families experiencing poverty are often forced to make impossible decisions about which essential purchases to make and which to forgo each week or month. In a 2022 letter to the Committee, the Board of Every Child Our Future highlighted that many families who use the Bright Beginnings Children's Centre struggle to provide fresh food for themselves and their children. They also noted:

'Children's shoes are an expensive but essential item [...] but some families in work really struggle to afford these.'

These findings were reflected in the focus group of income support recipients conducted by the Committee.

- 4.6. In a July 2022 report for the Committee, the Guernsey Welfare Service (GWS), which operates a foodbank, noted that, after supporting a fairly static number of households, in 2020 the numbers of Islanders seeking assistance increased drastically. Between the end of 2019 and the July report, claims had risen by 37%. The GWS' report said,

'Clearly the pandemic had a major part to play...but increasingly we find general cost of living increases and the high cost of private rentals are the reasons why people come to seek our assistance. Additionally, we have noticed an increase in the number of people in employment who are coming to us for help.'

- 4.7. In its Policy Letter entitled 'Non-contributory Benefit Rates for 2023', the Committee stated that financial hardship causes deprivation, negative self-image, a loss of opportunities, and an increased reliance on welfare systems. Given the current financial circumstances and high levels of inflation, the Committee considers that these risks to local households have not lessened since that Policy Letter was drafted.
- 4.8. The Committee also notes that, although median earnings have decreased in real terms by 0.9%, they have increased in nominal terms by 5.3% during the year ending 30<sup>th</sup> September 2022, and this is reflected in Islanders' social security and income tax payments. It is, therefore, of the opinion that the measures proposed in this Policy Letter are both essential and proportionate.

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<sup>11</sup> Policy Letter from the Committee for Employment & Social Security entitled: 'Non-contributory Benefit Rates for 2023' ([Billet d'État XIX of 2023, Article II](#)).

## **5. Consultation with the Policy & Resources Committee**

- 5.1. The Committee has consulted with the Policy & Resources Committee regarding the proposals set out in this Policy Letter.
- 5.2. The President of the Policy & Resources Committee has advised that while understanding the motivation for the proposals, his Committee is not able to support such measures at this time due to the level of unplanned expenditure, the current States financial pressures and concern centred on the beneficiaries of all the proposed uplifts. The Policy & Resources Committee's full consultation response is appended to this Policy Letter (see Appendix 2).
- 5.3. The Committee notes that the Policy & Resources Committee has expressed concern that 'many of the proposed uplifts are untargeted' and will not directly aid low-income households. The President of the Policy & Resources Committee said:

'The Policy & Resources Committee is concerned that many of the proposed uplifts are untargeted although you have stated the reason for the proposed uplift is that the unusually high levels of inflation are affecting the cost of living and most severely impacting the poorest households in the community. While we accept this argument in relation to income support, the Committee feels much of this very considerable expense will not reach low-income households, and in some cases will not benefit households at all.

For example, the [Policy & Resources] Committee notes that the proposed increase in the States Pension is by far the most significant expense at £2.2m. Appreciating that the States Pension is an entitlement based on contribution and not means tested, an increase would benefit many for whom their pension is a small part of their retirement income. The Rolling Electronic Census data suggests the pension represents less than half of total income for 58% of pensioner households and less than a quarter for 34%. Most of these households will be free of mortgage and rental costs. Further, considering that up to 15% of pension payments are made to people who no longer live in Guernsey, it is evident that a significant proportion of the cost [of the proposals] will be directed to those for whom there is not a demonstrable need.'

- 5.4. The Committee is strongly of the opinion that this is not the case. Although low-income households, including pensioner households, can apply for income support, they may fall just outside of entitlement for income support due to having modest savings, or weekly income slightly above their assessed

level of need. For such households, the impact of high inflation is still being keenly felt. Proposals for an extraordinary increase to benefit rates which only encompass means-tested benefits would not acknowledge that many Islanders who do not qualify for income support are also struggling to make ends meet.

- 5.5. Further, although a key consideration when preparing these proposals was to assist low-income households during the cost of living crisis, the Committee also notes in Paragraph 2.7 that inflated prices are not currently reflected in benefit rates, because the current rates were calculated using inflation figures as at 30<sup>th</sup> June 2022. Therefore, an equally important reason for bringing forward these proposals is to maintain pace with inflation at a time when it is exceptionally high.
- 5.6. The Committee considers that it is crucial to acknowledge that high inflation has an impact across Guernsey and Alderney, including for employers, care homes, and benefit recipients. This may also be true for pensioners who have emigrated and may be facing inflationary pressures wherever they live. The Committee does not consider it acceptable to propose that only certain benefits and rates are brought into line with inflation as at 31<sup>st</sup> December 2022 while others are not. As stated in Paragraph 3.3, the Committee does not intend to routinely propose emergency or interim increases to benefit rates when inflation returns to 'normal'.
- 5.7. The Committee also notes that the Policy & Resources Committee could not support its proposals due to 'current financial constraints and the additional in-year pressure that this proposal would put on the States finances.' The Committee is acutely aware of the pressure public finances are under and the need to find an acceptable solution to the long-term sustainability of those public finances. However, in the meantime it must also be recognised that this has been an extraordinary period of increased costs for those islanders who were already struggling. The additional support proposed by the Committee is very badly and urgently needed. The Committee would like to stress that the estimated additional cost of its proposals to General Revenue is approximately £0.5 million.
- 5.8. Although earnings have not kept pace with inflation over recent months, leading to reduced spending power for Islanders, the nominal median earnings figure, as at 30<sup>th</sup> September 2022, was 5.9% higher than at the same time in 2021. Consequently, social security contributions for the year ending 31<sup>st</sup> December 2022 were approximately £9 million higher than budgeted. Of this figure, the contributions allocated to the GIF in 2022 were approximately £6.5 million higher than expected. The projected financial impact to the GIF of the proposals in this Policy Letter is around £2.6 million.

- 5.9. The Committee considers it fair and reasonable to propose that contributory benefit rates be increased in line with inflation, especially given that contribution income in 2022 exceeded budgeted levels by £9 million as a result of higher than anticipated earnings levels. Given that the Social Insurance Scheme and the Long-term Care Insurance Scheme are essentially ‘pay as you go’ schemes, it is appropriate that the first call on contributions should be this year’s benefit payments.
- 5.10. Nevertheless, the Committee is keen to stress that it would be pleased to engage with any Members of the Policy & Resources Committee, or indeed any States Members, who may wish to submit an amendment to the proposals in this Policy Letter in order to limit the increase in benefit rates to income support only, noting that the Policy & Resources Committee has acknowledged that ‘unusually high levels of inflation are affecting the cost of living and most severely impacting the poorest households in the community’. Such an amendment would take the following benefits and associated rates out of scope for an interim uplift:
- The States Pension,
  - Survivor’s benefits and grants,
  - Parental benefits and grants,
  - Unemployment benefit,
  - Sickness and incapacity benefits,
  - Industrial injury benefits,
  - Long-term care benefit,
  - Family allowance,
  - Carer’s allowance, and
  - Severe disability benefit.

## **6. Compliance with Rule 4 of the Rules of Procedure**

- 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, Propositions laid before the States.
- 6.2. In accordance with Rule 4(1)(a), the Committee confirms that its proposal to increase benefit rates from mid-2023 to reflect the increasing cost of living aligns with one of the top ten priorities set out in the Government Work Plan 2022<sup>12</sup> - ‘to improve living standards’.
- 6.3. In accordance with Rule 4(1)(b), and as set out in section 5 of this Policy Letter, the Committee confirms that it has consulted with the Policy &

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<sup>12</sup> Policy Letter from the Policy & Resources Committee entitled: ‘The Government Work Plan 2022’ ([Billet d’État X of 2022, Volume 1, Article I](#)).



Resources Committee regarding its proposals for a mid-year uprating of contributory and non-contributory benefits.

- 6.4. In accordance with Rule 4(1)(c), the Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
- 6.5. In accordance with Rule 4(1)(d), estimates of the financial implications of carrying the proposals into effect are set out in section 4 of this Policy Letter.
- 6.6. In this Policy Letter, the Committee has set out proposals for an urgent uplift in benefit rates, to apply from the first week of July 2023. In line with Rule 4(2)(a), it is confirmed that the propositions align 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.’

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

Yours faithfully

P J Roffey  
President

H L de Sausmarez  
Vice-President

T L Bury  
S J Falla  
J A B Gollop

M R Thompson  
Non-States Member

R J Le Brun  
Non-States Member

## APPENDIX 1

### Proposed weekly rates of contributory and non-contributory benefits and income support limits of weekly income, personal allowances and maximum rent allowances

Benefit	Current rates	Proposed rates	Proposed rates with effect from	Funded from
<u>States Pension</u>			3 <sup>rd</sup> July 2023	Guernsey Insurance Fund <sup>2</sup>
Insured person	£250.22	<b>£257.48</b>		
Increase for dependant wife <sup>1</sup>	£125.34	<b>£128.97</b>		
<b>Total</b>	£375.56	<b>£386.45</b>		
<u>Survivor's Benefits</u>				
Widowed Parent's Allowance	£263.13	<b>£270.76</b>		
Bereavement Allowance <sup>3</sup>	£226.26	<b>£232.82</b>		
Maternal Health Allowance, Newborn Care Allowance, and Parental Allowance	£250.67	<b>£257.95</b>		
Unemployment Benefit, Sickness Benefit, and Industrial Injury Benefit	£184.17	<b>£189.49</b>		
Incapacity Benefit	£221.27	<b>£227.71</b>		
Industrial Disablement Benefit (100%) <sup>4</sup>	£201.64	<b>£207.49</b>		
<u>One off grants:</u>				
Maternity Grant and Adoption Grant	£461.00	<b>£474.00</b>		
Death Grant	£720.00	<b>£741.00</b>		

<sup>1</sup> For people whose marriages took place before 1<sup>st</sup> January 2004, and who reached pension age before 1<sup>st</sup> January 2014.

<sup>2</sup> Benefits funded from the Guernsey Insurance Fund apply to persons who have fully satisfied the relevant contribution conditions. Reduced rates of benefit are payable on incomplete contribution records, down to threshold levels, after which, no benefit is payable.

<sup>3</sup> Widow's pension is also payable at this rate. New applications cannot be made but there are still historic cases continuing.

<sup>4</sup> Lower rates are payable based on degree of disability.

<b>Benefit</b>	<b>Current rates</b>	<b>Proposed rates</b>	<b>Proposed rates with effect from</b>	<b>Funded from</b>
Bereavement Payment	£2,273.00	<b>£2,339.00</b>		
Residential care benefit	£570.29	<b>£586.81</b>	3 <sup>rd</sup> July 2023	Long-term Care Insurance Fund
Residential – dementia (elderly mentally infirm)	£745.43	<b>£767.06</b>		
Nursing care benefit	£1,028.93	<b>£1,058.75</b>		
Residential care respite benefit	£876.75	<b>£902.16</b>		
Residential – dementia (elderly mentally infirm) respite benefit	£1,051.89	<b>£1,082.41</b>		
Nursing care respite benefit	£1,335.39	<b>£1,374.10</b>		
Long-term care co-payment	£306.46	£315.35		N/A <sup>5</sup>
<b>Income support</b> <i>Short-term rates – up to 6 months</i> <u>Householders:</u> Single householder Cohabiting/married couple  <u>Non-householder:</u> 18 or over Rent allowance  <u>Member of a household:</u> Aged 11 and over Aged 5–10 Aged under 5	   £145.55 £242.80  £111.09 £86.00  £106.57 £83.41 £68.39	   <b>£149.77</b> <b>£249.84</b>  <b>£114.31</b> <b>£88.50</b>  <b>£109.66</b> <b>£85.83</b> <b>£70.37</b>	7 <sup>th</sup> July 2023	General Revenue

<sup>5</sup> The co-payment is the personal contribution funded either by the person in care, or through income support, or a combination of both.

Benefit	Current rates	Proposed rates	Proposed rates with effect from	Funded from
<b>Income support</b> <i>Long-term rates – over 6 months</i> <u>Householders:</u> Single householder Cohabiting/married couple  <u>Non-householder:</u> 18 or over Rent allowance  <u>Member of a household:</u> Aged 11 and over Aged 5–10 Aged under 5	   £207.80 £345.50  £158.22 £86.00  £121.38 £92.34 £80.61	   <b>£213.83</b> <b>£355.52</b>  <b>£162.81</b> <b>£88.50</b>  <b>£124.90</b> <b>£95.02</b> <b>£82.95</b>	7 <sup>th</sup> July 2023	General Revenue
<b>Income support</b> <i>Limits of weekly income<sup>6</sup> for:</i>  Residents of local residential and nursing homes  EMI residents, and residents of nursing homes or the Guernsey Cheshire Home	  £640.00  £920.00	  <b>£659.00</b>  <b>£947.00</b>		
<b>Income support</b> <i>Weekly personal allowance for:</i>  Residents of local residential and nursing homes	 £43.78	 <b>£45.05</b>		

<sup>6</sup> In November 2022, the States agreed to remove the limit of weekly income for people living in the community. However, two other weekly income limits remain in place.

Benefit	Current rates	Proposed rates	Proposed rates with effect from	Funded from
Guernsey people living in UK hospitals and care homes	£61.89	£63.68	7 <sup>th</sup> July 2023	General Revenue
<b>Income support</b>				
<i>Maximum rent allowances</i>				
<u>Tenancy group 1</u> Single with no children	£256.14	£263.57		
<u>Tenancy group 2</u> Couple with no children	£256.14	£263.57		
<u>Tenancy group 3</u> Single or couple with 1 child	£297.53	£306.16		
<u>Tenancy group 4</u> Single or couple with 2 children	£378.79	£389.77		
<u>Tenancy group 5</u> Single or couple with 3+ children	£463.04	£476.47		
<u>Tenancy group 6</u> Living in shared accommodation	£198.30	£204.05		
Family allowance <sup>7</sup>	£15.80	£16.30	3 <sup>rd</sup> July 2023	
Severe disability benefit <sup>8</sup>	£121.52	£125.02		
Carer’s allowance	£101.09	£104.02		

<sup>7</sup> The Committee recommends that the household income cap to receive family allowance remains at £120,000 per annum.

<sup>8</sup> The Committee recommends that the household income cap to receive severe disability allowance or carer's allowance remains at £113,400 per annum.

**Current and proposed payment tariffs for 2023 under the Mesothelioma Compensation Scheme, with effect from 1<sup>st</sup> July 2023**

Age of eligible person at date of diagnosis or date of death	Jan 2023 (current)		Jul 2023 (proposed)	
	Eligible person	Eligible relative	Eligible person	Eligible relative
<= 37	£103,714	£53,975	£106,722	£55,540
38	£101,698	£52,814	£104,647	£54,346
39	£99,687	£51,655	£102,578	£53,153
40	£97,673	£50,499	£100,506	£51,963
41	£95,657	£49,342	£98,431	£50,773
42	£93,644	£48,183	£96,360	£49,580
43	£92,640	£47,075	£95,327	£48,440
44	£91,626	£45,958	£94,283	£47,291
45	£90,624	£44,858	£93,252	£46,159
46	£89,616	£43,749	£92,215	£45,018
47	£88,609	£42,645	£91,179	£43,882
48	£85,795	£41,285	£88,283	£42,482
49	£82,974	£39,922	£85,380	£41,080
50	£80,152	£38,566	£82,476	£39,684
51	£77,335	£37,210	£79,578	£38,289
52	£74,508	£35,852	£76,669	£36,892
53	£72,497	£34,739	£74,599	£35,746
54	£70,485	£33,634	£72,529	£34,609
55	£68,476	£32,527	£70,462	£33,470
56	£66,452	£31,412	£68,379	£32,323
57	£64,440	£30,308	£66,309	£31,187
58	£59,205	£27,242	£60,922	£28,032
59	£53,968	£24,167	£55,533	£24,868
60	£48,739	£21,098	£50,152	£21,710
61	£43,500	£18,025	£44,761	£18,548
62	£38,265	£14,951	£39,375	£15,385
63	£35,040	£14,073	£36,056	£14,481
64	£31,816	£13,202	£32,739	£13,585
65	£28,599	£12,309	£29,428	£12,666
66	£25,375	£11,430	£26,111	£11,761
67(+)	£22,155	£8,937	£22,797	£9,196
68	£21,498		£22,121	

Age of eligible person at date of diagnosis or date of death	Jan 2023 (current)		Jul 2023 (proposed)	
	Eligible person	Eligible relative	Eligible person	Eligible relative
69	£20,839		£21,443	
70	£20,191		£20,777	
71	£19,537		£20,104	
72	£18,884		£19,432	
73	£18,327		£18,858	
74	£17,759		£18,274	
75	£17,216		£17,715	
76	£16,670		£17,153	
77+	£16,115		£16,582	



The President  
Committee for Employment & Social Security  
Edward T Wheadon House  
St Peter Port  
Guernsey  
GY1 3WH

Sir Charles Frossard House  
La Charroterie  
St Peter Port  
Guernsey  
GY1 1FH  
+44 (0) 1481 227000  
[policyandresources@gov.gg](mailto:policyandresources@gov.gg)  
[www.gov.gg](http://www.gov.gg)

7<sup>th</sup> March 2023

Dear Deputy Roffey

### **2023 MID YEAR UPRATING**

Thank you for attending the Policy & Resources Committee meeting held on 28 February 2023 to discuss the proposals for a mid-year uprating of all social security benefit rates from early July 2023 and for giving the Committee the opportunity to provide this response.

Members noted that your Committee will take the mid-year uprating policy letter for discussion at the States Meeting commencing on 26 April 2023 and that the overall financial impact of your proposals in 2023 would be circa £3.5m of unplanned additional expenditure. While understanding the motivation for the recommendations your Committee is making, in light of the current financial constraints and the additional in-year pressure that this proposal would put on States finances the Policy & Resources Committee is not able to support such measures at this time.

The Policy & Resources Committee is concerned that many of the proposed uplifts are untargeted although you have stated that the reason for the proposed uplift is that the unusually high levels of inflation are affecting the cost of living and most severely impacting the poorest households in the community. While we accept this argument in relation to income support, the Committee feels much of this very considerable expense will not reach low-income households, and in some cases will not benefit households at all.

For example, the Committee notes that the proposed increase in the States Pension is by far the most significant expense at £2.2m. Appreciating that the States Pension is an entitlement based on contribution and not means tested, an increase would benefit many for whom their pension is a small part of their retirement income. The Rolling Electronic Census data suggests the pension represents less than half of total income for 58% of pensioner households and less than a quarter for 34%. Most of these households will be free of mortgage and rental costs. Further, considering that up to 15% of pension payments are made to people who no longer live in Guernsey it is evident that a significant proportion of the cost will be directed toward those for whom there is not a demonstrable need. Pensioners who are struggling



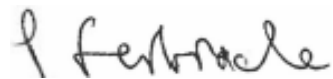
financially can and do claim income support. Households with at least one pensioner in residence make up around a quarter of income support claimants and therefore that would appear to be the most targeted way of supporting low income pensioners.

Further, the proposed increase in Sickness Benefit will be of greatest benefit to employers (who use this to offset the cost of paid sick leave) rather than those impacted by sickness and an increase in the long-term care benefit would be passed onto care homes which have already planned for and set fees for this year. The 2.9% increase in Family Allowance represents an improvement of just 46p per child per week – a very negligible benefit for the cost implications. As a result, the proposed across the board increases carry a risk of not directly benefiting the individuals that the recommendations are seeking to support.

Therefore, due to the level of unplanned expenditure, the current States financial pressures and concern centred on the beneficiaries of all the proposed uplifts, the Policy & Resources Committee is of the view that this proposal should not be approved at this time.

I would be grateful if you could append this consultation response to the policy letter.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'P Ferbrache', written in a cursive style.

Deputy Peter Ferbrache  
President

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY**

INTERIM UPDATING OF CONTRIBUTORY AND NON-CONTRIBUTORY BENEFIT RATES

The President  
Policy & Resources Committee  
Sir Charles Frossard House  
La Charroterie  
St Peter Port  
GY1 1FH

13<sup>th</sup> March 2023

Dear Sir

**Preferred date for consideration by the States of Deliberation**

In accordance with Rule 4(3) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee *for* Employment & Social Security requests that the Policy Letter entitled 'Interim Updating of Contributory and Non-contributory Benefit Rates' be considered at the States' meeting that is due to commence on 26<sup>th</sup> April 2023.

It is imperative that the above-named Policy Letter is considered by the States at that meeting in order to allow sufficient time for the necessary administrative and IT processes to be carried out prior to implementation of the new rates in early July 2023.

Yours faithfully



Peter Roffey  
President

Lindsay De Sausmarez  
Vice President

Tina Bury, Steve Falla, John Gollop

Ross Le Brun, Mark Thompson  
Non-States Members

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY**

**ACCESS TO WORK SCHEME**

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled 'Access to Work Scheme', dated 13<sup>th</sup> March 2023, they are of the opinion:

1. To agree that the Social Insurance (Guernsey) Law, 1978 is amended, in particular section 39A, to –
  - a) widen existing powers of the Committee *for* Employment & Social Security (to make arrangements to secure that insured persons take advantage of opportunities designed to facilitate a return to work and to make related grants) so they extend to making arrangements or grants, at the cost of the Guernsey Insurance Fund, in relation to the provision of aids, equipment, occupational health assessments, occupational therapy and other types of support to facilitate the retention or entrance into employment, or other gainful occupation, as well as the return to the same, of an insured person with a disability, and
  - b) make any necessary amendments to the existing regulation making powers under that section to allow the Committee *for* Employment & Social Security to prescribe all necessary matters in relation to such arrangements or grants,

as further detailed in Section 4 of the Policy Letter.

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

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

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY**

ACCESS TO WORK SCHEME

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

13<sup>th</sup> March 2023

Dear Sir

**1. Executive summary**

- 1.1. The Prevention of Discrimination (Guernsey) Ordinance, 2022 ('the Discrimination Ordinance') was enacted by the States on 30<sup>th</sup> September 2022. When it comes into force on (in the main) 1<sup>st</sup> October 2023, it will be unlawful to discriminate against a person on the grounds of disability in various contexts, including in employment.
- 1.2. The Discrimination Ordinance places a positive legal obligation on employers (and other duty-bearers) to make 'reasonable adjustments', which involve providing modifications or adjustments that remove disadvantages or barriers that prevent disabled persons from participating in employment. The limit of the duty is set by the fact that employers do not have to make such an adjustment if it imposes a 'disproportionate burden' (financial or other) on them.
- 1.3. The Committee *for* Employment & Social Security ('the Committee') recognised in its Policy Letter entitled 'Proposals for a New Discrimination Ordinance'<sup>1</sup> ('the 2020 Policy Letter') that the test of disproportionate burden had the potential to skew the labour market for disabled people towards larger employers with potentially greater financial resources.

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<sup>1</sup> Committee *for* Employment & Social Security's Policy Letter entitled 'Proposals for a New Discrimination Ordinance' ([Billet d'État XV of 2020](#), Article XV).

- 1.4. The Committee proposed to address this potential issue through the establishment of an 'Access to Work Scheme' to fund specific adjustments that would otherwise not be provided because they would be a disproportionate burden for an employer. Following consideration of the 2020 Policy Letter, the States noted that the Committee would bring proposals to the States for the establishment, operation and funding of an 'Access to Work Scheme' by the end of 2021.
- 1.5. This Policy Letter sets out proposals for such a Scheme and seeks States approval to amend the Social Insurance (Guernsey) Law, 1978, in particular section 39A, in order to widen existing powers of the Committee (to make arrangements to secure that insured persons take advantage of opportunities designed to facilitate a return to work and to make related grants) so they extend to making arrangements or grants, at the cost of the Guernsey Insurance Fund, in relation to the provision of aids, equipment, occupational health assessments, occupational therapy and other types of support to facilitate the retention or entrance into employment, or other gainful occupation, as well as the return to the same, of an insured person with a disability.
- 1.6. The maximum estimated cost of the Access to Work Scheme is £50,000 per annum. The Scheme is proposed as a 'spend to save' initiative as it is anticipated that it will assist disabled persons to enter, return to or retain employment, thereby reducing benefit expenditure and increasing contribution income. Wider economic benefits include increased and more diversified employment opportunities for disabled persons, increased workforce participation, and a resultant increase in the spending power of disabled persons.

## **2. Background**

- 2.1. Disability is one of five protected grounds under the Discrimination Ordinance which was enacted by the States on 30<sup>th</sup> September 2022. When it comes into force on (in the main) 1<sup>st</sup> October 2023, it will be unlawful to discriminate against a person on the grounds of disability in various contexts, including in employment.
- 2.2. The Discrimination Ordinance is similar to other jurisdictions (including the UK) in that it places a positive duty on employers (and other duty-bearers) to make 'reasonable adjustments' when they are aware that a disabled person has a disability and when that disabled person would be at a substantial disadvantage without the adjustment. Reasonable adjustments in the work context involve making changes that remove disadvantages or barriers that prevent disabled persons from participating in employment and thus enjoying

or exercising their right to work and to just and favourable conditions of work (as stated in Article 23(1) of the Universal Declaration of Human Rights).<sup>2</sup>

- 2.3. A reasonable adjustment can be any change that an employer makes to remove a disadvantage for a particular disabled person, such as changing the workplace, changing working arrangements, providing equipment, services or support, or altering the physical features of a building. While most of the reasonable adjustment duties will apply from 1<sup>st</sup> October 2023, employers - and other duty bearers - will not have to make changes to the physical features of buildings until that duty is commenced on or after 1<sup>st</sup> October 2028.
- 2.4. While the reasonable adjustment duty imposes a positive legal obligation on employers to provide a modification or adjustment where there is a disadvantage or barrier for a disabled person in the workplace, the limit of the duty is set by the fact that employers do not have to make such an adjustment if it imposes a 'disproportionate burden' (financial or other) on them. Therefore, the duty is sensitive to the needs of businesses and organisations, and will be different according to the financial and other resources which each business or organisation has.
- 2.5. The Committee recognised in the 2020 Policy Letter that:
- '...the test of disproportionate burden has the potential to skew the labour market for disabled people towards larger employers with potentially greater financial resources.'
- 2.6. The Committee proposed to address this potential issue through the establishment of an 'Access to Work Scheme' to fund specific adjustments that would otherwise not be provided because they would be a disproportionate burden for an employer. The Committee noted that it was envisaged that the provision of such a Scheme would result in fewer complaints being made in relation to failure to provide a reasonable adjustment, as funding would be available for adjustments that would otherwise be too expensive.
- 2.7. Following consideration of the 2020 Policy Letter, the States resolved, amongst other things:

'To note that the Committee *for* Employment & Social Security will bring proposals to the States for the establishment, operation and funding of an 'Access to Work Scheme' by the end of 2021 (see section 7).'<sup>3</sup>

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<sup>2</sup> [Universal Declaration of Human Rights](#).

<sup>3</sup> [Resolution 16](#) following consideration of the Committee *for* Employment & Social Security's Policy Letter entitled 'Proposals for a New Discrimination Ordinance' ([Billet d'État XV of 2020](#), Article XV).

### **3. The proposed Access to Work Scheme**

- 3.1. There are many ways in which disabled persons can be supported into and in work, depending on the type of impairment a person has. The UK government offers a wide array of grants, including those for support workers and daily travel costs, two of the biggest expenses under the UK's Access to Work Scheme.<sup>4</sup> Other jurisdictions' equivalent schemes have a more limited scope. Jersey limits its grants to those for specialist aids and equipment or alterations, which can cover anything from braille keyboards to specialist software.<sup>5</sup> In consultation with stakeholders, the Committee has developed proposals for an Access to Work Scheme broadly mirroring that which operates in Jersey.
- 3.2. It is envisaged that an Access to Work Scheme in Guernsey would complement, rather than replace, or compete with, the services that are already available on-island, mainly through third sector organisations. With this in mind, the Committee is of the view that the Scheme should initially solely focus on funding the provision of necessary aids and equipment, with occupational health advice where appropriate. This would address one of the biggest gaps in Guernsey's existing service provision. The option remains open to expand the scope of the Scheme at a future date to cover other adjustments (e.g. workplace mental health support, travel costs, etc) if considered necessary and affordable at that time. The amendments requested to the legislation are wide enough to cover these possible later adjustments.
- 3.3. The Scheme is expected to be utilised most by the employees and prospective employees of smaller businesses. However, the Committee is proposing that the Scheme be available to employees and prospective employees of employers of all sizes. This would not absolve employers of their duty to make reasonable adjustments for disabled persons, since grants to disabled persons under the Scheme would only be available where an adjustment would represent a disproportionate burden for an employer and, as part of the Scheme's grant application process, employers will be asked to explain why they cannot make the adjustment that their employee (or prospective employee) requires.
- 3.4. Grants would be for one-off costs only and subject, except in exceptional circumstances, to a cap of £5,000 per person per annum. The value of the cap is the same as that applied in Jersey and similar to the cap of €6,250 that applies to the Republic of Ireland's 'Workplace Equipment Adaptation Grant'.<sup>6</sup>

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<sup>4</sup> [Access to Work Statistics – April 2007 to March 2022.](#)

<sup>5</sup> [Access To Work Grant \(gov.je\).](#)

<sup>6</sup> [gov.ie - Operational Guidelines: Workplace Equipment Adaptation Grant \(WEAG\) \(www.gov.ie\).](#)

Both measures would serve to mitigate against excessive expenditure, which may compromise the Scheme's ability to reduce government expenditure.

- 3.5. The average cost of grants made under Jersey's equivalent Scheme is currently just over £1,000.<sup>7</sup> This figure represents the average cost of grants for equipment and aids funded through Jersey's Access to Work Scheme - it does not represent the average cost of reasonable adjustments funded by employers, which can often be made at no or little cost and can positively impact the workplace in many ways.
- 3.6. The Job Accommodation Network<sup>8</sup> in the United States has been monitoring 'reasonable accommodation' (the US equivalent of reasonable adjustment) in the employment context since 2004 through the use of employer surveys. The survey results consistently have shown that the benefits these employers reported they received from making workplace accommodations far outweigh the associated costs. Employers reported that accommodations resulted in such benefits as retaining valued employees, improving productivity and morale, reducing workers' compensation and training costs and improving company diversity.<sup>9</sup>
- 3.7. Wider economic benefits include increased and more diversified employment opportunities for disabled persons, increased workforce participation, and a resultant increase in the spending power of disabled persons (known as the 'purple pound', which has been estimated to have a value in the UK of £249 billion per annum).<sup>10</sup> The 2020 Policy Letter noted that such a Scheme 'both ensures equal treatment for disabled people and can potentially offer financial savings, if the individual who the adjustment is for would otherwise be out of work and claiming benefits'. Additionally, if enabled into employment, disabled persons would also likely pay tax and social security contributions.

#### **4. Amending the Social Insurance (Guernsey) Law, 1978**

- 4.1. It is estimated that the Access to Work Scheme will cost no more than £50,000 per annum. The Committee proposes that this be funded through the Guernsey Insurance Fund. An amendment to the Social Insurance (Guernsey) Law, 1978, in particular section 39A is necessary to allow this. Essentially, the Access to Work Scheme is proposed as a 'spend to save' initiative as it is

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<sup>7</sup> A Government of Jersey [response to a Freedom of Information request](#) indicated that, as at 9 March 2021, there had been 17 approved Access to Work grants costing £18,357 in total. This equates to an average cost of £1,080 per grant.

<sup>8</sup> Job Accommodation Network website: <https://askjan.org/about-us/index.cfm>.

<sup>9</sup> Job Accommodation Network – '[Accommodations and Compliance: Low Cost, High Impact](#)'.

<sup>10</sup> [Understanding the Purple Pound Market – Purple \(wearepurple.org.uk\)](#).



anticipated that it will assist disabled persons to enter, return to or retain employment, thereby reducing benefit expenditure and increasing contribution income.

- 4.2. Section 39A(1) empowers the Committee, at the cost of the Guernsey Insurance Fund, to make arrangements for securing that insured persons may take advantage of:
- a) vocational training,
  - b) industrial rehabilitation courses,
  - c) facilities in connection with employment or work under special conditions, and
  - d) such other opportunities, having as their object the provision of skills and other matters designed to facilitate a return to employment or other gainful occupational.

Regulations may prescribe all necessary matters in relation to arrangements under subsection (1).

- 4.3. Section 39A(3) of the Law empowers the Committee to make grants to persons as an incentive to participate in arrangements under section 39A(1) or for the provision of tools, equipment, transport or other items required to facilitate a return to employment or other gainful occupation. The section provides for exceptions, conditions and other matters in relation to such grants to be determined by the Committee or set out in Regulations. The section does not clearly refer to making arrangements or grant funding in relation to retaining or obtaining employment.
- 4.4. The Committee proposes that these existing powers in section 39A of the Law, be amended by Ordinance to extend to making arrangements or grants, at the cost of the Guernsey Insurance Fund, in relation to the provision of aids, equipment, occupational health assessments, occupational therapy and other types of support, to facilitate an insured person with a disability to *enter* or *retain* employment, as well as to *return* to employment or other gainful occupation (which is already covered under s.39A(1)(d) and 39(3)(b)). The current Regulation making powers under the section would also need widening accordingly.
- 4.5. It is intended that the Scheme would run primarily through the making of grants to disabled persons but it is also proposed that the Committee's related power to make arrangements is also widened for consistency and as the Committee may need to make arrangements in relation to support services the use of which by individual disabled persons will be funded by grants.

- 4.6. Subject to States approval of the Propositions, it is anticipated that the Access to Work Scheme would be open, in particular to receive applications for grants, from the date that the Discrimination Ordinance comes into force on 1<sup>st</sup> October 2023, or soon after.

## **5. Compliance with Rule 4 of the Rules of Procedure**

- 5.1. Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, Propositions laid before the States.
- 5.2. In accordance with Rule 4(1)(a), the Committee confirms that its proposal to amend the Social Insurance (Guernsey) Law, 1978 to facilitate the introduction of an Access to Work Scheme is part of a programme of work to support the enactment of the first phase of the Discrimination Ordinance, which was identified as a category 2 priority in the Government Work Plan 2022.<sup>11</sup>
- 5.3. In accordance with Rule 4(1)(b), the Committee has consulted with a number of relevant third-sector organisations, including, but not limited to, the Guernsey Employment Trust, which supports disabled and disadvantaged people to prepare for, find and maintain work in Guernsey, the Guernsey Disability Alliance, the Guernsey Blind Association, Autism Guernsey and the MS Society. Consultation took the form of a presentation on the Committee's proposals and allowed time for questions and answers. Consultees were invited to liaise with their colleagues and provide feedback at a later date. While some interest was expressed in expanding the proposed Scheme to include things like taxi costs and other travel expenses, consultees were supportive of the Committee's proposals. A presentation was also given to the Discrimination Legislation External Stakeholder Group, which includes invitees from business groups.
- 5.4. In accordance with Rule 4(1)(c), the Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
- 5.5. In accordance with Rule 4(1)(d), estimates of the financial implications of carrying the proposals into effect are set out in paragraph 4.1 of this Policy Letter.
- 5.6. In this Policy Letter, the Committee has set out proposals for a legislative change to facilitate the introduction of an Access to Work Scheme. In line with

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<sup>11</sup> Policy Letter from the Policy & Resources Committee entitled: 'The Government Work Plan 2022' ([Billet d'État X of 2022, Volume 1, Article I](#)).

Rule 4(2)(a), it is confirmed that the propositions align 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.'

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

Yours faithfully

P J Roffey  
President

H L de Sausmarez  
Vice-President

T L Bury  
S J Falla  
J A B Gollop

M R Thompson  
Non-States Member

R J Le Brun  
Non-States Member

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY**

**ACCESS TO WORK SCHEME**

The President  
Policy & Resources Committee  
Sir Charles Frossard House  
La Charroterie  
St Peter Port  
GY1 1FH

13<sup>th</sup> March 2023

Dear Sir

**Preferred date for consideration by the States of Deliberation**

In accordance with Rule 4(3) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee *for* Employment & Social Security requests that the Policy Letter entitled 'Access to Work Scheme' be scheduled for consideration at the States' meeting that is due to commence on 26<sup>th</sup> April 2023.

The Policy Letter seeks States' approval to amend the Social Insurance (Guernsey) Law, 1978 in order to enable an 'Access to Work Scheme', as described in the Policy Letter, to be funded from the Guernsey Insurance Fund. As it is hoped that the Access to Work Scheme would be open to receive applications for grants from the date that the Prevention of Discrimination (Guernsey) Ordinance, 2022 comes into force on 1<sup>st</sup> October 2023, the draft amendment Ordinance will ideally need to return to the States for approval at one of the September 2023 meetings (provided that it is possible for the amendment Ordinance to be prioritised and drafted within that timeframe). This preferred timeline may be achievable if the Policy Letter is considered by the States in April but is unlikely to be so if debate on the Policy Letter is delayed.

Yours faithfully



Peter Roffey  
President

Lindsay De Sausmarez  
Vice President

Tina Bury, Steve Falla, John Gollop

Ross Le Brun, Mark Thompson  
Non-States Members

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**POLICY & RESOURCES COMMITTEE**

**AMENDMENT TO THE ROYAL COURT (REFORM) (GUERNSEY) LAW, 2008**

The States are asked to decide:-

Whether, after consideration of the policy letter entitled 'Amendment to the Royal Court (Reform) (Guernsey) Law, 2008' dated 13<sup>th</sup> March 2023, they are of the opinion:-

1. To agree to amend the Royal Court (Reform) Law, 2008, to allow Jurats of not less than 3 years' standing to be appointed as Juré-Justicier Suppléant; and,
2. To direct the preparation of such legislation as may be necessary to give effect to the above decision.

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**POLICY & RESOURCES COMMITTEE**

**AMENDMENT TO THE ROYAL COURT (REFORM) (GUERNSEY) LAW, 2008**

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

13<sup>th</sup> March 2023

Dear Sir

**1 Executive Summary**

- 1.1 This policy letter recommends that the qualifying period of sitting as a Jurat to qualify to seek appointment as a Juré-Justicier Suppléant is reduced from 5-years to 3-years. This will offer greater flexibility in those eligible to sit in the Royal Court in the office of Juré-Justicier Suppléant and is intended to improve the overall administration of justice.

**2 Office of Jurat**

- 2.1 Jurats of the Royal Court of Guernsey (Jurés Justiciers de la Cour Royale) are elected by the States of Election. Candidates must be nominated by a member of the States of Election or a parish Douzenier and must receive greater than one half of the votes of those present at the meeting. Elected Jurats hold office until the age of 70 years, although the term of office of an individual Jurat can be extended by the other Jurats if they consider it desirable that his or her tenure should continue for a period or periods not extending beyond the age of 72.
- 2.2 Jurats are judges of fact, and act as a jury in both civil and criminal cases. Other duties of a Jurat comprise the Bench of the Royal Court, sitting both as a Full Court and as an Ordinary Court, including hearing appeals from the Magistrate's Court. They conduct the Contracts Court (which deals with conveyances, bonds, occasional liquor licences, and other matters), and act as Commissioners in saisie, en désastre and compulsory liquidation hearings.
- 2.3 The Royal Court (Reform) Law, 2008 ("the 2008 Law"), made provision for the number of Jurats to be increased from 12 to 16. This, however, did not alter the

minimum number of Jurats required to constitute the divisions of the Royal Court (7 for a Full Court, 2 for an Ordinary Court). These changes were driven by the increasing demands on the office of Jurat, due to the growth in the activities of the Royal Court. This trend continues.

### **3 Office of Juré-Justicier Suppléant**

- 3.1 The office of Juré-Justicier Suppléant was created by the 2008 Law as another way of increasing the number of persons available to sit as Jurats. Jurats over the age of 65 with not less than 5 years' experience may offer to retire from the Bench and offer himself or herself for election as a Juré-Justicier Suppléant, until a maximum age of 75. A Juré-Justicier Suppléant undertakes the functions of a Jurat without being committed to sitting to the same extent as ordinary Jurats and can adjust their workload according to circumstances.
- 3.2 The current 5-year requirement for qualification was recommended at the time to prevent persons taking this option before they have gained the requisite experience by serving for a substantial period as a Jurat.

### **4 Proposed changes to the Royal Court (Reform) Law, 2008**

- 4.1 The Bailiff has written to the Committee recommending that consideration be given to amending the 2008 Law so to allow Jurats of not less than 3 years' standing to be appointed as Juré-Justicier Suppléant. He has explained that since 2008, there has been one occasion where a Jurat has reached the age of 72 without having satisfied the 5-year requirement for qualification as a Suppléant, which will likely re-occur if this requirement is kept. It is proposed that a 3-year length of service is a more appropriate requirement and, given the volume of work before the Court, provides sufficient opportunity for a Jurat to acquire a broad-based level of experience.
- 4.2 HM Procureur has confirmed that, as the business before the courts has increased since the Royal Court (Reform) (Guernsey) Law, 2008 was enacted, particularly in criminal matters where Jurats and those holding office as Juré Justicier Suppléant tend to participate the most, reducing the requirement for qualification as a Suppléant currently set out in the 2008 Law from 5-years to 3-years would assist in improving the overall administration of justice, as it offers greater flexibility to the Royal Court in terms of those eligible to sit in the office of Juré-Justicier Suppléant.

### **5 Compliance with Rule 4**

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

5.2 In accordance with Rule 4(1):

- a) The propositions contribute to the States' objectives and policy plans by further enhancing the administration of justice.
- b) In preparing the propositions, consultation has been undertaken with Her Majesty's Procureur, the Bailiff, and the Committee *for* Home Affairs.
- c) The propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- d) There are no financial implications to the States of carrying the proposal into effect.

5.3 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.

Yours faithfully

P T R Ferbrache  
President

M A J Helyar  
Vice President

J P Le Tocq  
D J Mahoney  
R C Murray





Committee *for*  
Health & Social Care

Le Vauquiedor Office  
Rue Mignot  
St Andrew  
Guernsey  
GY6 8TW

The Bailiff  
The Royal Court House  
St Peter Port  
Guernsey  
GY1 2NZ

+44 (1481) 220000  
healthandsocialcare@gov.gg  
www.gov.gg

27<sup>th</sup> January 2023

Dear Sir,

**Committee *for* Health & Social Care – resignation of Non-Voting Member**

On behalf of the Committee *for* Health & Social Care, I'm writing to advise that Mrs Emily Carey (previously Ms Litten) has submitted a letter of resignation from her role as a Non-voting Member on the Committee. As per Rule 46 (3) of the Rules of Procedure, this resignation has taken immediate effect.

The Committee has very much welcomed the contribution made by Mrs Carey since the start of the current political term and, on its behalf, I would like to take the opportunity to record our thanks to Mrs Carey for her valued input and to wish her all the very best in her future endeavours.

Yours sincerely,

**Deputy Al Brouard**  
President