XI
2020

BILLET D'ÉTAT

WEDNESDAY, 20th MAY 2020

LEGISLATIVE BUSINESS

Legislation for Approval

1. Policy & Resources Committee - The Alderney Property Tax (Enabling Provisions) Law, 2020, P.2020/62
2. Committee *for* Health & Social Care - The Human Tissue and Transplantation (Bailiwick of Guernsey) Law, 2020, P.2020/63
3. Committee *for* Home Affairs - The Population Management (Guernsey) (Amendment) Law, 2019 (Commencement) Ordinance, 2020, P.2020/64
4. Policy & Resources Committee - The Machinery of Government (Transfer of Functions) Ordinance, 2020, P.2020/65
5. States' Trading Supervisory Board - The Pilotage (Amendment) Ordinance, 2020, P.2020/66
6. Committee *for* Economic Development - The Banking Deposit Compensation Scheme (Bailiwick of Guernsey) (Amendment) Ordinance, 2020, P.2020/67
7. Policy & Resources Committee - The Taxation of Real Property (Guernsey and Alderney) (Amendment) Ordinance, 2020, P.2020/68

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OTHER BUSINESS

8. Committee *for the* Environment & Infrastructure - States of Guernsey Energy Policy 2020-2050, P.2020/47
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BILLET D'ÉTAT

TO
THE MEMBERS OF THE STATES
OF THE ISLAND OF GUERNSEY

I hereby give notice that a Meeting of the States of Deliberation will be held via **MICROSOFT TEAMS LIVE,** on **WEDNESDAY,** the **20th May, 2020** at **9.30 a.m.,** to consider the items listed in this Billet d'État which have been submitted for debate.

R. J. COLLAS
Bailiff and Presiding Officer

The Royal Court House
Guernsey

4th May, 2020

P.2020/62

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

PROJET DE LOI

Entitled

THE ALDERNEY PROPERTY TAX (ENABLING PROVISIONS) LAW, 2020

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Alderney Property Tax (Enabling Provisions) Law, 2020", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

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

EXPLANATORY MEMORANDUM

The Alderney Property Tax (Enabling Provisions) Law, 2020, which is closely based on the Taxation of Real Property (Enabling Provisions) (Guernsey and Alderney) Law, 2005, empowers the States of Alderney by Ordinance to make provision in relation to the taxation of real property in Alderney. The new tax will be called "Alderney property tax".

Alderney property tax will be based (so far as assessment, liability, administration and collection are concerned) on Guernsey's current taxation of real property regime ("TRP"), which will continue to have effect in Alderney but will from the 1st January, 2021 be levied at a zero rate. Alderney property tax will also replace Alderney occupiers' rate, currently levied by Alderney Ordinance under the Alderney (Application of Legislation) Law, 1948.

Section 1 empowers the States of Alderney by Ordinance to make such provision as they think fit in relation to the taxation of real property in Alderney; defines "Alderney property tax" and "real property"; and lists the specific matters in relation to which an Ordinance under the Law may make provision.

Examples are the rates of, and the allowances, discounts and deductions in respect of, Alderney property tax; the times at which, the periods in respect of which, and the manner in which, Alderney property tax is payable; the classes, descriptions and categories of real property subject to Alderney property tax; the persons liable to pay Alderney property tax, and the persons excepted or exempted from liability; and appeals in relation to the calculation, assessment and levying of Alderney property tax and the valuation, measurement, assessment and categorisation of real property.

Section 2 contains the standard general provisions and powers as to the making, amendment and repeal of Ordinances.

Section 3 lists specific enactments which may be amended by an Ordinance, including the Alderney (Application of Legislation) Law, 1948 and any enactment which refers to Alderney occupiers' rate and TRP.

Sections 4 and 5 deal respectively with interpretation and citation.

PROJET DE LOI

ENTITLED

The Alderney Property Tax (Enabling Provisions) Law, 2020

THE STATES, in pursuance of their Resolution of the 28th February, 2019[a], have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey and Alderney.

Power to make Ordinances as to taxation of real property.

1. (1) The States of Alderney may by Ordinance make such provision as they think fit in relation to the taxation of real property in Alderney.

(2) In this Law -

"**Alderney property tax**" means any tax levied in respect of real property in Alderney under an Ordinance made under this Law,

"**real property**" means -

(a) land, buildings and other property in Alderney constituting immovable property under the law of

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[a] Article VIII of Billet d'État No. III of 2019.

Alderney, and

(b) any other class or description of property in Alderney prescribed by Ordinance of the States of Alderney.

(3) Without prejudice to the generality of subsection (1), an Ordinance under this Law may make provision as to the following matters -

(a) the rates of, and the allowances, discounts and deductions in respect of, Alderney property tax,

(b) the times at which, the periods in respect of which, and the manner in which, Alderney property tax is payable,

(c) the classes, descriptions and categories of real property subject to Alderney property tax,

(d) the persons liable to pay Alderney property tax, and the persons excepted or exempted from liability,

(e) the basis on which and the manner in which -

(i) real property is to be valued, measured and assessed for the purposes of Alderney property tax, and

(ii) Alderney property tax is to be calculated, assessed and levied,

(f) the rate of Alderney property tax in respect of any class, description or category of real property,

(g) the imposition of an enhanced rate or default rate of Alderney property tax in the event of non-compliance with any prescribed requirement,

(h) the administration, payment, collection and recovery of Alderney property tax and the enforcement of liabilities to pay it,

(i) the levying of interest and penalties in the event of the non-payment of Alderney property tax,

(j) powers of entry for the purpose of valuing, measuring, assessing and categorising real property,

(k) the preparation and maintenance of records and registers of real property in Alderney (which may, without limitation, be in addition to or in replacement of the Cadastre), and the funding of the costs of preparation and maintenance,

(l) the information to be entered on those records and registers,

(m) the public inspection and evidencing of those records and registers and the information in them,

(n) the exchange between committees of the States of Alderney and the States of Guernsey and other public authorities of the Islands of information in respect of Alderney property tax and real property in Alderney,

(o) the making of declarations and notifications, and the obtaining and exchanging of information, in respect of-

(i) real property and the class, description or category into which any real property falls, and

(ii) the persons who own, or have any other prescribed interest in, real property, including (without limitation), where those persons are bodies corporate, the ownership and control of the bodies corporate and the shareholdings in them,

(p) the confidentiality of information,

(q) the making of assessments to Alderney property tax and the preparation of statements of account,

(r) appeals in relation to the calculation, assessment and levying of Alderney property tax and the valuation, measurement, assessment and categorisation of real property, including the forum and grounds of such appeals and the parties thereto,

(s) the establishment of a tribunal to deal with such appeals and a panel of persons from whom the members of the tribunal are to be drawn,

(t) the jurisdiction and powers of the courts of Alderney, and the constitution and procedure of those courts, in relation to such appeals,

(u) the imposition of time limits and other restrictions subject to which -

(i) any claim for the payment or repayment of Alderney property tax, and

(ii) any other proceedings in respect of the administration and enforcement of Alderney property tax,

must be made or instituted,

(v) the cancellation of liability to any description of tax or charge due under an enactment repealed, amended, modified or disapplied by an Ordinance under this Law,

(w) anti-avoidance measures,

(x) the charging or securing on real property of claims for unpaid Alderney property tax and penalties and interest in respect thereof, the priority to be given to such claims, and the payment of such claims in preference to other debts and claims,

(y) the service of notices,

(z) the meaning of the expressions "Alderney property tax", "real property" and "the taxation of real property" in this Law.

General provisions as to Ordinances.

2. (1) An Ordinance under this Law -

(a) may be amended or repealed by a subsequent Ordinance hereunder, and

(b) may contain such consequential, incidental, supplementary, savings, transitional and other ancillary provisions as the States of Alderney think fit.

(2) Any power conferred by this Law to make an Ordinance may be exercised -

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised -

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions,

(iv) different provision for different classes, descriptions and categories of real property.

(3) Without prejudice to the generality of the foregoing provisions of this Law, an Ordinance under this Law -

(a) may make provision in relation to the creation, summary trial and punishment of offences in respect of contraventions of the Ordinance and as to the creation of new duties, obligations, liabilities, remedies, penalties, sanctions and other consequences (but subject to the provisions of subsection (4)),

(b) may make provision for the purpose of dealing with matters arising out of or related to the taxation of real property,

(c) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force,

(d) may empower any committee, and any other body (including, without limitation, the Court of Alderney), to make rules or regulations, whether as to matters in relation to which an Ordinance can be made under this Law or otherwise,

(e) may empower the States of Alderney to pass resolutions specifying or prescribing matters described in paragraph (d),

(f) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by Projet de Loi (including, without limitation, provision repealing, replacing, amending, extending, adapting, modifying or disapplying any enactment or rule of law, including customary or common law), but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

(4) No Ordinance of the States of Alderney under this Law -

(a) may specify a penalty in respect of an offence triable summarily which exceeds -

(i) the maximum penalty specified by the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007 in respect of a corresponding offence when tried summarily in Guernsey, or

(ii) the limits of jurisdiction for the time being imposed on the Court of Alderney by section 13 of the Government of Alderney Law, 2004,

whichever is greater, or

(b) shall increase the limits of jurisdiction for the time being imposed upon the Court of Alderney by section 13 of the Government of Alderney Law, 2004.

Specific enactments which may be amended, etc.

3. Without prejudice to the generality of the powers conferred by this Law, an Ordinance under this Law may repeal, replace, amend, adapt, modify or disapply any of the following enactments so far as they have effect in Alderney -

(a) the Cadastre Law, 1947[b],

(b) the Alderney (Application of Legislation) Law, 1948[c],

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b Ordres en Conseil Vol. XIII, pp. 78 and 381; there are amendments not material to this Law.

c Ordres en Conseil Vol. XIII, p. 448; there are amendments not material to this Law.

(c) the Preferred Debts (Guernsey) Law, 1983[d],

(d) the Taxation of Real Property (Enabling Provisions) (Guernsey and Alderney) Law, 2005[e],

(e) any enactment made under any of the above Laws,

(f) any enactment which refers to occupiers' rate, taxation of real property, annual rental value, rateable value and tax on rateable values (or any other tax or charge under an enactment repealed, replaced, amended, adapted, modified or disapplied by an Ordinance under this Law), and

(g) this Law.

Interpretation.

4. In this Law, unless the context requires otherwise –

"**Alderney**" means the Island of Alderney,

"**Alderney property tax**" **:** see section 1(2),

"**Cadastre**" means the valuation carried out and maintained under the

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d Ordres en Conseil Vol. XXVIII, p. 184; there are amendments not material to this Law.

e Order in Council No. X of 2006.

provisions of section 4 of the Alderney (Application of Legislation) Law, 1948,

"**enactment**" means any Law, Ordinance or subordinate legislation enacted (in each case) in the Islands,

"**information**" includes data, however recorded,

"**Islands**" means the Islands of Guernsey and Alderney,

"**prescribed**" means prescribed by an Ordinance, rule or regulation under this Law,

"**real property**" **:** see section 1(2).

Citation.

5. This Law may be cited as the Alderney Property Tax (Enabling Provisions) Law, 2020.

P.2020/63

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

PROJET DE LOI

Entitled

THE HUMAN TISSUE AND TRANSPLANTATION (BAILIWICK OF GUERNSEY) LAW, 2020

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Human Tissue and Transplantation (Bailiwick of Guernsey) Law, 2020", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

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

EXPLANATORY MEMORANDUM

Part I defines activities that are authorised and regulated under the Law.

Clause 1 defines "regulated activity", "transplantation" and "transplantation activity".

Part II authorises and regulates those activities.

Clause 2 authorises a transplantation activity or the removal of human tissue from the body of a deceased person, or removal of the body of a deceased person, for a teaching, research or therapeutic purpose ("a regulated activity") if the activity is carried out with express or deemed consent. The activity is also authorised if specifically authorised by clause 5 or if it comprises a limited activity in relation to human tissue that was lawfully removed outside the Bailiwick and lawfully imported into the Bailiwick.

Clause 3 prohibits regulated activities unless authorised by clause 2.

Clause 4 prohibits the removal of human tissue from the body of a deceased person for a transplantation activity or a teaching, research or therapeutic purpose unless the person removing the tissue is a registered medical practitioner, two registered medical practitioners have certified that life is extinct and an authorised person has certified that there is express or deemed consent for the relevant activity or purpose.

Clause 5 authorises the controller of a hospital or other institution to take steps to preserve the body or human tissue for use for transplantation unless and until it is clear that there is no express or deemed consent for transplantation.

Part III deals with the giving of express consent for a regulated activity and sets out circumstances in which consent for the activity is deemed to have been given.

Clause 6 sets out who can give express consent to a regulated activity involving the removal of human tissue from the body of an adult or removal of the body of a deceased adult.

Clause 7 sets out the circumstances in which consent is deemed to be given to a regulated activity involving the removal of human tissue from the body of a deceased adult.

Clause 8 sets out who can give express consent to a regulated activity involving the removal of human tissue from the body of a child or removal of the body of a deceased child.

Clause 9 provides for the oral or written appointment of one or more individuals to represent a person after death to deal with the issue of express consent.

Clause 10 precludes a guardian of an adult dealing with the issue of express consent by virtue only of being the guardian of the adult.

Clause 11 presumes that a child of or over 16 years of age is competent to deal with the issue of express consent unless the contrary is shown.

Clause 12 prohibits a person from giving, or acting on, consent to a regulated activity involving a deceased person where the person is aware or has reason to believe that a post-mortem or inquest might be required by Her Majesty's Procureur.

Part IV deals with offences and penalties under the Law.

Clause 13 makes it an offence to provide false, deceptive or misleading information in purported compliance with any condition, requirement or duty or where the information is used or relied on to make a determination or carry out an activity under the Law.

Clause 14 sets out the general penalty for an offence under the Law for which no other penalty is specified.

Clause 15 provides for a defence of due diligence.

Clause 16 deals with the criminal liability of directors and other officers of legal entities.

Clause 17 deals with criminal proceedings against unincorporated bodies.

Part V sets out general and miscellaneous provisions.

Clause 18 excludes post-mortem examinations, inquests and related activities from the application of the Law.

Clause 19 excludes civil liability on the part of an authorised person acting in the discharge of functions under this Law, unless the authorised person acted in bad faith.

Clause 20 provides for the States of Guernsey Committee for Health & Social Care to issue codes of practice and guidance for the purposes of the Law.

Clause 21 provides for the States of Deliberation to make Ordinances to give effect to the Law. Before recommending that the States of Deliberation make an Ordinance that affects Alderney or Sark, the States of Guernsey Committee for Health & Social Care must consult the Policy & Finance Committee of the States of Alderney or, as the case requires, the Policy and Finance Committee of the Chief Pleas of Sark. Either or both of the States of Alderney and the Chief Pleas of Sark may disapprove (and disapply) an Ordinance that would otherwise apply to Alderney or, as the case may be, Sark.

Clause 22 empowers the States of Deliberation to amend provisions of the Law relating to the giving of express consent for adults and children, deemed consent for adults, the appointment of persons to deal with consent, the meaning of "excepted adults" for the purposes of deemed consent, and the meaning of "qualifying relationship".

Clause 23 provides for the States of Guernsey Committee for Health & Social Care to make regulations for the purposes of the Law, including prescribing fees and charges for the issue of any report or certificate. Before making any regulations that affect Alderney or Sark, the States of Guernsey Committee for Health & Social Care must consult the Policy & Finance Committee of the States of Alderney or, as the case requires, the Policy and Finance Committee of the Chief Pleas of Sark. Either or both of the States of Alderney and the Chief Pleas of Sark may disapprove (and disapply) regulations that would otherwise apply to Alderney or, as the case may be, Sark.

Clause 24 defines "excepted adult" for the purposes of deemed consent.

Clause 25 defines "qualifying relationship".

Clause 26 clarifies the meaning of references to human tissue from a body.

Clause 27 defines other expressions used in the Law.

Clause 28 repeals the Human Tissue (Bailiwick of Guernsey) Law, 1981.

Clause 29 makes transitional provision in respect of a body or part of a body removed in accordance with an authority given under section 1 of the Human Tissue (Bailiwick of Guernsey) Law, 1981. Where such removal takes place before the date on which that Law is repealed, the removal and subsequent use of the body or part of the body in accordance with that authority remains lawful as if that Law had not been repealed.

Clauses 30 and 31 are the citation and commencement provisions respectively. The Law will come into force on the date or dates specified by Ordinance of the States of Deliberation.

PROJET DE LOI

ENTITLED

The Human Tissue and Transplantation (Bailiwick of Guernsey) Law, 2020

ARRANGEMENT OF SECTIONS

PROJET DE LOI

ENTITLED

The Human Tissue and Transplantation (Bailiwick of Guernsey) Law, 2020

THE STATES, in pursuance of their Resolution of the 28th November, 2018[a], have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I

PRELIMINARY

Meaning of "regulated activity", "transplantation" and "transplantation activity".

1. (1) In this Law –

"**regulated activity**" means –

(a) any transplantation activity;

(b) the removal of human tissue from the body of a deceased person, or removal of the body of a deceased person, for a teaching, research or therapeutic purpose,

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[a] Article XIV of Billet d'État No. XXV of 2018.

(c) any other prescribed activity, and

"**transplantation activity**" means –

(a) storing the body of a deceased person for the purpose of transplantation,

(b) carrying out tests and investigations to determine whether human tissue is suitable for the purpose of transplantation,

(c) removing from the body of a deceased person for the purpose of transplantation any human tissue of which the body consists or which it contains,

(d) storing for the purpose of transplantation any human tissue which has come from the body of a person,

(e) using for the purpose of transplantation any human tissue which has come from the body of a person, or

(f) any prescribed activity.

(2) In this Law, a reference to transplantation –

(a) is a reference to transplantation to a human body, and

(b) includes transfusion.

PART II

AUTHORISATION AND CONTROL OF REGULATED ACTIVITIES

Authorisation of regulated activities.

2. (1) Subject to subsection (5), despite any custom or rule of law to the contrary, a person may carry out a regulated activity if it satisfies one or more of conditions A, B and C.

(2) Condition A is that the activity is carried out with express consent or deemed consent.

(3) Condition B is that the activity falls within paragraph (d) or (e) of the definition of "**transplantation activity**" in section 1(1), and the human tissue was –

(a) lawfully removed from the person's body outside the Bailiwick, and

(b) lawfully imported into the Bailiwick.

(4) Condition C is that the activity is authorised by section 5.

(5) Subsection (1) does not apply if the activity is carried out in breach of section 4(1) or 12(2).

(6) This section does not –

(a) make unlawful any dealing with the body of a deceased person or any human tissue from it that would be lawful otherwise than under this Law, or

(b) limit the effect of section 4.

Prohibition of regulated activities.

3. (1) A person must not carry out a regulated activity unless it is authorised by section 2.

(2) A person who contravenes or fails to comply with subsection (1) is guilty of an offence.

Conditions for removal of human tissue from deceased persons.

4. (1) Unless both conditions D and E and any other prescribed condition are satisfied, a person must not remove any human tissue from the body of a deceased person for –

(a) a transplantation activity,

(b) a teaching, research or therapeutic purpose, or

(c) any other prescribed activity.

(2) Condition D is that the person removing the human tissue –

(a) is a registered practitioner, or

(b) is not a registered practitioner but satisfies the conditions in section 1(1)(a) and (b) of the Regulation of

Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015[b] or section 1(1)(a) and (b) of the Regulation of Health Professions (Medical Practitioners) (Sark) Ordinance, 2017[c], as the case may be,

(3) Subject to subsection (4), condition E is that –

(a) two registered practitioners have issued a certificate to the effect that they each have by personal examination of the body satisfied themselves that life is extinct, and

(b) an authorised person has issued a certificate to the effect that the person is of the opinion that there is express consent or deemed consent for the removal of that human tissue for the activity or purpose concerned.

(4) A person removing or using the human tissue must not issue a certificate for the purposes of subsection (3).

(5) A person who contravenes or fails to comply with subsection (1) is guilty of an offence.

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b Ordinance No. XXII of 2015; amended by No. L of 2015 and No. IX of 2016.

c Sark Ordinance No. VI of 2017.

Preservation for transplantation.

5. (1) Where human tissue from the body of a deceased person lying in a hospital, nursing home, mortuary or other institution is or may be suitable for use for transplantation, the controller of the institution may do all or any of the following –

(a) take steps for the purpose of preserving the body or human tissue for use for transplantation,

(b) store the body or human tissue for the purpose mentioned in paragraph (a), and

(c) carry out any other prescribed activity.

(2) Subsection (1)(a) only authorises –

(a) the taking of minimum steps necessary for the purpose mentioned in that provision, and

(b) the use of the least invasive procedure.

(3) Subsection (1) ceases to apply once the controller is aware or has reason to believe that, for the removal of the human tissue from the body for transplantation –

(a) express consent has not been and will not be given, and

(b) there is no deemed consent.

(4) For the avoidance of doubt, subsection (1) does not apply where the body is entrusted to the controller only for the purpose of its interment or cremation.

(5) In this section "**controller**", in relation to any institution –

(a) means the person that has the control or management of the institution, and

(b) includes any person authorised by the person described in paragraph (a) to carry out an activity mentioned in subsection (1).

PART III

CONSENT

Express consent for adults.

6. (1) Express consent is given for a regulated activity involving the removal of human tissue from the body of an adult, or removal of the body of a deceased adult, in each case described in column 1 of Table 1 where the person specified in column 2 of the table has given express consent to the activity –

TABLE 1

	Column 1	**Column 2**
	Case	**Person giving express consent**
1.	The adult is alive.	That adult.

Column 1		Column 2
Case		Person giving express consent
2.	The adult has died and a decision of the adult as to consent to the regulated activity was in effect immediately before the adult's death.	That adult.
3.	The adult has died, case 2 does not apply, the adult had appointed a person under section 9 to deal with the issue of express consent and the appointed person is available to give express consent under the appointment.	The appointed person.
4.	The adult has died, case 2 does not apply and the adult had appointed a person under section 9 to deal with the issue of express consent but the appointed person is unavailable to give express consent under the appointment.	Any person who stood in a qualifying relationship to the adult immediately before the adult's death.
5.	The adult has died and none of cases 2, 3 or 4 applies in relation to that adult.	Any person who stood in a qualifying relationship to the adult immediately before the adult's death.

(2) For the avoidance of doubt, case 1 in Table 1 does not apply to a regulated activity involving the removal of human tissue from the body of a deceased adult or the removal of the body of a deceased adult.

<u>Deemed consent for adults.</u>

7. (1) Consent is deemed to be given for a transplantation activity involving the removal of human tissue from the body of a deceased adult unless –

(a) the human tissue is or contains excluded material,

(b) the case falls within the description of case 2, 3 or 4 of Table 1 in section 6,

(c) a decision of the adult not to consent to transplantation activity is in effect,

(d) the adult is an excepted adult,

(e) the adult would not have consented to the transplantation activity, or

(f) proceeding with the transplantation activity would lead to severe distress in or severe conflict amongst persons who stood in a qualifying relationship to the adult immediately before death.

(2) The Committee may make regulations to regulate the issue by an authorised person of a certificate to the effect that there is deemed consent for the purposes of section 4(3)(b), including regulations prescribing –

(a) the procedure to be followed by an authorised person to determine whether or not there is deemed consent,

(b) the matters to be considered by an authorised person to determine whether or not there is deemed consent, and

(c) the manner and form in which a certificate may be issued.

Express consent for children.

8. (1) Express consent is given for a regulated activity involving the removal of human tissue from the body of a child, or removal of the body of a deceased child, in each case described in column 1 of Table 2 where the person specified in column 2 of the table has given express consent to the activity –

TABLE 2

	Column 1	**Column 2**
	Case	**Person by whom the express consent is given**
1.	The child is alive, no decision of the child as to consent to the regulated activity is in effect, and either the child is not competent to deal with the issue of express consent or is competent to deal with the issue but fails to do so.	Any person who has parental responsibility for the child.
2.	The child is alive and case 1 does not apply.	That child.
3.	The child has died and a decision of the child as to consent to the regulated activity was in effect immediately before that child's death.	That child.
4.	The child has died, case 3 does not apply, the child had appointed a person under section 9 to deal with the issue of express consent and the appointed person is available to give express consent under the appointment.	The appointed person.
5.	The child has died, case 3 does not apply and	Any person who had parental

Column 1		Column 2
Case		Person by whom the express consent is given
	the child had appointed a person under section 9 to deal with the issue of express consent but the appointed person is unavailable to give express consent under the appointment.	responsibility for the child immediately before the child's death or, where no such person exists, the consent of any person who stood in a qualifying relationship to that child immediately before that child's death.
6.	The child has died and none of cases 3, 4 or 5 applies in relation to that child.	Any person who had parental responsibility for the child immediately before the child's death or, where no such person exists, the consent of any person who stood in a qualifying relationship to that child immediately before that child's death.

(2) For the avoidance of doubt, neither case 1 nor case 2 in Table 2 applies to a regulated activity involving the removal of human tissue from the body of a deceased child or the removal of the body of a deceased child.

Appointment of persons to deal with consent.

9. (1) A person may appoint one or more individuals ("**appointed persons**") to represent the person after death to deal with the issue of express consent for the purposes of this Law.

(2) An appointment may be –

(a) general, or

(b) limited to express consent to one or more regulated activities specified in the appointment.

(3) An appointment may be made orally or in writing.

(4) An oral appointment is valid only if made in the presence of at least two witnesses present at the time the appointment is made.

(5) A written appointment is valid only if –

(a) it is signed by the person making it in the presence of at least one witness who attests to the signature,

(b) it is signed at the direction of the person making it, in that person's presence and in the presence of at least one witness who attests to the signature,

(c) it is contained in the will of the person making it,

(d) it is an appointment made in a lasting power of attorney concerning the person's health and welfare under the Capacity (Bailiwick of Guernsey) Law, 2020[d], or

(e) it is made in any other circumstances, or in accordance with any other procedures, prescribed by regulations made by the Committee.

(6) Where a person appoints two or more individuals to deal with the issue of express consent to the same regulated activity, those two or more individuals are to be regarded as appointed to act jointly and severally unless the appointment provides that they are appointed only to act jointly.

(7) An appointment may be revoked or amended at any time and subsections (3), (4) and (5) apply with appropriate modifications to a revocation or an amendment as they apply to the making of an appointment.

(8) An appointed person may at any time renounce the appointment.

(9) An appointed person is to be treated as being unavailable to give express consent under the appointment if –

(a) proscribed by regulations made by the Committee,

(b) the appointed person is a child,

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d Order in Council No. ** of 2020.

(c) the appointed person is dead or physically or legally incapable of giving express consent,

(d) it is not reasonably practicable to communicate with the appointed person within the time available if express consent is to be acted upon, or

(e) the appointed person has renounced the appointment.

Competence of guardians of adults.

10. (1) This section applies where a person ("**A**") is the guardian of an adult ("**B**") under any custom or rule of law.

(2) For the avoidance of doubt, A is not competent to do any of the following by virtue only of being the guardian of B –

(a) to give express consent on behalf of B,

(b) to appoint one or more persons to represent B after death to deal with the issue of express consent for the purposes of this Law, or

(c) to otherwise deal with the issue of express consent for B.

Competence of children.

11. (1) Unless shown to the contrary, a child is presumed to be competent for the purposes of this Law if the child is of or over the designated age.

(2) Subsection (1) has effect despite any custom, rule of law or provision in any other enactment to the contrary.

(3) In this section –

"**competent**", in relation to any child, means competent –

(a) to give express consent,

(b) to appoint one or more persons to represent the child after death to deal with the issue of express consent, or

(c) to otherwise deal with the issue of express consent, and

"**designated age**" means –

(a) the age of 16 years, or

(b) any other age prescribed in place of the age in paragraph (a).

Restrictions on consent where post-mortem, etc. may be required.

12. (1) This section applies where a person ("**A**") has died and another person ("**B**") is aware or has reason to believe that Her Majesty's Procureur might require a post-mortem examination to be carried out on A's body or might direct an inquest to be held into A's death.

(2) Where this section applies, B must not give or act on any consent to a regulated activity involving A's body or human tissue from it unless

authorised by Her Majesty's Procureur.

(3) Subsection (2) has effect despite any other provision to the contrary in this Law.

(4) A person who contravenes or fails to comply with subsection (2) is guilty of an offence and liable on summary conviction or conviction on indictment to a fine not exceeding twice level 5 on the uniform scale.

(5) Subsection (4) has effect subject to –

(a) the limits on the criminal jurisdiction of the Court of Alderney imposed by section 13 of the Government of Alderney Law, 2004[e], and

(b) the limits on the criminal jurisdiction of the Court of the Seneschal imposed by section 11 of the Reform (Sark) Law, 2008[f].

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[e] Order in Council No. III of 2005; as amended by Order in Council No. XXII of 2010; No. XI of 2012; No. V of 2014; Alderney Ordinance No. IX of 2016.

[f] Order in Council No. V of 2008; amended by Nos. VI and XXVII of 2008; No. XIV of 2010; No. XII of 2011; No. XI of 2014; No. IX of 2016; No. IX of 2017; Sark Ordinance Nos. II and VI of 2015; No. XI of 2017; No. XIII of 2018.

PART IV

FURTHER OFFENCES AND PENALTIES

Providing false, deceptive or misleading information.

13. (1) A person is guilty of an offence if –

(a) in purported compliance with any condition, requirement or duty imposed under this Law, or

(b) otherwise than as mentioned in paragraph (a) but in circumstances where the person knows, or could reasonably be expected to know, that the information would or could be used or relied on by any other person for the purpose of making a determination or carrying out an activity under this Law,

that person does any of the following –

(i) makes a statement which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

(ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,

(iii) produces or furnishes, or causes or permits to be produced or furnished, any information which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or

(iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information which is false, deceptive or misleading in a material particular.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction or conviction on indictment to a fine not exceeding level 3 on the uniform scale.

(3) In subsection (1), "**making a determination or carrying out an activity under this Law**" –

(a) means any determination or activity required or authorised by any provision of this Law, and

(b) without limiting the generality of paragraph (a), includes –

(i) carrying out a regulated activity,

(ii) issuing any certificate required under any provision of this Law, and

(iii) determining whether or not there is express or deemed consent in any particular case.

General penalty.

14. (1) A person who is guilty of an offence for which no other provision in this Law provides a penalty is liable –

(a) on summary conviction to imprisonment for a term not exceeding two years, a fine not exceeding twice level 5 on the uniform scale, or both, and

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

(2) Subsection (1)(a) has effect subject to –

(a) the limits on the criminal jurisdiction of the Court of Alderney imposed by section 13 of the Government of Alderney Law, 2004, and

(b) the limits on the criminal jurisdiction of the Court of the Seneschal imposed by section 11 of the Reform (Sark) Law, 2008.

Defence of due diligence.

15. (1) In proceedings for an offence under this Law, it is a defence for the defendant ("**A**") to prove that both –

(a) the commission of the offence was due to a mistake or the reliance on information supplied to A, or to the act or default of another person, an accident or some other cause beyond A's control, and

(b) A exercised due diligence and took all reasonable precautions to avoid commission of the offence.

(2) If reliance on the defence provided by subsection (1) involves the allegation that the commission of the offence was due to reliance on information supplied by another person or to the act or default of another person, A is not, without leave of the court, entitled to rely on that defence unless, not less than 7 working days before the hearing, A has served on the prosecutor written notice providing information identifying, or assisting in the identification of, that other person.

(3) This section does not apply to an offence under section 13.

Criminal liability of directors and other officers.

16. (1) Where an offence under this Law is committed by a body corporate, limited partnership with legal personality or foundation 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 body corporate, any director, controller, manager, secretary or other similar officer,

(b) in the case of a limited partnership with legal personality, any general partner,

(c) in the case of a foundation, any foundation official, or

(d) any person purporting to act in a capacity described in paragraph (a), (b) or (c),

that person as well as the body corporate, limited partnership or foundation is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with the member's functions of management as if the member were a director.

<u>Criminal proceedings against unincorporated bodies.</u>

17. (1) 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 (not being a limited partnership with legal personality, or a limited liability partnership incorporated under the Limited Liability Partnerships (Guernsey) Law, 2013[g]), any partner,

(b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or

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[g] Order in Council No. VI of 2014; amended by No. VI of 2017; Ordinance No. XII of 2015; No. IX of 2016 and Ordinance No. XXVII of 2018.

(c) any person purporting to act in a 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.

(2) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence must, without prejudice to subsection (1), be brought in the name of the body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction for an offence under this Law must be paid from the funds of the body.

PART V

GENERAL AND MISCELLANEOUS

Post-mortem examinations, inquests, etc. excluded from this Law.

18. This Law does not apply to anything done for the purposes of discharging or facilitating the discharge of any function of Her Majesty's Procureur or any court of the Bailiwick in relation to a post-mortem examination or an inquest.

Exclusion of liability.

19. (1) Subject to subsection (2), an authorised person is not liable in damages or personally liable in any civil proceedings in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of the authorised person's functions under this Law, unless the thing was done or omitted to be done in bad faith.

(2) Subsection (1) does not apply so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000[h].

Codes of practice and guidance.

20. (1) The Committee may issue a code of practice for the purposes of this Law and, in particular (but without limitation) –

(a) for the guidance of any person acting under this Law in connection with any regulated activity, or

(b) with respect to any other matter that the Committee considers appropriate.

(2) A person must have regard to any relevant code when acting under this Law.

(3) Subsection (4) applies where it appears to a court or tribunal, when conducting any civil or criminal proceedings, that either or both of the following are relevant to a question arising in those proceedings –

(a) any provision of a code, or

(b) a failure to comply with any provision of a code.

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h Order in Council No. XIV of 2000; as amended by Order in Council No. I of 2005; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. XX of 2015; No. IX of 2016; No. XXVI of 2018; and G.S.I. No. 27 of 2006.

(4) Where this subsection applies -

(a) failure to comply with a relevant provision of a code issued under this section may be relied upon as tending to establish liability in those proceedings, and

(b) compliance with a relevant provision of such a code may be relied upon as tending to negative liability in those proceedings.

(5) Section 20 of the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016[i] applies with all necessary modifications to a code as that provision applies to regulations made under this Law.

(6) Before issuing, amending or revoking a code, the Committee must consult stakeholders in a manner that the Committee considers appropriate.

(7) The Committee must publish a code and any amendment or revocation of it in a manner that the Committee considers appropriate to bring it to the attention of stakeholders.

(8) With a view to securing compliance with this Law, including any code, the Committee may issue guidance on any matter it considers appropriate.

(9) In this section –

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[i] Order in Council No. V of 2018; as amended by Ordinances No. XXII and XXVI of 2018.

"**code**" means a code of practice issued under subsection (1), and

"**stakeholders**", in relation to a code, means bodies or persons likely to be concerned with or affected by the provisions of the code.

General power to make Ordinances.

21. (1) The States of Deliberation may by Ordinance make any provision that the States considers appropriate for the purpose of giving effect to this Law.

(2) Without limiting the generality of subsection (1), the States of Deliberation may make an Ordinance for all or any of the following purposes –

(a) further regulating any regulated activity,

(b) exempting any regulated activity from a provision of this Law, and

(c) prescribing or otherwise providing for any matter required or authorised to be prescribed or otherwise provided for by any provision of this Law.

(3) Subject to subsection (4), an Ordinance may–

(a) provide for the creation, trial (summarily or on indictment) and punishment of offences,

(b) give any function to any committee of the States of Guernsey, the States of Alderney, the Chief Pleas of

Sark or any other person,

(c) empower any committee of the States of Guernsey, the States of Alderney, the Chief Pleas of Sark or any other person to –

(i) make subordinate legislation, or

(ii) issue a code of practice or guidance,

(d) provide that no liability is to be incurred by any person in respect of anything done or omitted in the discharge or purported discharge of the person's functions under this Law unless the thing is done or omitted in bad faith,

(e) repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law, and

(f) make any such provision to any extent that might be made by Projet de Loi, but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

(4) An Ordinance may not –

(a) provide for offences to be triable only on indictment, or

(b) authorise the imposition –

(i) on summary conviction, of imprisonment for a term exceeding 12 months, or a fine exceeding level 5 on the uniform scale, or

(ii) on conviction on indictment, of imprisonment for a term exceeding two years.

(5) Before recommending that the States of Deliberation agree to make an Ordinance under this Law, the Committee must consult –

(a) in the case of an Ordinance having effect in Alderney, the Policy & Finance Committee of the States of Alderney, and

(b) in the case of an Ordinance having effect in Sark, the Policy and Finance Committee of the Chief Pleas of Sark,

in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection does not invalidate any Ordinance made under this Law.

(6) An Ordinance made under this Law ceases to have effect –

(a) in Alderney if, within the period of four months immediately following the approval date, the States of Alderney resolve to disapprove its application to Alderney, and

(b) in Sark if, at the first or second meeting of the Chief Pleas of Sark following the approval date, the Chief Pleas resolve to disapprove its application to Sark.

(7) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of an Ordinance in accordance with subsection (6), the Ordinance ceases to have effect in Alderney or (as the case may be) Sark, but without prejudice to –

(a) anything done under the Ordinance in Alderney or (as the case may be) Sark, or

(b) the making of a new Ordinance having effect in Alderney or (as the case may be) Sark.

(8) In this section, "**approval date**", in relation to an Ordinance, means the date on which the Ordinance is approved by the States of Deliberation.

Power to amend Law by Ordinance.

22. The States of Deliberation may by Ordinance amend or substitute all or any of the following provisions of this Law –

(a) Table 1 in section 6,

(b) section 7,

(c) Table 2 in section 8,

(d) section 9,

(e) section 24, and

(f) section 25.

Power to make regulations.

23. (1) The Committee may make regulations for all or any of the following purposes –

(a) registering, recognising, confirming or otherwise giving effect to –

(i) the giving of express consent to a regulated activity, or

(ii) a decision not to consent to a regulated activity,

(b) charging fees for the provision or issue of any report or certificate or the exercise or performance of any other function under this Law, or

(c) prescribing or otherwise providing for any matter required or authorised, by any provision of this Law or any Ordinance made under it, to be prescribed or provided for by regulations.

(2) Regulations made under subsection (1)(b) may –

(a) specify who must pay the fee to whom,

(b) specify the fee payable or a method by which the fee payable must be calculated, and

(c) specify the manner and time in which the fee must be paid.

(3) Before making any regulations under this Law, the Committee must consult –

(a) in the case of regulations having effect in Alderney, the Policy & Finance Committee of the States of Alderney, and

(b) in the case of regulations having effect in Sark, the Policy and Finance Committee of the Chief Pleas of Sark,

in relation to the terms of the proposed regulations; but a failure to comply with this subsection does not invalidate any regulations made under this Law.

(4) Regulations made under this Law cease to have effect –

(a) in Alderney if, within the period of four months immediately following the relevant date, the States of Alderney resolve to disapprove the application of those regulations to Alderney, and

(b) in Sark if, at the first or second meeting of the Chief Pleas of Sark following the relevant date, the Chief Pleas resolve to disapprove the application of those regulations to Sark.

(5) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of any regulations in accordance with subsection (6), those regulations ceases to have effect in Alderney or (as the case may be) Sark, but without prejudice to –

(a) anything done under those regulations in Alderney or (as the case may be) Sark, or

(b) the making of new regulations having effect in Alderney or (as the case may be) Sark.

(6) Regulations made under this Law must be laid before a meeting of the States of Deliberation as soon as possible and, if at that or the next meeting the States resolve to annul them, these regulations cease to have effect without prejudice to anything done under them or to the making of new regulations.

(7) In this section, "**relevant date**", in relation to any regulations, means the date on which those regulations are made by the Committee.

Meaning of "excepted adult".

24. (1) A deceased adult is an excepted adult for the purposes of this Law only if –

(a) throughout all or the majority of the designated period, the adult had lacked capacity to understand the notion that consent to a regulated activity can be deemed to be given, or

(b) the adult had not been ordinarily resident in the Bailiwick for the designated period.

(2) The Committee may make regulations prescribing circumstances in which a person is to be regarded to be, or not to be, ordinarily resident in the Bailiwick for the purposes of this section.

(3) In this section, "**the designated period**" means the period of 12 months immediately before dying.

Meaning of "qualifying relationship".

25. (1) For the purposes of express consent to a regulated activity, a person ("**A**") stands in a qualifying relationship to another person ("**B**") in any of the following circumstances –

(a) A is a spouse or civil partner of B,

(b) A is a parent or child of B,

(c) A is a brother or sister of B,

(d) A is a grandparent or grandchild of B,

(e) A is the brother or sister of a parent of B,

(f) B is the brother or sister of a parent of A,

(g) A is the stepfather or stepmother of B,

(h) A is a long standing friend of B,

(i) B is living in the care of A pursuant to an order made under section 14 of the Children (Guernsey and Alderney) Law, 2008[j] or section 13 of the Children (Sark) Law, 2016[k], as the case may be,

(j) A is the guardian of B under any custom or rule of law, or

(k) any other circumstances prescribed by regulations made by the Committee.

(2) For the purposes of subsection (1), a relationship of the whole blood includes a relationship of the half-blood.

(3) For the purposes of subsection (1)(a), A is a "**civil partner**" of B if –

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j Order in Council No. XIV of 2009; amended by No. XI of 2009 and No. VI of 2016; Ordinance No. XLVIII of 2009, Nos. IX and XX of 2016 and No. VI of 2017.

k Order in Council No. VIII of 2016; amended by Guernsey Ordinance No. IX of 2016; Sark Ordinance No. I of 2017.

(a) A and B are in a civil partnership which exists under or by virtue of the Civil Partnership Act 2004[1] or equivalent legislation in force anywhere in the British Islands,

(b) A and B are in a same sex relationship registered outside the British Islands which is entitled to be treated as a civil partnership under the Civil Partnership Act 2004 or equivalent legislation in force anywhere in the British Islands, or

(c) A is living with B as an unmarried partner (whether same sex or not) in a relationship akin to marriage or a civil partnership (within the meaning of paragraph (a) or (b)) and neither of them is a spouse or civil partner (within the meaning of this definition) of any other person.

Human tissue from a body.

26. In this Law –

(a) a reference to human tissue from the body of a living person is a reference to human tissue from the body of a person who is alive at the point of the separation of the human tissue from the body,

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1 An Act of Parliament (Chapter 33 of 2004).

(b) a reference to human tissue from the body of a deceased person is a reference to human tissue from the body of a person who is not alive at the point of the separation of the human tissue from the body, and

(c) a reference to human tissue from a body excludes anything created outside the body.

Interpretation.

27. In this Law, unless the context requires otherwise –

"**adult**" means a person who is 18 years of age or more,

"**appointed person**" means an individual appointed under section 9 to represent a person after death to deal with the issue of express consent for the purposes of this Law,

"**approval date**": see section 21(8),

"**authorised person**" means a person authorised for the purposes of this Law –

(a) by regulations made by the Committee, or

(b) otherwise in writing by the Committee,

"**the Bailiwick**" means the Bailiwick of Guernsey,

"**certificate**" means a certificate in a form approved by the Committee, "**child**" means a person who is under 18 years of age,

"**civil partner**": see section 25(3),

"**code**": see section 20(9),

"**the Committee**" means the States of Guernsey Committee for Health and Social Care,

"**competent**": see section 11,

"**consent**" means express consent or deemed consent,

"**controller**" has the meaning given by section 5(5),

"**deemed consent**" means consent deemed to be given under section 7,

"**designated age**": see section 11(3),

"**designated period**": see section 24(3),

"**embryo**" –

(a) means a live human embryo where fertilisation is complete, and

(b) is deemed to include an egg in the process of fertilisation, and for the purposes of paragraph (a), fertilisation is not complete until the appearance of a two-cell zygote,

"**excepted adult**" has the meaning given by section 24,

"**excluded material**" means any prescribed human tissue,

"**express consent**" means express consent given in accordance with section 6 or 8,

"**foundation**" means –

(a) a foundation created under the Foundations (Guernsey) Law, 2012[m], or

(b) an equivalent or similar body (however named) created or established under the law of any other jurisdiction,

"**human tissue**" –

(a) means material which consists of or includes human cells, but

(b) excludes –

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[m] Order in Council No. I of 2013; amended by No. VI of 2017; Ordinance No. IX of 2016 and Ordinance No. XXVII of 2018.

(i) live human gametes (other than eggs in the process of fertilisation),

(ii) embryos outside the human body,

(iii) hair or nail from the body of a living person, and

(iv) any other prescribed material,

"**this Law**" includes any Ordinance, regulations or code of practice made under a provision of this Law,

"**limited partnership**" means –

(a) an arrangement which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995[n], or

(b) an arrangement entered into under the laws of a jurisdiction outside Guernsey between two or more persons, under which –

(i) one or more of them is, or are jointly and

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n Ordres en Conseil Vol. XXXVI, p. 264; amended by Vol. XXXVI, p. 571; Order in Council No. IV of 2001, No. X of 2007 and No. VIII of 2008; Ordinance No. XXXIII of 2003 and No. IX of 2016; G.S.I. No. 89 of 2008 and No. 51 of 2016.

severally, liable without limitation for all debts and obligations to third parties incurred pursuant to the arrangement, and

(ii) the others have, by whatever means, contributed or agreed to contribute specified amounts pursuant to the arrangement and are not liable for those debts and obligations (unless they participate in controlling the business or are otherwise subjected to a greater liability by those laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality,

"**making a determination or carrying out an activity under this Law**": see section 13(3),

"**parental responsibility**", in relation to any child, has the meaning given by section 5 of the Children (Guernsey and Alderney) Law, 2008 or section 4 of the Children (Sark) Law, 2016, as the case may be,

"**prescribed**" means prescribed by an Ordinance made by the States of Deliberation,

"**qualifying relationship**": see section 25,

"**registered practitioner**" –

(a) in Guernsey or Alderney, means a registered practitioner within the meaning of section 26(1) of the Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015, and

(b) in Sark, means a registered practitioner within the meaning of section 47(1) of the Regulation of Health Professions (Medical Practitioners) (Sark) Ordinance, 2017,

"**regulated activity**" has the meaning given by section 1(1),

"**relevant date**": see section 23(7),

"**repeal date**": see section 29(4),

"**stakeholders**": see section 20(9),

"**teaching, research or therapeutic purpose**" means –

(a) the teaching of anatomy,

(b) medical education or research, or

(c) a therapeutic purpose,

"**transplantation**": see section 1(2), and "**transplantation activity**" has the meaning given by section 1(1).

Repeal.

28. The Human Tissue (Bailiwick of Guernsey) Law, 1981[o] is repealed.

Transitional.

29. (1) This section applies where a body or part of a body is removed before the repeal date in accordance with an authority given under section 1 of the Human Tissue (Bailiwick of Guernsey) Law, 1981 ("**the previous authority**").

(2) Despite the repeal of the Human Tissue (Bailiwick of Guernsey) Law, 1981, the following are and continue to be lawful on and after the repeal date as if that Law had not been repealed –

(a) the removal of the body or part of the body, and

(b) any use of the body or part of the body in accordance with the previous authority.

(3) Nothing in this Law applies on or after the repeal date to prohibit or restrict –

(a) any use of the body or part of the body in accordance with the previous authority, or

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[o] Ordres en Conseil Vol. XXVI, p. 299; amended by Ordinance No. XXXIII of 2003 and No. IX of 2016.

(b) any other activity carried out for the purpose of enabling or facilitating the use of the body or part of the body in accordance with the previous authority,

if the use or, as the case may be, other activity would have been lawful under the Human Tissue (Bailiwick of Guernsey) Law, 1981 before the repeal date.

(4) In this section, "**repeal date**" means the date on which section 28 of this Law comes into force.

Citation.

30. This Law may be cited as the Human Tissue and Transplantation (Bailiwick of Guernsey) Law, 2020.

Commencement.

31. This Law shall come into force on the date appointed by Ordinance of the States; and different dates may be appointed for different provisions and for different purposes.

P.2020/64

<u>THE STATES OF DELIBERATION</u>
<u>of the</u>
<u>ISLAND OF GUERNSEY</u>

THE POPULATION MANAGEMENT (GUERNSEY) (AMENDMENT) LAW, 2019 (COMMENCEMENT) ORDINANCE, 2020

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Population Management (Guernsey) (Amendment) Law, 2019 (Commencement) Ordinance, 2020", and to direct that the same shall have effect as an Ordinance of the States.

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

EXPLANATORY MEMORANDUM

This Ordinance commences the Population Management (Guernsey) (Amendment) Law, 2019, which will come into force on the 6^{th} May, 2020.

The Population Management (Guernsey) (Amendment) Law, 2019 (Commencement) Ordinance, 2020

THE STATES, in exercise of the powers conferred on them by section 3 of the Population Management (Guernsey) (Amendment) Law, 2019[a] and of all other powers enabling them in that behalf, hereby order:-

Commencement of the Population Management (Guernsey) (Amendment) Law, 2019.

1. The Population Management (Guernsey) (Amendment) Law, 2019 shall come into force on the 6th May, 2020.

Citation.

2. This Ordinance may be cited as the Population Management (Guernsey) (Amendment) Law, 2019 (Commencement) Ordinance, 2020.

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[a] Order in Council No. I of 2020.

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<u>THE STATES OF DELIBERATION</u>
<u>of the</u>
<u>ISLAND OF GUERNSEY</u>

THE MACHINERY OF GOVERNMENT (TRANSFER OF FUNCTIONS) ORDINANCE, 2020

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Machinery of Government (Transfer of Functions) Ordinance, 2020", and to direct that the same shall have effect as an Ordinance of the States.

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

EXPLANATORY MEMORANDUM

Section 1 of this Ordinance transfers to the Committee for Health & Social Care the functions of the Committee for Employment & Social Security relating to (i) health service benefits provided under the Health Service (Benefit) (Guernsey) Law, 1990, and (ii) travelling allowance grant under the Social Insurance (Guernsey) Law, 1978. Sections 2 to 4 make related provision in relation to the consequent amendment of statutory references, relevant things done or in the process of being done before the Ordinance comes into force, and subordinate legislation. Section 5 makes appropriate alternative provision in respect of the one relevant provision in the Health Service (Benefit) (Guernsey) Law, 1990 where specific provision is necessary. Section 6 sets out what are effectively consequential amendments to the Social Insurance (Guernsey) Law, 1978 that flow from the transfer of functions made in respect of travelling allowance grant, in relation to associated regulation making powers. Section 7 amends the Alderney (Application of Legislation) (Health Service) (Benefit) Ordinance, 1990 to provide for amendments to the Health Service (Benefit) (Guernsey) Law, 1990 to automatically extend to Alderney. Sections 8 and 9 are the citation and commencement provisions.

The Machinery of Government (Transfer of Functions) Ordinance, 2020

THE STATES, in pursuance of their Resolutions of the 13th June, 2019[a], and in exercise of the powers conferred on them by sections 1 and 3 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991[b], sections 115A and 116 of the Social Insurance (Guernsey) Law, 1978[c], section 1 of the Alderney (Application of Legislation) Law, 1948[d], and all other powers enabling them in that behalf, hereby order:-

<u>Transfer of Functions.</u>

1. The functions, rights and liabilities of the Committee for Employment & Social Security arising under –

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a Article VII of Billet d'État No. X of 2019.

b Ordres en Conseil Vol. XXXIII, p. 478; as amended by Ordinance No. XXXIII of 2003 and No. IX of 2016.

c Ordres en Conseil Vol. XXVI, p. 292; as amended by Ordres en Conseil Vol. XXVII, pp. 238, 307 and 392; Vol. XXIX, pp. 24, 148 and 422; Vol XXXI, p. 278; Vol. XXXII, p. 59; Vol. XXXIV, p. 510; Vol. XXXV(1), p. 164; Vol. XXXVI, pp. 123 and 343; Vol. XXXVIII, p. 59: Vol. XXXIX, p. 107; Order in Council No. X of 2000; No. IX of 2001; No. XXIII of 2002; No. XXIV of 2003; No. XI of 2004; No. XVIII of 2007; No. V of 2012; No. IV of 2014; No. III of 2016 and No. IV of 2018; Recueil d'Ordonnances Tome XXV, p. 148; Tome XXVI, p. 177; Ordinance No. XXXIII of 2003; No. XLIV of 2007; Nos. VII and XLII of 2009; No. XVII of 2011; No. XXXVIII of 2012; No. XXX of 2013; Nos. IX and XXX of 2016; Nos. XIII and XXIII 2017; Nos. XXVII and XXIX of 2019; and Alderney Ordinance No. VIII of 2018.

d Ordres en Conseil Vol. XIII, p. 448; as amended by Ordres en Conseil Vol. XVI, pp. 124 and 126; Vol. XXIV, p. 210; Vol. XXXIX, p. 299; Vol. XXX, p. 224; Vol. XXXVII, p. 251; Ordinance No. XXXIII of 2003; No. XXXIII of 2007; and No. IX of 2016.

(a) Parts II to VI, sections 21 to 23, and Parts VIII to X of the Health Service (Benefit) (Guernsey) Law, 1990[e], and

(b) section 36 of the Social Insurance (Guernsey) Law, 1978,

are transferred to and vested in the Committee for Health & Social Care; and the Parts and sections listed in paragraphs (a) and (b) are referred to in this Ordinance as the "**Relevant Enactments**".

Amendment of statutory references.

2. For any reference in the Relevant Enactments to the Committee for Employment & Social Security, however expressed, there is substituted a reference to the Committee for Health & Social Care.

Savings and transitional provisions.

3. Anything done before the date of commencement of this Ordinance, or in the process of being done on that date, by or in relation to the Committee for Employment & Social Security under the Relevant Enactments shall have effect as if done or (as the case may be) may be continued by or in relation to the Committee for Health & Social Care.

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[e] Ordres en Conseil Vol. XXXII, p. 192; amended by Order in Council No. IX of 2003; No. II of 2011; No. IV of 2018; Recueil d'Ordonnances Tome XXVI, pp. 177 and 483; Ordinance Nos. XXII and XXVII of 2002; No. XXI and XXXIII of 2003; No. XLII of 2006; No. XLIII of 2007; No. XXII of 2015; Ordinance Nos. IX and XLIV of 2016; No. XLIV of 2016; and No. XXX of 2019.

Subordinate legislation.

4. The provisions of sections 1 to 3 apply in relation to any Ordinance or subordinate legislation made or having effect as if made under the Relevant Enactments as they apply in relation to the Relevant Enactments themselves, and the provisions of the enactment under which the subordinate legislation was made are varied insofar as is necessary to give effect to this section.

Exceptions.

5. (1) Sections 1 to 4 do not apply in respect of the definitions of "**approved primary care mental health and wellbeing service arrangement**" and "**approved visiting medical specialist arrangement**" in section 39(1) of the Health Service (Benefit) (Guernsey) Law, 1990, as that Law applies in relation to specialist medical benefit by virtue of the Health Service (Specialist Medical Benefit) Ordinance, 1995[f].

(2) In the definitions of the arrangements referred to in subsection (1), for "Committee for Employment & Social Security" substitute "States Policy & Resources Committee".

(3) Anything done before the date of commencement of this Ordinance, or in the process of being done on that date, by or in relation to the Committee for Employment & Social Security under the arrangements referred to in subsection (1) shall have effect as if done or (as the case may be) may be continued by or in relation to the Policy & Resources Committee.

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[f] Recueil d'Ordonnances Tome XXVI, p. 484; as amended by Ordinance No. XXIX of 2002; No. XXXIII of 2003; No. XLII of 2013; No. LVII of 2014 and. No. IX of 2016.

<u>Amendment of Social Insurance (Guernsey) Law, 1978.</u>

6. (1) The Social Insurance (Guernsey) Law, 1978 is amended as follows.

(2) In section 64(4)(d), delete ", travelling allowance grant".

(3) After section 64(4)(d), insert –

"(da) for enabling the Guernsey Committee for Health & Social Care to pay any sum payable by way of travelling allowance grant in respect of any liability incurred by the beneficiary or any other person to the person for the time being entitled to give a discharge in respect of such a liability,".

(4) In section 116(2), for "the States or the Committee", substitute "the States, the Committee, or the Guernsey Committee for Health & Social Care".

(5) In section 117, after "the Committee" at the first time it appears insert "or the Guernsey Committee for Health & Social Care", and after "the Committee" at the second time it appears insert "or the Guernsey Committee for Health & Social Care (as the case may be)".

<u>Amendment of the Alderney (Application of Legislation) (Health Service) (Benefit) Ordinance, 1990.</u>

7. For section 1 of the Alderney (Application of Legislation) (Health Service) (Benefit) Ordinance, 1990[g] substitute –

"**<u>Law to have effect in Alderney</u>.**

1. The Health Service (Benefit) (Guernsey) Law, 1990 (subject to such amendments, modifications, exceptions and adaptations as are enacted from time to time) is extended to the Island of Alderney subject to the exceptions, adaptations and modifications set out in the Schedule.".

<u>Citation.</u>

8. This Ordinance may be cited as the Machinery of Government (Transfer of Functions) Ordinance, 2020.

<u>Commencement.</u>

9. This Ordinance shall come into force on 11th May, 2020.

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[g] Recueil d'Ordonnances Tome XXV, p. 204; as amended by Recueil d'Ordonnances Tome XXVI, p. 489; Tome XXVI, p. 499; Tome XXVII, p. 9; Tome XXVIII, p. 11; and Ordinance No. XXXIV of 2002.

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<u>THE STATES OF DELIBERATION</u>
<u>of the</u>
<u>ISLAND OF GUERNSEY</u>

THE PILOTAGE (AMENDMENT) ORDINANCE, 2020

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Pilotage (Amendment) Ordinance, 2020", and to direct that the same shall have effect as an Ordinance of the States.

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

EXPLANATORY MEMORANDUM

This Ordinance amends the Pilotage Ordinance, 1967 ("the 1967 Ordinance") to require pilots to produce medical certificates which comply with UK Merchant Shipping Notice 1886 (which deals with Seafarer's medical reports and certificates), and to remove the requirement for general pilots to retire when they reach the age of 65. That latter amendment provides for general pilots to elect to retire at 65, or to do so at a later age provided that they continue to hold a valid medical certificate which complies with the requirements of section 12 of the 1967 Ordinance.

The Pilotage (Amendment) Ordinance, 2020

THE STATES, in pursuance of their Resolutions of the 16th October, 2019[a], and in exercise of the powers conferred on them by section 1 of the Pilotage (Guernsey) Law, 1966[b] and all other powers enabling them in that behalf, hereby order:-

Amendment of the Pilotage Ordinance.

1. (1) The Pilotage Ordinance, 1967[c] is amended as follows.

(2) In section 12 renumber the text as subsection (1).

(3) For section 12(1)(b), substitute -

"(b) in the case of a general pilotage licence, the applicant produces a medical certificate that he is medically fit to carry out his duties as a pilot -

(i) signed by a medical practitioner who is approved under Annex B of

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a Article VII of Billet d'État No. XX of 2019.

b Ordres en Conseil Vol. XX, p. 206; as amended by Vol. XXIX, p. 340; Vol. XXXI, p. 278; Order in Council No. XXI of 2001; Ordinance No. XXXIII of 2003; and No. IX of 2016.

c Recueil d'Ordonnances Tome XV, p. 50; as amended by Ordres en Conseil Vol. XXXI, p. 278; Recueil d'Ordonnances Tome XVIII, pp. 19, 24 and 143; Tome XX, pp. 158 and 161; Tome XXIII, p. 34; Tome XXIV, p. 1; Tome XXVI, p. 118; and Ordinance No. XXXIII of 2003; No. XII of 2012; No. IX of 2015; and No. IX of 2016.

Merchant Shipping Notice 1886, and

(ii) issued in compliance with subsection (2) of this section.".

(4) After section 12(1) insert -

"(2) The medical certificate referred to in subsection (1)(b) of this section shall only be issued -

(a) where the medical practitioner, having regard to the medical fitness standards specified in Merchant Shipping Notice 1886, considers that the applicant is fit to perform the duties of a general pilot, and

(b) in the same or equivalent form to an ML5 medical certificate specified in Merchant Shipping Notice 1886.".

(5) For section 28, substitute -

"**Retirement of general pilots.**

28. (1) Subject to the provisions of subsection (2), a general pilot shall retire -

(a) on attaining the age of sixty-five years, or

(b) at any later age that he elects to retire, provided that he continues to hold a valid medical certificate referred to in section 12.

(2) A pilotage licence shall cease to be valid on the retirement of a general pilot.

(3) As soon as may be after his pilotage licence ceases to be valid in pursuance of the provisions of subsection (2), a general pilot shall return it to the States Harbourmaster who shall cancel the pilotage licence and shall make an appropriate note against the entry relating thereto in the register of pilotage licences.".

(6) In section 55(1), insert (in their correct alphabetical order) –

""**Merchant Shipping Notice 1886**" means the notice of that number issued by the MCA, as amended from time to time,", and

""**the MCA**" means the Maritime and Coastal Agency of the United Kingdom,".

Citation.

2. This Ordinance may be cited as the Pilotage (Amendment) Ordinance, 2020.

Commencement.

3. This Ordinance shall come into force on the 6th May, 2020.

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THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE BANKING DEPOSIT COMPENSATION SCHEME (BAILIWICK OF GUERNSEY) (AMENDMENT) ORDINANCE, 2020

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Banking Deposit Compensation Scheme (Bailiwick of Guernsey) (Amendment) Ordinance, 2020", and to direct that the same shall have effect as an Ordinance of the States.

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

EXPLANATORY MEMORANDUM

This Ordinance amends the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008. It confirms that members of the Guernsey Banking Deposit Compensation Board hold and vacate office in accordance with their terms and conditions of appointment, which may also stipulate a notice period. It also allows for negative interest rates; increases the existing aggregate payment cap from £1,000,000 to £2,000,000 in any calendar year and removes the 3 years profits cap; changes the payment timescales for compensation levies by participant banks; clarifies that each participant bank’s duty to co-operate includes the provision of personal data; and explicitly requires participant banks to provide data promptly to the Board.

The Banking Deposit Compensation Scheme (Bailiwick of Guernsey) (Amendment) Ordinance, 2020

THE STATES, in pursuance of their Resolutions of the 25th October, 2018[a] and of 28th November 2018[b], and in exercise of the powers conferred on them by sections 46 and 60 of the Banking Supervision (Bailiwick of Guernsey) Law, 1994[c], and all other powers enabling them in that behalf, hereby order:-

Amendment of the Ordinance.

1. The Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008[d] is amended as follows -

(a) immediately after section 3(3), insert the following subsection -

"(3A) For the avoidance of doubt, the appointment of a member of the Board under this section may be made on such terms as to remuneration, expenses, pensions, retirement and other conditions of service as the Board thinks fit.",

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a Article XIII of Billet d'État No. XXIII of 2018.

b Article XV of Billet d'Etat No. XXV of 2018.

c Ordres en Conseil Vol. XXXV, p. 271; amended by Ordres en Conseil Vol. XLIII(1) p. 462; Vol. XLII(2), pp. 644 and 766; Order in Council No. XVI of 2008; No. IV of 2009; No. XIII of 2010; No. XXI of 2010; Recueil d'Ordonnances Tome XXIX, p. 406; and G.S.I. No. 1 of 2008; No's. 35 and 83 of 2010.

d No. XLVIII of 2008 (Recueil d'Ordonnances Tome XXXIII, p. 238); as amended by Ordinance No. XXX of 2014 and No. IX of 2016.

(b) in subsection 3(5)(a), immediately after the word "shall", insert ", subject to the provisions of this subsection and to the terms and conditions of that member's appointment,",

(c) in section 3(5)(c), immediately after the word "may", insert ", subject to the provisions of this subsection and to the terms and conditions of that member's appointment as to resignation (and in particular any notice period),",

(d) in section 7(2)(a), immediately after "members of the Board", insert "and any negative interest charge in respect of monies held in the administration fund",

(e) in section 8(2)(f)(ii), immediately after "default in question", insert ", including "any negative interest charge in respect of monies held in the compensation fund",

(f) immediately after section 12(7), insert the following subsection -

"(7ZA) Without prejudice to subsection (7), the compensation to which a qualifying claimant is entitled shall also be reduced by any amount as the Board may determine represents an appropriate deduction to reflect any negative interest rate which applied to a qualifying deposit before a declaration of default has been made in respect of the participant holding that deposit.",

(g) for section 18(4), substitute the following subsection -

"(4) The Board may not require a participant to pay in any calendar year an aggregate amount by way of a contribution to a compensation levy which would exceed a total of £2,000,000, provided that the element of the compensation levy payable under paragraph (a) of Schedule 2 shall not be subject to such limitation and shall accordingly be disregarded in calculating the maximum aggregate amount payable by virtue of this subsection.",

(h) in section 18(7)(c)(i), for "14", substitute "5 working",

(i) in section 18(7)(c)(ii), for "not be earlier than 14" substitute "not be later than 5 working", and

(j) in section 20, after subsection (2) insert the following subsection –

"(3) For the avoidance of doubt, a participant shall -

(a) promptly provide any documents or information which are required by the Board, and

(b) subject to the provisions of the Data Protection (Bailiwick of Guernsey) Law, 2017, provide personal data (including special category data) of claimants to the Board when requested to do so where it is necessary for the carrying out of the Board's functions under this Ordinance.".

Extent.

2. This Ordinance has effect throughout the Bailiwick of Guernsey.

Citation.

3. This Ordinance may be cited as the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) (Amendment) Ordinance, 2020.

Commencement.

4. This Ordinance shall come into force on the 21st May, 2020.

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THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE TAXATION OF REAL PROPERTY (GUERNSEY AND ALDERNEY) (AMENDMENT) ORDINANCE, 2020

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Taxation of Real Property (Guernsey and Alderney) (Amendment) Ordinance, 2020", and to direct that the same shall have effect as an Ordinance of the States.

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

EXPLANATORY MEMORANDUM

This Ordinance amends the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007 by a number of technical revisions concerning, but not limited to, assessment methods, appeals and the definition of certain words and phrases to assist with its application.

The Taxation of Real Property (Guernsey and Alderney) (Amendment) Ordinance, 2020

THE STATES, in pursuance of their Resolution of the 18th April, 2018[a], and in exercise of the powers conferred on them by sections 1 and 2 of the Taxation of Real Property (Enabling Provisions) (Guernsey and Alderney) Law, 2005[b], and all other powers enabling them in that behalf, hereby order:-

Amendment of Ordinance.

1. The Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007[c] is further amended as follows.

2. Immediately after section 2(2), insert the following subsection -

"(2A) Where a building has a mezzanine floor, each square metre of the plan area of that floor is an assessable unit, in addition to the measurement of assessable units set out in subsection (2).".

3. Immediately after section 3(4), insert the following subsection -

"(5) For the avoidance of doubt, nothing in this Ordinance

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a Article IV of Billet d'État No. XI of 2018.

b Order in Council No. X of 2006.

c No. XXXIII of 2007; as amended by Order in Council No. XIII of 2010; Ordinance Nos. X and LVI of 2008; No. XLV of 2009; No. LIII of 2010; No. XLVIII of 2011; Nos. XIII and LI of 2012; No. XXVII of 2013; No. XLI of 2014; No. XLI of 2015; Nos. IX and XXXII of 2016; No. XXXII of 2017; No. XXXI of 2018; No. XXVI of 2019; G.S.I. No. 54 of 2008; No. 109 of 2010; No. 40 of 2011; No. 51 of 2013.

shall prevent different parts of real property falling into different property references where the Committee can ascertain and accurately measure those parts.".

4. Immediately after section 6(1), insert the following subsection -

"(1A) For the avoidance of doubt, nothing in subsection (1) shall prevent the internal or external measurement of a building where the Committee considers it appropriate.".

5. In section 9 -

(a) re-number the current text as subsection (1), and

(b) immediately after subsection (1), insert the following subsection -

"(2) For the avoidance of doubt, a decision of the Committee under this section is a relevant decision within the meaning of section 28.".

6. In section 11 -

(a) re-number the current text as subsection (1), and

(b) immediately after subsection (1), insert the following subsection -

"(2) For the avoidance of doubt, where an enactment -

(a) adds, amends or repeals any property reference, or

(b) grants the Committee power to approve whether a property falls into a particular property reference,

the property reference of any real property affected for the purposes of calculating the amount of property tax due in any year in respect of that real property in accordance with subsection (1)(b) shall be taken to be, from the date on which the enactment is made or the Committee grants approval (as the case may be), the property reference accorded to it by the enactment or the grant of approval, notwithstanding that the enactment was not in force at the time appointed for the purpose of determining the property reference of any real property.".

7. Immediately after section 11, insert the following section -

"**Repayment of overpayments.**

11A. (1) Where –

(a) a person has paid an amount by way of property tax to the Committee,

(b) the plan area or usage of that person's property has changed within the two years immediately preceding the date of that payment, and

(c) that person believes that, due to that change of plan area or usage -

(i) the property tax was not due, or

(ii) the amount of property tax paid was greater than was due,

that person may make a claim to the Committee for repayment of the amount overpaid.

(2) The Committee is not liable to give effect to a claim under this section if or to the extent that the claim falls within subsection (3) or (4).

(3) A claim falls within this subsection where the property tax was not due or the amount paid is greater than was due by reason of a failure by the claimant to notify the Committee of -

(a) a change in the plan area of the property, or

(b) a change in the property or the purposes for which the property is used,

in accordance with section 15.

(4) A claim falls within this subsection where the claimant knew, or ought reasonably to have known, of the grounds for the claim before the latest of the following -

(a) the date on which an appeal by the claimant relating to the amount paid, or liable to be paid, in the course of which the ground could have been put forward (a "**relevant appeal**") was determined by the Tax or Real Property Appeals Tribunal ("**the Tribunal**") or is treated as having been so determined,

(b) the date on which the claimant withdrew a relevant appeal to the Tribunal, or

(c) the end of the period in which the claimant was entitled to make a relevant appeal to the Tribunal.

(5) A claim under this section may not be made more than four years after the date of payment of the property tax to the Committee.".

8. Immediately after section 14(2), insert the following subsection -

"(2A) For the avoidance of doubt, the Committee may serve notice in writing on the owner of a property for the purposes of subsection (2) by means of an account specifying the amount of tax due for the purposes of section 8.".

9. In section 15(1), for "within 28 days of the change" substitute "by 31st December of the year in which the change is effected.".

10. Immediately after section 23, insert the following section -

"**<u>Resignation or removal of members of the Panel.</u>**

23A. (1) A person ceases to be a member of the Panel if -

(a) that person resigns from office by giving not less than 3 months' notice in writing to the Committee, or

(b) that person' s appointment is terminated under subsection (2).

(2) The States may, on the recommendation of the Committee, terminate the appointment of a member of the Panel after satisfying themselves that the member -

(a) has become bankrupt,

(b) is incapacitated by physical or mental illness, or

(c) is otherwise unable or unfit to discharge the functions of a member.

(3) For the purposes of subsection 2(a), "**become bankrupt**" means -

(a) that a declaration of insolvency has been made in respect of that member by the Royal Court under the Loi ayant rapport aux Débiteurs et à la Renonciation, 1929[d],

(b) that a Commissioner or Committee of Creditors has been appointed by the Royal Court under that Law to supervise or secure that member's estate,

(c) that that member's affairs have been declared to be in a state of "*désastre*" at a meeting of that member's arresting creditors held before a Commissioner of the Royal Court,

(d) that an interim vesting order has been made against a person in respect of any of that member's real property in the Bailiwick, or

(e) that a composition, compromise or arrangement with creditors has been entered into in respect of that member whereby that member's creditors will receive less than 100 pence in the pound,".

11. In section 28, immediately after paragraph (d), insert the following paragraph -

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d Ordres en Conseil Vol. VIII, p. 310.

"(da) a decision to levy a flat rate penalty or interest in accordance with section 9, and" .

12. Immediately after section 31(6), insert the following subsection -

"(7) Without prejudice to any other provision of this Ordinance, where the decision to be appealed is a decision to levy a flat rate penalty or interest in accordance with section 9 -

(a) the Tribunal may be constituted by the Chairman, Deputy Chairman, or other member of the Taxation on Real Property Appeals Panel as may be selected by the Chairman, sitting alone, and

(b) the appeal may be determined on the notice, information and documents received by the Tribunal and without a hearing.".

13. In section 33(1), for "in the form set out in Part 1 or (as the case may be) Part II of Schedule 5", substitute "in such form as may be specified by the Committee".

14. In section 39(2), immediately after "hear any", insert "oral or receive any written".

15. Immediately after section 48(5), insert the following subsections -

"(5A) For the avoidance of doubt and without prejudice to any other method of service set out in this section, a document may be served by being transmitted to the relevant electronic address of the person to be served and, for the purposes of this subsection -

(a) "**electronic address**" includes, without limitation, an e-mail address and telecommunications address, and

(b) "**relevant electronic address**" means an electronic address -

(i) with which, in the reasonable opinion of the person effecting service, the person concerned has a personal, business or other connection, and

(ii) a document transmitted to which is likely to come to his attention.

(5B) A document transmitted to an electronic address shall, unless the contrary is shown, be deemed to have been received when it was transmitted.".

16. In section 54(1) -

(a) immediately after the definition of ""**document**"", insert the following definition -

"**electronic address**" and "**relevant electronic address**": see section 48(5A),",

(b) immediately after the definition of "Map", insert the following definition -

"**mezzanine**" means a floor area within a building which does not extend over the whole floor space of the building", and

(c) immediately after the definition of "**Register**" and "**registration**", insert the following definition –

""**relevant appeal**": see section 11A(4)(a),".

17. In paragraph 1 of Part II of Schedule 1, immediately after the words "for religious ceremony", insert "and connected purposes".

18. In Part III of Schedule 1 -

(a) for the definition of ""**development building**"", substitute the following definition -

"**development building**" means, notwithstanding section 41 of this Ordinance -

(a) where the building is in Guernsey, a building in relation to which -

(i) full plans have been approved and a licence to execute the proposed works has been granted by the States of

Guernsey Development & Planning Authority in accordance with regulation 16 of the Building (Guernsey) Regulations, 2012 ("**the Guernsey Regulations**")[d], and

(ii) the States of Guernsey Development & Planning Authority has confirmed in writing that building work has commenced,

but a building will cease to be considered in development when the States of Guernsey Development & Planning Authority has -

(A) issued a completion certificate, or

(B) confirmed the building has met the relevant requirements for completion in accordance with regulation 18(2) of the Guernsey Regulations, and

(b) where the building is in Alderney, a building in relation to which -

(i) full plans have been approved in accordance with regulation 16 of the Building (Alderney) Regulations, 2014 ("**the Alderney Regulations**")[e], and

(ii) the States of Alderney Building and Development Control Committee has confirmed in writing that building work has commenced,

but a building will cease to be considered in development when the States of Alderney Building Development and Control Committee has -

(A) issued a completion certificate, or

(B) confirmed the building has met the relevant requirements for completion in accordance with Regulation 18(2) of Alderney Regulations.",

(b) immediately after the definition of ""**food outlet**"", insert the following definition -

""**garaging or parking**" means real property (or part of real property) used solely for the storage or parking of one or more private vehicles or for domestic storage,",

(c) immediately after the definition of ""**glasshouse**"", insert the following definition -

""**harbour**" has the meaning given to "harbour land" in section 58(1) of the Harbours Ordinance, 1988[e],",

(d) in the definition of ""**hostelry**"", immediately after paragraph (c), insert "and includes any private residential, nursing or care home",

(e) immediately after the definition of "**motor trade**", insert the following definition -

""**moveable site structure**" does not include any property -

(a) which cannot be moved to a different position without being damaged or deconstructed, or

(b) which has a direct connection to receive -

(i) mains electricity,

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[e] Recueil d'Ordonnances Tome XXIV, p. 418; as amended by Ordres en Conseil Vol. XXXI, p. 78); Recueil d'Ordonnances Tome XXIV, p. 418; Tome XXV, p. 11; Tome XVI, p. 310; Ordinance No. XII of 2001; Nos. XVII and XXXIII of 2003; No. IX of 2016.

(ii) mains gas , or

(iii) mains water,",

(f) immediately after the definition of ""**publicly owned non-domestic**"", insert the following definition -

""**quays**" shall have the meaning given in section 58(1) of the Harbours Ordinance, 1988,", and

(g) for the definition of ""**warehousing**"", substitute the following definition -

"**warehousing**" means any building used to store goods for the purposes of a business, trade or undertaking unless it is part of, or connected to, real property used principally for another property reference.".

19. Schedule 5 is repealed.

<u>Extent.</u>

20. This Ordinance has effect in the islands of Guernsey, Alderney and Herm.

<u>Citation.</u>

21. This Ordinance may be cited as the Taxation of Real Property (Guernsey and Alderney) (Amendment) Ordinance, 2020.

Commencement.

22. This Ordinance shall come into force on the 6th May, 2020.

P.2020/□□

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *for the* ENVIRONMENT & INFRASTRUCTURE

STATES OF GUERNSEY ENERGY POLICY 2020-2050

The States are asked to decide whether, after consideration of the policy letter entitled "States of Guernsey Energy Policy 2020-2050" dated 28th February 2020 they are of the opinion:

1. To agree the overall objectives of the Energy Policy as:

   - Decarbonisation;
   - Security and resilience of supply;
   - Consumer value and choice;
   - Equity and fairness;
   - Supportive of a vibrant economy; and
   - Greater energy independence.

2. To agree the vision for Guernsey's energy future as set out in paragraph 2.1 of the policy letter and prioritise opportunities to reduce emissions.

3. To agree to adopt a target of net zero emissions by 2050 and to adopt an interim target of reducing emissions by 57% on 1990 levels by 2030.

4. To direct the Committee *for the* Environment & Infrastructure to

   (a) provide a definition of what constitutes a "low carbon" and "low emission" source for on-island energy sources by Q4 2020; and
   (b) establish a target for the generation of on-island (where "on-island" includes within our territorial waters) renewable energy by Q2 2021.

5. To agree to revise the requirements for the dispatch of electricity by Guernsey Electricity Limited (known as the "merit order") to place any pre-committed energy production, prioritising on-island renewable generation, ahead of flexible dispatchable production and to direct the Committee *for* Economic Development to bring proposals to the States of Deliberation to give directions to the relevant regulator.

6. To direct the Committee *for* Economic Development, working with the Committee *for the* Environment & Infrastructure, to undertake a technical consultation on:

(a) a licensing framework for targeted competition to support establishing on-island (including off-shore) renewable energy; and
(b) the introduction of licensing for the supply of hydrocarbons particularly in relation to hydrocarbon security of supply and emissions reduction,

and to bring proposals to the States of Deliberation to give directions on these matters to the relevant regulator in these matters by Q4 2021.

7. To direct the Committee *for* Economic Development to bring proposals to the States of Deliberation to give directions to the relevant regulator to ensure continuity of current arrangements relating to electricity production (for example, by renewing the licence of Guernsey Electricity Limited) where the relevant regulator is not in a position to issue licences under any revised framework as outlined in proposition upon the expiry of current licences.

8. To approve the cable strategy set out in 8.17 and agree in principle the need for a second interconnector, subject to the consideration of a full business case; and to direct the States Trading Supervisory Board via Guernsey Electricity Limited to revert to the States of Deliberation with the full business case, the cost of developing which can be reflected and recovered by Guernsey Electricity Limited through its charges.

9. To agree in principle the future move from N-2 to N-1 (or another standard as deemed appropriate), subject both to the completion of the second interconnector, and to the States' endorsement of an updated electricity strategy to be brought to the States of Deliberation by the Committee *for the* Environment & Infrastructure.

10. To agree the separation of the hydrocarbon programme into three work streams:

(a) Energy Policy and Climate Change policy (the Committee *for the* Environment & Infrastructure);
(b) The States Trading and Supervisory Board's St Peter Port Harbour Development Programme due to report to the States of Deliberation by December 2020 that will be informed by the Energy Policy and will include hydrocarbon requirements; and
(c) A support programme working with energy providers for interim supply solutions (the Committee *for the* Environment & Infrastructure to report back by Q2 2021).

11. To direct the Committee *for the* Environment & Infrastructure to establish the public-private Energy Partnership by Q4 2020.

12. To direct the Committee *for* Economic Development to undertake a review of structures for cost reflective tariffs (including reflecting fixed and variable costs), to bring proposals to the States of Deliberation to give directions to the relevant regulator by Q4 2020.

13. To direct the Committee *for* Employment & Social Security working with the Committee *for the* Environment & Infrastructure to co-ordinate an investigation of the most effective means of addressing energy poverty and report back to the States by the Q2 2021.

14. To direct the Committee *for the* Environment & Infrastructure to work with the Development & Planning Authority to bring forward further recommendations to improve the energy efficiency of existing and future housing stock, assess the potential for and impact of requirements to report building energy efficiency standards and/or to implement a minimum standard for the rental market and a reporting standard for the sales market by the end of Q2 2021.

15. To direct the Committee *for the* Environment & Infrastructure, working with the Policy & Resources Committee, to review the position on the introduction of energy related taxes, to deliver on the policy's aims, and bring any recommendation to the States of Deliberation by May 2023.

16. To note the resource implications set out in paragraphs 11.2 to 11.18 and that any requests for additional budget be submitted through the appropriate budget setting or capital prioritisation process.

17. To rescind the following Resolutions of the States or parts thereof:

    (a) Resolution 11(d) of Article XIV of Billet d'État XV of 2011 "Review of Utility Regulation";

    (b) Resolution 4 of Article III of Billet d'État XII of 2014 "Guernsey Electricity Supply – Future Strategy"; and

    (c) Resolution 2 of Article IX of Billet d'État VII of 2016 "Comprehensive Social Welfare Benefits Model".

18. To amend the following Resolutions of the States:

    (a) Resolution 1 of Article III of Billet d'État VI of 2015 "Alternative Framework for the Oversight of Guernsey Electricity Limited and Guernsey Post Limited" to:

        (i) delete "Guernsey Electricity Limited and" and "respective electricity and"; and

        (ii) substitute "law" for "laws"; and

(b) Resolutions 1 and 2 of Article XVII of Billet d'État III of 2016 "Legislative changes relating to the future oversight of Guernsey Electricity Limited and Guernsey Post Limited" to delete:

(i) in resolution 1, "and electricity"; and

(ii) in resolution 2, "the Electricity (Guernsey) Law, 2001 and" on both occasions it appears

<u>THE STATES OF DELIBERATION</u>
<u>of the</u>
<u>ISLAND OF GUERNSEY</u>

COMMITTEE *for the* ENVIRONMENT & INFRASTRUCTURE

STATES OF GUERNSEY ENERGY POLICY 2020-2050

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

2 March 2019

Dear Sir

1. Executive Summary

1.1 Meeting Guernsey's Energy needs is a policy priority area agreed by the States of Guernsey in the Future Guernsey Plan.

1.2 The Committee *for the* Environment & Infrastructure (the Committee) has responsibility for Guernsey's energy policy, including renewable energy, infrastructure, and the security of supply.

1.3 The Committee has been developing a 2020-50 energy policy working with parties involved in the industry.

1.4 It proposes a policy framework for the effective management of Guernsey's energy needs over the period 2020-2050 and sets out the steps that would be needed to establish that framework.

1.5 Subject to approval by the States, the Committee's propositions and accompanying policy letter will constitute the States' agreed Energy Policy for the period 2020-2050.

1.6 The Energy Policy sets high-level policy direction to enable the States to manage the transition of the energy market. It is put forward as an enabling policy with clear objectives, which seeks to enable the market to change to achieve the objectives.

1.7 Globally, governments are taking steps to move towards decarbonisation of energy systems and a low carbon economy, set against a background of successive international agreements which seek to reduce greenhouse gas emissions in order to tackle climate change.

1.8 The Energy Policy objectives and vision are aligned with international targets and enables Guernsey to manage global changes at local level and to balance affordability, security, and sustainability for the Island.

1.9 The propositions in this policy letter seek to enable Guernsey to manage the global transition to decarbonisation at local level in an appropriate timescale.

1.10 The Energy Policy seeks to facilitate the continuation of competition within the sections of the energy market where there is already competition, whilst providing for a framework to distribute responsibility more proportionately security of the Island's energy supply across providers.

1.11 The Energy Policy also seeks to enable Guernsey's emissions reduction targets to be in part achieved, including through on-island renewable energy generation, by facilitating targeted competition within the electricity market to enable potential additional renewable or low carbon energy operators to serve the market.

1.12 The Energy Policy further seeks to create the conditions necessary to enable existing operators to contribute towards both the decarbonisation of Guernsey's energy mix, and the security of the Island's energy supply, through the provision of low carbon and/or renewable energy generated (though not necessarily exclusively) on-island.

1.13 This policy letter outlines greenhouse gas emission targets but does not seek to take the place of a climate change or environmental policy. The climate change policy and a 'Climate Change Action Plan' will be submitted to the States by the Committee no later than May 2020. The Energy Policy and the Climate Change policy and Action Plan objectives are aligned.

1.14 The Committee, under its mandate to advise the States on energy and climate change, advises the States to set a target to reduce Guernsey's greenhouse gas emissions to net zero by 2050. The United Kingdom recently enshrined in law this same target, following the advice of the Committee on Climate Change[1], the independent, statutory body established under the Climate Change Act 2008[2] to advise the United Kingdom Government on matters relating to climate change.

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[1] Committee on Climate Change (2019) 'Net Zero: The UK's contribution to stopping global warming', available at: https://www.theccc.org.uk/wp-content/uploads/2019/05/Net-Zero-The-UKs-contribution-to-stopping-global-warming.pdf

[2] Committee on Climate Change, 'About the Committee on Climate Change' available at: https://www.theccc.org.uk/about/

1.15 The States are further advised to adopt an interim target of reducing emissions by 57% on 1990 levels by 2030, in line with the target set out in the United Kingdom's fifth carbon budget (for the period 2028-2032)[3].

1.16 By adopting these targets, the Island would be aligning itself with the leading approach to decarbonisation by the United Kingdom (UK).

1.17 The Energy Policy will provide a stable basis, through a long term government policy, for the energy market to plan and make sound investment decisions in a changing marketplace.

2. Vision for Guernsey's energy future

2.1 By 2050 at the latest, the vast majority of Guernsey's energy supplies will come from clean, low carbon sources and residual emissions will be offset. Energy will be used wisely, so as not to waste precious resources. Conscientious use of on-island natural resources will safeguard our healthy environment and clean air, whilst protecting Guernsey's unique surroundings, biodiversity, and natural beauty. Generation of on-island (where "on-island" includes within our territorial waters) renewable, clean, affordable energy is supported by implementation of the Energy Policy and will provide value and choice for everybody and will play its part in helping Guernsey to mitigate climate change. Guernsey's energy supply will be resilient and secure, as well as sustainable, to meet reasonable demands for energy. Guernsey will be aligned with global efforts to reduce emissions and development of renewable technologies. The strategy for a transition to decarbonisation from 2020 to 2050 is contained within this policy letter.

Pillars for Guernsey's energy future

2.2 Through active engagement and consultation with stakeholders, the Committee has developed the following pillars.

2.3 The pillars were developed collaboratively with stakeholders and local energy organisations. They are aimed at industry level and provide the foundation principles for the Energy Policy. The pillars also provide necessary direction for progression and next steps for the Hydrocarbon Supply Programme.

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[3] Committee on Climate Change 'Carbon budgets: how we monitor emissions targets' available at: https://www.theccc.org.uk/tackling-climate-change/reducing-carbon-emissions/carbon-budgets-and-targets/

Manage and support change in the energy market in line with global efforts to reduce emissions	**Allow for an open energy market with all suppliers having shared responsibility for security**	**Facilitate a Competitive energy supply market using shared critical infrastructure as appropriate**	**Establish a secure supply platform as an enabling factor for the growth of renewable technologies**

Objectives for Guernsey's energy future

2.4 In order to implement this vision for Guernsey's future energy there are six overall objectives for Guernsey's energy future:

1. Decarbonisation	Decarbonisation of the Island's energy system will be in line with developing and evolving international standards and those set by other jurisdictions to mitigate climate change. This means our aim must be to have an energy system in which our energy supplies come from clean, low carbon sources. The outcome of this will be clean air and a healthy environment in which our community lives.
2. Security and resilience of supply	Maintaining the required level of security of supply to withstand simultaneous infrastructure failures within the system and still serve our energy needs. Working on the basis of increased interconnection; the existing N-2 criteria (on-island generation provision) would be updated, as appropriate, to maintain security of supply levels in light of increased connectivity.
3. Consumer value and choice	An approach to competition in the energy market that is aligned with Guernsey's scale and size, and one where consumers can have a choice over their primary source of energy.
4. Equity and fairness	An energy market where all consumers pay a share of the maintenance of the system, and in return receive equal access to the opportunities that come from technological advances.

5. Supporting a vibrant economy	A clean, reliable, and affordable energy supply is a fundamental economic enabler. Establishing an environment for the development of on-island (including offshore) renewables will support the diversification and vibrancy of Guernsey's economy. A shift to decarbonisation in Guernsey will be an essential reputational advantage to support the growth of the green finance sector. Establishing a clean and secure energy supply is a significant component of decarbonisation and assists in delivering the credibility and reputation that underpin growth in green finance.
6. Greater energy independence	A system where a greater and significant proportion of our community's energy needs are supplied through local energy sources. This will increase resilience by reducing exposure to external and geopolitical factors.

2.5 To meet the objectives of the Energy Policy one of the most crucial investments will be 'plugging into' the European grid. During the energy transition a business case should be evaluated by Guernsey Electricity for a second electricity cable providing a link to the European grid, known as an interconnector. Consideration should be given to the ability of a second interconnector to satisfy the Island's energy objectives for security and resilience of supply and to enable and support growth of on-island (including offshore) renewables.

2.6 Energy independence is a desirable ambition for the Island and the outputs from research into renewables could achieve this objective in the future, by 2050 or earlier allowing for technologies to develop and mature. It is therefore reasonable for the case for a second interconnector to be outlined within the Energy Policy to ensure that the energy transition will be well managed and supported.

3. The rationale for a long-term Energy Policy

3.1 The States have agreed that the formulation of a long-term Energy Policy for Guernsey is one of its priorities[4]. It has been prepared both in the local context of Guernsey's present and future energy needs, and in global context of the ongoing and forecast future transition to lower carbon economies worldwide and international efforts to reduce greenhouse gas emissions through the

[4] Billet d'État XX of 2017

phasing out of hydrocarbons. It should be noted that, in this case, when considering greenhouse gas emissions, the lifecycle of carbon associated with the energy form should be looked at to provide a fair comparison between technologies and to allow the Island to make a fully informed choice. The Policy also considers the importance of assessing other emissions (such as particulates, sulphur, and NO_x (Nitrogen Oxides)) which have wider environmental and health impacts. In addition, the Economic Development Strategy agreed in 2018 places an emphasis on the opportunities presented by the development of Guernsey's renewable energy sector.

3.2 The Energy Policy will supersede the existing Guernsey Energy Resource Plan[5] which the States approved in 2012. The themes of the 2012 Energy Resource Plan were: decarbonisation of Guernsey's energy generation; diversification into low carbon and renewable energy supplies; continuation of a sustainable and secure energy supply; and the need for transparency in energy decision making.

3.3 The Energy Policy builds on these themes and reflects the changes in the energy market which have taken place over the past seven years, taking into account the current and forecast changes which energy market stakeholders and analysts expect to shape the Island's energy demand and supply during the period 2020 to 2050.

3.4 The Energy Policy does not supersede the Guernsey Electricity Supply – Future Strategy[6], which the States approved in 2014, but it does provide the foundation and direction for implementing, updating, and reviewing the Electricity Strategy in the most effective way.

3.5 To ensure the Energy Policy remains up-to-date and responsive to developments in the energy market, and as part of the monitoring of the Energy Policy, the Committee will report progress against delivery of the Energy Policy through the Future Guernsey Plan's annual update process.

3.6 The Policy will need to be aligned with other directly linked States' areas of priority such as the emerging Climate Change Policy & Action Plan, the work on developing a Long-Term Infrastructure Framework, and the Hydrocarbons Programme (which is referenced in this policy letter). In addition, there are other areas such as the Economic Development Strategy, the Housing Strategy and policies that support the Future Guernsey Plan's objective of sustainable well-being.

[5] Billet d'État III of 2012
[6] Billet d'État XII of 2014, Article III

4. The energy system in Guernsey today

4.1 Guernsey's present-day energy mix primarily consists of:

- Electricity generated off-island from renewable (hydroelectric) and nuclear energy sources, and imported from France via Jersey by interconnector;
- Electricity generated on-island using hydrocarbon fuels (heavy fuel oil or liquefied petroleum gas) imported by sea;
- Electricity generated on-island, on a domestic and small-scale commercial basis, from renewable sources;
- Hydrocarbon fuels including transport fuels, kerosene, and mains and cylinder gas, all of which are imported by sea; and
- Solid fuels such as wood and coal, sourced locally for some wood and imported by sea.

4.2 An estimated breakdown of energy demand in Guernsey in 2018 is provided below[7]:

TABLE 3: SUMMARY OF GUERNSEY ENERGY MARKET SEGMENTS	
Energy component	**GWh (2018, est.)**
Non-electricity heating demand	482
Electricity demand	379
Road fuel demand	322
Marine demand	61
Aviation demand	55
Source: States of Guernsey Facts and Figures 2018 and PwC analysis, cited in PwC report 'Energy policy options for the States of Guernsey'.	

4.3 The estimated percentage share, from the report 'Energy policy options for the States of Guernsey', of energy demand in Guernsey in 2018 is provided below:

[7] Source: States of Guernsey Facts and Figures 2018 and PwC analysis

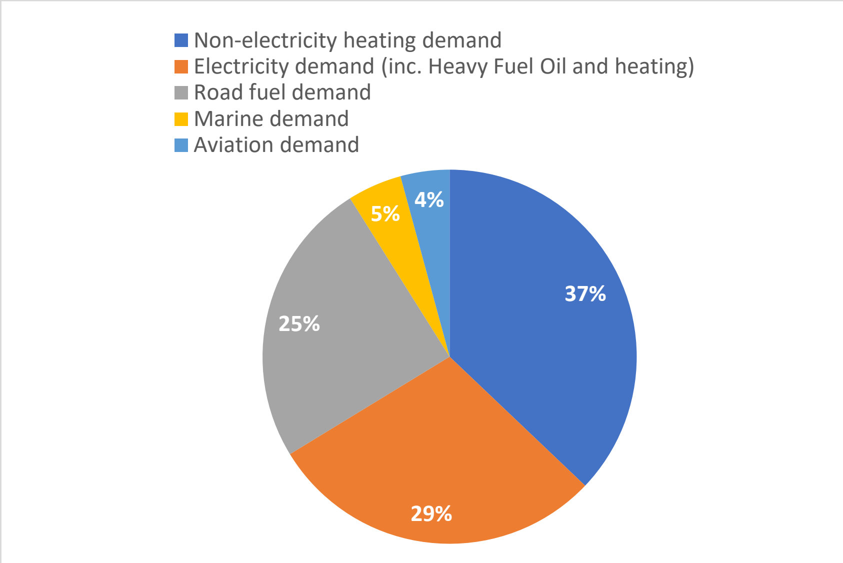

Figure 1: Estimated percentage share of energy demand in Guernsey in 2018

4.4 Entry to the Island's electricity market is controlled by licence issued by the Guernsey Competition and Regulatory Authority (GCRA), and the sector is subject to economic regulation. The electricity market's largest provider is Guernsey Electricity Limited (GEL), which is wholly-owned by the States and meets commercial, environmental, and social objectives set by the shareholder executive function that is overseen by the States' Trading Supervisory Board.

4.5 The electricity market in Guernsey is regulated and licensed for three components – generation, conveyance, and supply. A generation licence or exemption is required "to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given". A conveyance licence is required "to convey electricity for that purpose in that person's Authorised Area". A supply licence or exemption is required "to supply electricity in that person's Authorised Area" or "to supply electricity to any premises specified or of a description specified in the licence".

4.6 The Electricity (Guernsey) Law, 2001 provides detailed definitions of the terms "supply" and "conveyance" in relation to electricity. In broad terms, under the current legislation, "supply" can be understood as meaning the supply of electricity through electric cables other than to premises occupied by the electricity licensee. "Conveyance" can be understood as the transportation of electricity by means of an electricity network.

4.7 Conveyance covers the transportation of electricity from the generating station (generator or supply cable) to the final substation, which closely aligns to the high voltage ("HV") cable network, although not in totality as some customers are supplied with HV directly. The low voltage ("LV") and HV cabling beyond the last substation to supply a property is covered in the supply portion of regulation and licencing. The breakdown of Guernsey's electricity network is approximately one third high voltage and two thirds low voltage. See Appendix A

4.8 GEL is licensed to generate electricity and has protected exclusivity in the supply and conveyance sections of the electricity market until 2022. In 2017, a generation licence and supply exemption were granted to another entity, the International Energy Group (IEG).

4.9 Guernsey's public electricity supply is primarily sourced either from electricity generated on-island by GEL using hydrocarbon fuels, or from electricity generated off-island from renewable and nuclear energy sources and imported by GEL from France via Jersey by interconnector cable. If the interconnector system is disrupted, electricity supply depends upon domestic production by various hydrocarbon-based generation assets. In addition, there is currently a small amount of generation on-island by solar and domestic sources.

4.10 Reliance on a single off-island interconnector places the Island in a binary position for emissions output, both in terms of greenhouse gas and other emissions such as particulates, $NO_{x,}$ and sulphur, related to electricity generation.

4.11 The existing cable has had the single largest positive impact on reducing the Island's emissions output; conversely, when the cable has failed emissions have significantly increased. GEL has advised that during the financial year 2018-19 (which runs from 1 April to 31 March), it achieved an importation level of 55%, with the remaining 45% generated on-island. In terms of production figures this equates to 203,968MWh of imported electricity and 165,605MWh generated on-island, including through generation using fossil fuels, and from locally-generated solar energy due to the failure of the interconnector between Guernsey and Jersey (known as Guernsey to Jersey 1 or GJ1)

4.12 GEL reports[8] that in recent financial years, the percentage of total demand was split as follows and that on-island generation was largely due to the failure of GJ1:

TABLE 4: IMPORTED vs ON-ISLAND ELECTRICITY GENERATION		
Financial Year	**Imported**	**Generated on-island**
2018-2019	55%	45%
2017-2018	86%	14%
2016-2017	79%	21%
2015-2016	77%	23%
2014-2015	58%	42%

[8] GEL Annual Report 2018-2019

4.13 Electricity generated on-island refers to the proportion of the demand on GEL's system supplied by locally produced energy. This includes both diesel generation and local renewable generation that is fed into the grid, either directly from GEL's solar array (multiple solar panels located on one site), which was completed in late March 2018[9] or through the 'buy-back' arrangement for customers with 'behind-the-meter' generation that produces more energy than the customer requires.

4.14 GEL has advised that it forecasts achieving an importation level of 64% during the financial year 2019-20, owing to the restricted import levels of the GJ1 interconnector and a necessary outage later in the year to facilitate its replacement.

4.15 Under the existing Electricity Strategy, the States requires GEL to operate to a security of supply criterion referred to as "N-2". In broad terms, the N-2 criterion requires GEL to ensure that it has sufficient plant to meet maximum demand with its two largest sources of supply (excluding the interconnector) simultaneously unavailable. However, the N-2 security criterion does not set out other parameters relating to the security of energy supply in its totality across energy sectors; for instance, continuous supply obligations and hydrocarbons stockholding obligations, or the operation of the electricity grid.

4.16 GEL has initiated a project with the French electricity transmission system operator Réseau de Transport d'Electricite, for the development of a direct subsea cable to France ("GF1"), which GEL has stated will enhance electricity security and increase the capacity to access affordable low carbon electricity[10]. However, the Committee understands that no final investment decision has been made on the GF1 project. The Energy Policy seeks to set clear policy direction to enable energy suppliers, including GEL, to make investment decisions.

4.17 The market for gas is served by Guernsey Gas, which is part of the International Energy Group. Unlike the electricity market, the gas market is not subject to licensing or economic regulation (other than legislative requirements pertaining to health and safety). There are currently no other operators in the Island's gas market. Guernsey Gas Limited imports liquid petroleum gas by sea.

4.18 The market for solid fuels (i.e. coal and wood) is served by several suppliers. There is a local supply of wood, and both wood and coal fuels are imported in bulk by Load-on Load-Off (Lo-Lo) vessels at St Sampson's Harbour or via commercial freight at St Peter Port Harbour.

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[9] GEL 'Solar Array Installed,' available at: https://www.electricity.gg/news/solar-array-installed/ (accessed 21.06.2019).
[10] GEL Annual Report 2018

4.19 The market for light liquid fuels is served by four businesses. Three of these import fuels, Channel Islands Fuels Limited, Rubis, and ATF Fuels (in addition, Guernsey Electricity Limited imports heavy fuel oils and has some light liquid fuel storage). There is an additional on-island supplier, Guernsey Petroleum Distributers.

4.20 The liquid fuels market is not subject to licensing or regulation in terms of governing the entry to and operation of the market, although businesses in the market are subject to legislative requirements pertaining to health and safety. Channel Islands Fuels Limited and Rubis currently maintain supplies of liquid fuel to safeguard against shortages.

4.21 Light liquid fuels, heavy fuel oil, and liquid petroleum gas are delivered to Guernsey by sea, and most ships importing these fuels berth at St Sampson's Harbour. More recently, ATF Fuels have begun to import some light fuels via International Organisation for Standardisation (ISO) containers delivered as commercial freight via St Peter Port Harbour. Delivery is currently via the roll-on, roll-off service. Unitised delivery can also be facilitated using the lift on, lift-off service.

4.22 Owing to the nature of the different types of product, the different vessels which are used to deliver light fuels, heavy fuels, and liquid petroleum gas to St Sampson's Harbour cannot be shared. Heavy fuel oil and light liquid fuels could use the same vessel. However, the practical reality of continually shifting use from one product to the other, together with the associated incremental costs, means this is not a viable solution (this is further exacerbated when combined with the limited access windows to St Sampson's Harbour).

4.23 Bulk shipments of light liquid fuels are made by specialist vessels purchased by the States in 2008[11] (and independently run as a commercial venture) to ensure the security of light liquid fuel supplies to the Island. However, these vessels are approaching the end of their service lives (with an end-of-life date of 2027), and soon the States will need to make a strategic decision relating to the importation of light liquid fuels.

4.24 Shipments of heavy fuel oil and liquid petroleum gas are made by privately-owned vessels. However, the vessels currently used for the importation of liquid petroleum gas are also approaching the end of their service life (in 2021).

5. Baseline Future energy demand in Guernsey

5.1 To understand better the future energy mix on a local scale, PwC was

[11] Billet d'État IV of 2009

commissioned to develop a long-term forecast of energy demand, out to 2050[12]. This provides the context for making energy infrastructure decisions, which typically are minimum 20-year commitments, and includes the method used by PwC to develop its long-term forecast of energy demand.

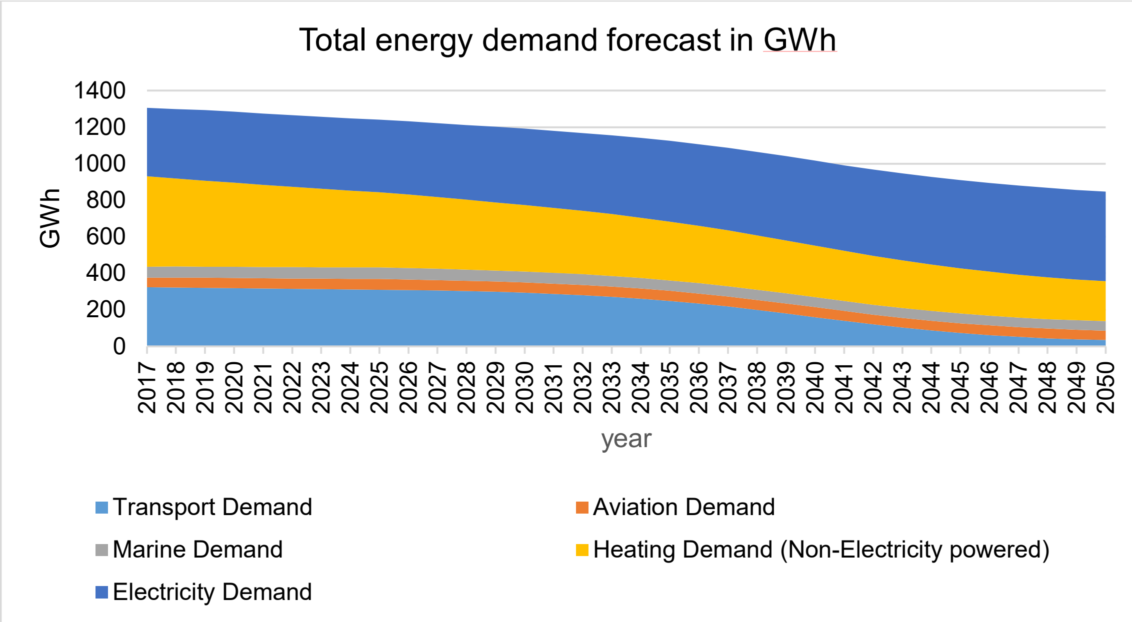
5.2 PwC's baseline forecast results (without direct policy intervention from Guernsey) show a local decline in total energy demand by more than 450GWh. PwC comments that although numerous factors drive the individual forecasts in each component, a consistent factor contributing to the overall demand decline is an increase in technological efficiencies, including:

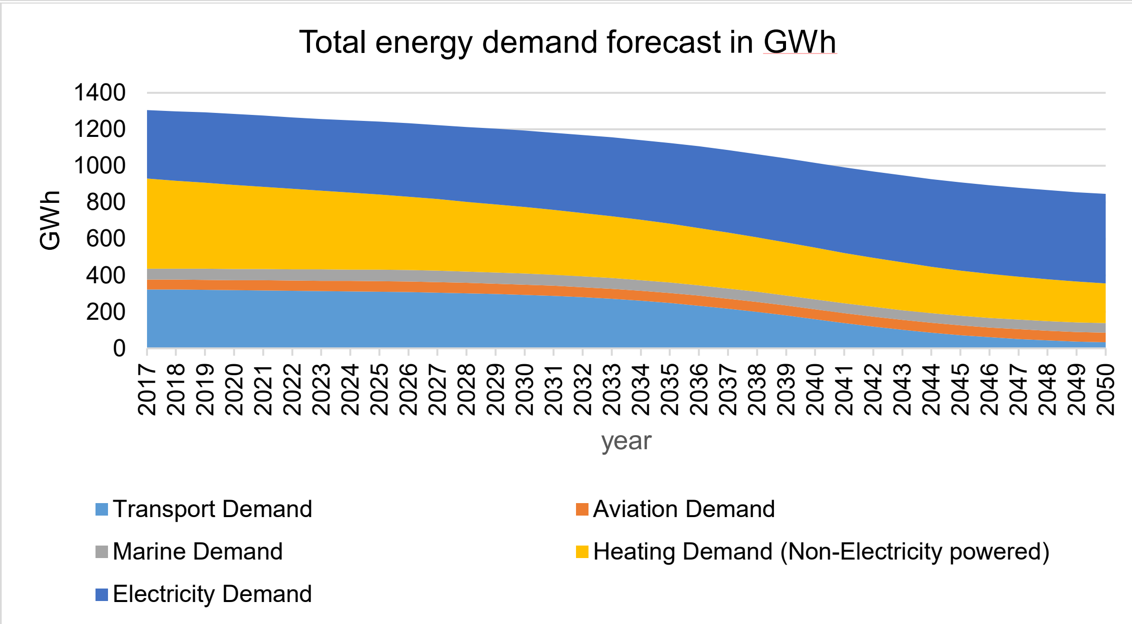
- increases in fuel efficiency;
- the uptake of demand energy reduction measures such as home insulation; and
- the uptake of new technology and the transition to electrification. For instance, PwC refers to the energy saving associated with electric vehicle use, with less electricity required than petrol or diesel to travel the same distance.

5.3 The largest absolute and relative declines in demand are forecast to come in the road transport and (non-electricity) heating demand segments. Conversely, electricity demand is forecast to expand in both volume and demand share (electricity being the only segment forecast to expand). PwC's forecast therefore indicates both a downward trend in total energy demand in Guernsey, and a general transition from hydrocarbons to electricity.

[12] Future energy demand and policy considerations for Guernsey – available at https://gov.gg/CHttpHandler.ashx?id=123629&p=0

5.4 Based on Table 5 below, the energy demand by component forecast to 2050 is:





5.5 PwC found that during the period to 2050, demand for electricity in Guernsey will increase while other sources of energy fall. PwC predicts that over the next three decades, demand for electricity will increase from 29% of energy consumption on the Island to 58%. PwC attributes this increase to a growing share of electricity demand and declining share of non-electricity heating demand and road transport fuel demand owing to the transition to electricity. This is driven by consumers installing electric heating and replacing internal combustion engine vehicles with electric vehicles. In addition, PwC forecast a fall in total energy demand because of improvements in efficiency that reduce the need for energy consumption. PwC's long-term energy demand forecast for Guernsey, in the absence of any intervention or policy action from the States, is provided below:

TABLE 5 GUERNSEY ENERGY DEMAND FORECAST BY COMPONENT IN 2050 WITH COMPARISON TO 2018 ESTIMATED DEMAND				
Fuel segment	**2018 (est.)**		**2050**	
	Demand volume (GWh)	**Demand share (%)**	**Demand volume (GWh)**	**Demand share (%)**
Road transport fuel demand	322	24.82%	34	4.05%
Aviation demand forecast	55	4.20%	52	6.13%
Marine demand	61	4.67%	52	6.16%
Non-electricity heating demand	482	37.11%	218	25.70%
Electricity	379	29.21%	491	57.96%
Total	**1,299**		**847**	
Source: PwC report 'Energy Policy options for the States of Guernsey'.				

5.6 The report states that although energy use in Guernsey is forecast to decline by 2050, the energy security risk to the Island is increasing, with risks arising from the transition to electricity and the declining demand for hydrocarbon fuels. In addition, PwC identifies a risk associated with the declining demand of hydrocarbons.

5.7 At present, if the interconnector system is disrupted, electricity is produced by various generation assets. However, PwC advises that the burden placed upon domestic generation could be even larger in the future, given the expected rapid transition to electricity, and that this could increase reliance on the grid and increase the current energy security risk.

5.8 One of the objectives of the Energy Policy is to support the transition away from hydrocarbons, and it is important to note that global trends indicate that this transition will occur notwithstanding any policy intervention by the States. Measures such as bans introduced in the UK, France, and other jurisdictions on the future sales of internal combustion engines and individual city policies on congestion charges, diesel bans and moves to decarbonisation have in turn significantly moved the car manufacturing industry. This has resulted in increased hybrid and electric vehicle manufacturing replacing traditional internal combustion engine vehicles.

6. The rationale for an emissions reduction target

6.1 The Kyoto Protocol to the United Nations Framework Convention on Climate Change legally bound signatories to greenhouse gas emissions reduction targets for a first commitment period (2008 – 2012). It had modest ambitions and was adopted in 1997, coming into force in 2005. The United Kingdom's ratification of the protocol was extended to Guernsey in 2006 and committed the Island to reducing its greenhouse gas emissions by around 12.5% on 1990 levels by 2012.

6.2 The Doha Amendment to the Kyoto Protocol was adopted in 2012 and set more ambitious emissions reductions targets for a second commitment period (2012 – 2020). Under the Doha Amendment, the United Kingdom (as part of the European Union) committed to reducing CO_2 emissions by 20% on 1990 levels by 2020. In 2015, parties to the Doha Amendment signed up to the Paris Agreement[13], which aimed to further strengthen the global response to the threat of climate change. The United Kingdom is a signatory to the Paris Agreement, although this has not been extended to the Bailiwick.

6.3 In 2018, the United Nations' Intergovernmental Panel on Climate Change (IPCC) issued a report[14], which stated that to limit global warming to 1.5°C, "rapid and far-reaching" transitions would be required in land, energy, industry, buildings, transport, and cities. The IPCC report also stated that global net human-caused emissions of CO_2 would need to fall by about 45% from 2010 levels by 2030, reaching 'net zero' around 2050. In response to the IPCC report, at the 2018 UN Climate Conference (Cop24), a multinational group formed called the 'High Ambition Coalition', to lobby for bold policies and actionable and transformative regulations to meet the Paris Agreement.

6.4 In addition to making commitments under the Convention, governments worldwide, including those of the other largest Crown Dependencies, have made domestic commitments to emissions reduction. The States of Jersey[15]and the Isle of Man Government[16] have made commitments to reduce greenhouse gas emissions by 80% below 1990 levels by 2050.

6.5 In 2019, the States of Jersey declared a climate emergency and made a commitment to reach carbon neutrality by 2030 and to introduce policy to support this in the first quarter of 2020. The Isle of Man has acknowledged that there is a climate emergency and has prepared a climate change report, under independent oversight, to inform the government action plan.

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[13] UNFCC Summary of the Paris Agreement available at: https://unfccc.int/resource/bigpicture/#content-the-paris-agreement (accessed 28.02.2019)

[14] IPCC Press Release ' Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C approved by governments' available at: https://www.ipcc.ch/site/assets/uploads/2018/11/pr_181008_P48_spm_en.pdf (accessed 14.03.2019)

[15]States of Jersey 'Pathway 2050: An Energy Plan for Jersey' available at: https://www.gov.je/Government/Pages/StatesReports.aspx?ReportID=1039 (accessed 07.03.2019)

[16] Isle of Man Government 'Greater efficiency, Cleaner energy, resilient economy' available at: https://www.gov.im/media/1351764/mitigation-addressing-our-climate-challenges.pdf (accessed 07.03.2019)

6.6 The United Kingdom, in June 2019, amended the Climate Change Act 2008 and put in place domestic legislation to reduce its emissions by 80% by 2050 compared to 1990 levels[17]. The European Union[18] has put in place a binding target to cut its emissions by at least 40% below 1990 levels by 2030 and includes further targets of at least a 32% share for renewable energy and at least a 32.5% improvement in energy efficiency.

6.7 In 2019 Guernsey acknowledged that there was a climate crisis and added climate change as a priority policy area in the Future Guernsey Plan. Guernsey had not, at that point, committed to reducing its greenhouse gas emissions by 80% below 1990 levels by 2050, or set any new targets or commitments subsequent to the Kyoto Protocol. This meant it was out of step with both the United Kingdom and the European Union, in terms of its emissions targets, and therefore at risk of reputational harm. The vision for net zero by 2050 at the latest and objectives to reach this target will address this.

6.8 The Committee recognises that the Energy Policy represents an opportunity for the States to demonstrate their ambition and commitment to tackling climate change by reducing greenhouse gas emissions. Therefore, it lays out in the vision for Guernsey's energy future a target of net zero emissions by 2050 at the latest. By adopting this vision, the Island would bring itself in line with the United Kingdom, which recently announced that it would enshrine in law this same target. The target of net zero by 2050 has been outlined as required to meet the goal of the Paris Agreement which is to keep global temperature rise to below 2°C above pre-industrial levels. The Committee recognises this target is wider reaching than Energy Policy and has therefore proposed a net zero default position by 2050 to set clear direction and commitment to decarbonisation. The forthcoming Climate Change Policy and Action Plan will consider further the alignment to the UK's adopted policy and timings. Subject to the States' agreement to these initiatives, the financial implications of these initiatives, and how the resources and funding to support them where necessary can be secured, will be considered as part of the 2021 Budget cycle.

6.9 In addition, the States are advised to adopt an interim target of reducing emissions by 57% on 1990 levels by 2030. This would align the Island with the United Kingdom government's target, set out in its fifth carbon budget (for the period 2028-2032)[1].

6.10 Furthermore, the Committee recognises that whilst emissions from energy-related sources make the greatest overall contribution to the Island's

[17] HM Government. The Clean Growth Strategy. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/700496/clean-growth-strategy-correction-april-2018.pdf (accessed 28.02.2019)
[18] European Union '2030 climate & energy framework' Available at: https://ec.europa.eu/clima/policies/strategies/2030_en (accessed 28.02.2019)

greenhouse gas emissions inventory, there are other contributing factors, such as emissions from waste and agriculture, the policy approach to which falls outside of the scope of this policy letter. The Committee therefore proposes that work to develop the future climate change policy should include consideration of reducing emissions from non-energy sources.

6.11 The States of Guernsey provides annual updates of Guernsey's greenhouse gas emissions inventory, using data provided by Aether Limited, which compiles the figures as part of the United Kingdom's National Atmospheric Emissions Inventory. Emissions of the greenhouse gases carbon dioxide, methane, nitrous oxide, and fluorinated gases (or F-gasses: hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride) are all estimated for the inventory. They are all presented in the form of CO_2 carbon dioxide equivalents (CO_2e) for ease of comparison.

6.12 The States of Guernsey's most recent Greenhouse Gas Bulletin[19] reported (based on consumption rather than production) the following headlines, concerning Guernsey's emissions of greenhouse gases:

- Greenhouse gas emissions from Guernsey decreased by 10.5% in 2017, when they totalled 355.4kt of carbon dioxide (CO_2) equivalent, compared to 397.3kt in 2016;
- The cumulative percentage change in Guernsey's greenhouse gas emissions between 1990 and 2017 was a decrease of 35.7% (or 197.7kt of CO_2 equivalent);
- Transport contributed the largest proportion (32.2%) of the greenhouse gases emitted in 2017. Waste contributed a further 27.0%. On-island power generation contributed 9.0% (a greatly reduced proportion compared with pre-2001 when the cable link was established);
- The majority (64.0%) of the emissions were in the form of carbon dioxide; and
- Compared with 1990, only agriculture and F-gas emissions have increased in volume: agriculture by 0.1kt of CO_2 equivalent and f-gases by 19.8kt of CO_2 equivalent.

6.13 Energy makes the greatest overall contribution, in terms of proportion, to Guernsey's greenhouse gas emissions (all figures based on production rather than consumption). In 2017 (the most recent year for which published data are available) Energy made up 63.7% of greenhouse gas emissions. The percentage contribution of emissions by source in 2017 were as follows:

[19] States of Guernsey (2019) 'Guernsey Annual Greenhouse Gas Bulletin 2017' available at: https://www.gov.gg/ghg

TABLE 6 PERCENTAGE CONTRIBUTION OF GUERNSEY'S GREENHOUSE GAS EMISSIONS BY SOURCE 2017	
Source	**Proportion**
Energy – Power Generation	9.0%
Energy – Industrial Combustion	10.8%
Energy – Transport	32.2%
Energy – Commercial and domestic combustion	11.7%
Agriculture, land use, land use change and forestry	3.7%
Waste	27.0%
F-Gases	5.6%
Source: States of Guernsey Greenhouse Gas Bulletin 2017 (Issue date: 4 March 2019)	

7. Engagement with stakeholders

7.1 The Committee has undertaken extensive engagement with stakeholders across the energy sector; with relevant Committees, and with organisations representing on-island businesses. The themes raised by stakeholders include the need for the Energy Policy to address the following issues:

- Establishing favourable energy market conditions and a level playing field for operators;
- Managing the transition from hydrocarbons to electricity;
- Reducing Guernsey's greenhouse gas emissions and other emissions;
- Managing energy demand;
- Managing the energy supply chain and storage needs;
- Managing energy security;
- Meeting consumer needs;
- Facilitating and supporting economic development;
- Addressing global trends and international commitments; and
- Addressing issues relating to the generation of States' income.

7.2 These have been summarised into the following pillars developed in conjunction with stakeholders:

- To manage and support change in the energy market in line with global efforts to reduce emissions;
- To allow for an open energy market with all suppliers having shared responsibility for security;
- To facilitate a competitive energy supply market using shared critical infrastructure as appropriate; and
- To establish a secure supply platform as an enabling factor for the growth of renewable technologies.

7.3 The Committee, in formulating the recommendations in this policy letter, has had regard to the issues raised by energy market stakeholders, seeking to achieve a balance across the various areas of interest and need. In particular, the Committee recognises the need to manage and support the transition from hydrocarbons to adapt to global trends towards decarbonisation whilst working with fuel suppliers to ensure the continued security of the Island's energy supply.

7.4 The 2019 Budget Report indicated that the development of the Energy Policy would include a consideration of environmental and energy related taxes. The PwC engagement therefore included analysis and advice in respect of six potential tax policy options: hydrocarbons tax; carbon tax; pollution tax; mileage tax; heating efficiency tax; and an appliances tax.

7.5 The Committee's view is that at this stage the objectives of the Energy Policy can begin to be achieved without the use of fiscal levers to effect the necessary change. The Committee is mindful that the Policy & Resources Committee is responsible for fiscal policy and emphasises that if these taxes were to be implemented in the future, it would be on the basis of the taxes being policy levers as opposed to being fiscal instruments.

7.6 Therefore, the Committee does not recommend the introduction of any specific environmental or energy-related tax or taxes currently. However, it will review that position again by May 2023 by which time there will be a good 'baseline' level regarding market forces alone, which will inform any future recommendations more accurately. Should the Committee consider that such policy levers would be beneficial, it will report back to the States with policy proposals and then work with the Policy & Resources Committee to develop appropriate taxes for the Guernsey community for inclusion in a future Budget Report.

8. The benefits of a second interconnector to delivering the objectives of the Energy Policy

8.1 Additional interconnection is a way to increase the security of supply, maintain access to affordable European electricity, facilitate emissions reduction through the importation of low carbon electricity, reduce the requirements of N-2 and provide for the uptake of local renewable energy for both the management of the grid and providing the potential for export.

8.2 Guernsey expects to have reliable and affordable access to imported low carbon electricity and retain high levels of security of supply today and into the future. Meeting these expectations now, as well as in the future, is particularly relevant given the recent experience of failures in the subsea cable between Guernsey and Jersey (GJ1).

8.3 GEL's overall investment strategy for interconnection has not changed from the previous policy direction approved in the 2012 Energy Resource Plan. This was to have two subsea import cables to the Island. Therefore, the overall strategic aims of two interconnecting cables remain to:

- Provide electricity supplies to customers at affordable prices;
- Ensure appropriate levels of security and resilience of electricity supplies;
- Meet the needs of the energy transition, and the adoption of local macro and micro renewables; and
- Reduce carbon emissions from, and the environmental impact of on-island generation activities.

8.4 Of specific importance for the Guernsey interconnection strategy are the island's objectives for the entire energy system, particularly in terms of the level of local renewable energy generation and Guernsey's independence from other energy economies.

8.5 A second interconnector forms a firm basis for the development of local renewable generation and provides secure grid stability to the network as well as a resilient low carbon electricity supply chain. The proposed second interconnector would be Guernsey-France – GF1.

8.6 The principal change since the 2012 Energy Resource Plan is the early replacement of GJ1. The GJ1 replacement subsea cable has returned Guernsey's electricity production to mainly imported low carbon energy and reduced the need for local fossil fuelled power generation. However, whilst the likelihood of similar interconnector failure events as have been seen in recent years occurring should have reduced with the new cable, the risk impacts of a failure of the single circuit remain substantial. It is also clear that pressure from the global movement to stop generating using fossil-based fuel is increasing.

8.7 Noise pollution and air quality have come into greater focus and priority which goes beyond the pure carbon intensity consideration. Guernsey is preparing to enact legislation that controls industrial emissions in line with other European countries. The legislation was laid before the States on 27 November 2019 and confirmed the power station as a prescribed operation that requires a licence. The licence imposed conditions regarding the emissions from the facility (amongst other controls). Through consultation with the Guernsey Office of Environmental Health and Pollution Regulation, GEL decided that they should comply with the limits if they use the generators in D station to generate electricity and may exceed if use the older C station engines. GEL will work closely with the office throughout 2020 to ensure the licensing of GEL's operation allows GEL to continue operating with compliance under reasonably foreseeable circumstances.

8.8 Delaying progress on the GF1 project, or indeed not investing in a second interconnector at all, would likely necessitate additional, and strategically and financially sub-optimal, investment in local power generating plant required to ensure supply resilience. The plant would need to operate using hydrocarbon fuels which would comply with sulphur limits set within air pollution legislation potentially resulting in increases to operating costs. Alternatively, the Island would need to accept an increasing risk to the security and reliability of electricity supplies, e.g. an increased frequency of power cuts and disruption to supply.

8.9 The current challenges faced by GEL regarding their asset base, and the increasing investment burden required to keep the older heavy fuel oil based generating plant, and their auxiliaries in efficient working order has become more onerous, and expensive. Energy transition for the current source fuel (HFO) must be progressed swiftly, and fossil-free electricity from Europe would be a relatively swift and cost-effective solution.

8.10 Not investing in an additional interconnector would result in significant investment in on-island generation assets to provide security of supply. Renewable energy generation will be intermittent by its nature with the wind, sun, tides, and waves all having periods of absence.

8.11 To provide security from renewable sources energy storage would form an integral part of the system. Currently costs of energy storage are high and difficult to implement at grid scale. However, there are certain advantages of pairing renewable systems with storage. Battery systems can provide grid stabilisation for renewables.

8.12 Investment appraisal into a second interconnector continues to promote a clear investment option of installing a cable directly from Guernsey to France. This appraisal was fully aligned and took account of renewable technology changes and the likelihood and timing of adoption on the Island. The appraisal concluded that the option to install a direct cable to France would deliver added resilience to the electricity supply system in Guernsey by providing a second cable to supply the Island via a different route than the existing interconnector supply. It would also provide the Island with a supply capacity which virtually removes all carbon emissions associated with electricity generation from the Island by using French nuclear and hydroelectric power plants.

8.13 With the introduction of a second interconnector, resulting in enhanced resilience in the import supply chain, the level of resilience in on-island flexible generating capacity may be relaxed, leading to the existing N-2 criterion being revised. Indeed, GEL's view would be to pursue and encourage such change through a review of the Guernsey electricity supply strategy to ensure the Island's electricity provision remains affordable.

8.14 A second interconnector can continue to provide low cost low carbon electricity to the Guernsey energy economy. In consideration of the strategic advantages and overall outcomes that can be achieved for Guernsey in the near term and also in provision for the long-term future, it remains GEL's firm belief that the most appropriate investment pathway is the continued pursuit of the GF1 interconnector, that being a direct connection to France.

8.15 The process of gaining permissions and consents to install and connect a direct interconnector to French infrastructure consists of various stages which are set out in French regulation. The consultation processes take on average two years to complete, provided there are no significant issues that need to be addressed during the consultation. The Environmental Impact Assessment is reviewed for the entire project including the Channel Islands section. This document includes the collation of all studies, analysis and recommendations carried out and concluded during this period. The permissions and consents are required before a final investment decision, through submission of a business case, can be made as these confirm route and connection points. This decision point is planned to be in 2021/22.

8.16 The project total cost is currently estimated at £85m with the formation of a business case along with the French consenting and permissions process responsible for some £6 to £10m of these costs. This includes not only the consultation process but also the necessary surveys and offshore investigations. The project timescale continues to be for completion in the mid 2020's.

8.17 The Committee is asking the States, through the Energy Policy, to agree the strategy for Guernsey to have interconnection through two electricity cables in order to address issues relating to the forecast increase in demand for electricity in Guernsey and the security and affordability of the Island's electricity supply, to facilitate emissions reduction, and to provide connectivity to the European grid for the import and also potentially the export of low carbon electricity including electricity generated from renewable sources.

8.18 The costs associated with the development of a full business case, along with the French consenting and permissions processes, to be presented to the States are estimated to be at £6-10 million, as this will include a survey of the seabed. The overall required investment and funding will be set out in the business case which will be put to the States for its consideration. The costs for the development of the business case, including the survey, will be met by GEL but they will be fully reflected and recovered by the business through its charges.

8.19 There are several reasons why the rationale for a second interconnector from Guernsey directly to France (GF1) rather than a second interconnector from Guernsey to Jersey (GJ2) is supported:

- **Supply resilience -** GF1 provides secure connectivity to the European Grid via diverse points of supply from different areas within France, provides a substantially different routing of submarine cable and supplies Guernsey Electricity Limited's on-island network at different positions within the transmission network. This configuration ensures redundancy at every point in the import supply system, creating a resilient network. This does not mean that Guernsey can withstand any adverse event, rather the consequences of any adverse event should fall within Guernsey Electricity Limited's (and Guernsey's) security of supply tolerance. The alternative option to route a second interconnector via Jersey does not provide the same level of resilience, where inferior geographical separation and continued reliance on the Jersey transmission network exist;
- **Capacity** - the additional capacity offered by GF1 will allow c.99% importation at present levels of electricity demand and will provision substantially towards the long term forecast future peak demand which is expected to increase to around 100 to 120MW, dependent on how well the Island's electricity demand is managed. Whilst a second connection to Jersey as a subsea asset may be installed at 100MW, substantial further investment in capacity rights into Jersey, and in network infrastructure across Jersey will be necessary. Although this situation presents some opportunity in terms of capital phasing, capital phasing also presents an issue of continued investment liability;
- **Future investment liability** - an investment in a direct route to France increases both Guernsey and Channel Island resilience and reduces dependency on GJ1, CIEG (the Channel Island Electricity Group) assets and associated commitments required to sustain capacity rights on GJ1; and
- **Affordability** - all necessary investment options challenge affordability and will represent substantial cost on consumers' energy provision. However, it can be seen through financial modelling that the GF1 investment has the least impact on customers and GEL's financial sustainability if delivered through an appropriate capital financing structure. With affordability under strain whichever the chosen pathway, it becomes more a question of policy than investment strategy.

9 Renewables and low carbon

9.1 As per the Energy Policy 2020 – 2050 vision for Guernsey's energy future, all Guernsey's energy supplies will come from clean, low carbon sources. The island is fortunate to be in a position where there are abundant resources of wind, wave, tidal and solar energy that can be utilised to produce power. In the long-term, renewables offer a locally sourced and independent form of energy provision. Over the short term the nascent state of the grid scale energy storage sector means that renewables are unlikely to be able to provide additional security of supply at low cost. There is clear potential to provide security through storage.

Onshore wind and solar are both cost competitive and are now the cheapest forms of new build bulk power. Offshore wind prices have come down significantly based on next generation (10-12MW) turbines and are also now cost competitive. Newer technologies such as floating platform offshore wind, tidal and wave are still largely pre-commercial and require significant scaling up before they become commercial, but offer good opportunities for the Island in the future. Cost implications at consumer level will be related to the status of the technologies, of wind, wave, tidal and solar, as well as the scale of a given development.

9.2 Renewable energy can be adopted in two ways: at a large grid, or macro, scale, with arrays ranging from ~100kW for solar up to 100's of MW for wind or; at small domestic scale, or micro, ranging from a few watts up to a few kilowatts and this can be both solar and small scale wind. Both micro and macro generation are a departure from traditional centralised generation, which is an adaptation that is required globally as we transition to a lower carbon energy system. A system of management for intermittent and smart/AI technology (e.g. washing machines that 'switch on' during load dips) for distributed generation will be essential for the uptake of renewables. See Appendix B.

9.3 In 2016, working with Guernsey Electricity, Environment and Infrastructure's Renewable Energy Team commissioned a report[20] into the potential for a 30MW (5-10 turbines) offshore wind farm to be developed within the Island's waters. The report investigated whether it was both technically and financially feasible to develop a small scale wind farm to service the Island and reached the following conclusions:

- There are a range of technically feasible options to develop an offshore wind project in Guernsey's waters. Developing a modest project, of the order 30MW, will achieve the fundamental objectives associated with energy diversification namely: security; price certainty; sustainability and lower carbon emissions.
- The cost (based on 2016 prices) was higher than current French importation and on-island generation.
- The lowest cost site is likely to be in the shallow waters off the north coast (or any coastal site).

9.4 Following the report in 2016 continued evolution in the development of offshore wind turbines has resulted in increased size of turbines (regularly exceeding

[20] Full report - http://www.guernseyrenewableenergy.com/documents/managed/Offshore-Wind-Feasibility-Report.pdf
Summary report - http://www.guernseyrenewableenergy.com/documents/managed/offshore%20feasibility%20high%20level%20summary.pdf

10MW) and reducing costs. The changes and advances in the sector present challenges and new options for Guernsey. For example, smaller turbines as originally modelled are less available. Using larger turbines currently available for a 30MW windfarm increases dependency on each individual turbine and a larger scale wind farm with greater generation capability may be viable. Whole life costs for wind farms have significantly reduced as illustrated by the falling strike prices of offshore wind projects in the UK – with the latest awards putting offshore wind as the second cheapest form of new build power generation in northwest Europe (behind only onshore wind)[21]. Therefore, the options for Guernsey include:

- To work with a nearby off-shore wind farm to benefit from the scale;
- To investigate increasing the scale of a wind farm and selling surplus electricity and/or producing hydrogen for sale/storage;
- To proceed with a smaller scale off-shore windfarm and accept a slightly higher cost of energy.

9.5 The security of interconnection and the stability of the grid is an important consideration when setting targets for local renewable generation. Careful consideration of how grid stability can be ensured when scaling up renewable energy deployment on Guernsey is required. Resilient grid interconnection is viewed as a preferable means of ensuring stability rather than reliance on a domestic (island) level ancillary balancing services market for which the local energy market lacks the scale to make commercially viable.

9.6 With the successful commissioning of the replacement GJ1 cable and without the investment into a second interconnector, GEL forecasts an average carbon intensity of electricity of between 60 to 70 gCO2e/kWh with the single interconnector in reliable operation. However, this figure again rises to over 100 gCO2e/kWh by 2048 and this is due to forecast increases in demand during peak times needing to be served by on-island diesel generation whilst the GJ1 cable has reached technical capacity limitation (note this figure also takes account of annual scheduled outages required for maintenance).

9.7 With GF1 forecast to deliver c.99% of electricity requirements on Guernsey, the average carbon intensity of electricity is 5.2 gCO2e/kWh, assuming contractual terms between Channel Island's Electricity Grid (CIEG) and Électricité de France (EdF) remain as present.

9.8 Whilst local renewable energy generation and storage is likely to reduce the need for on-island hydrocarbon-based generation and may play a valuable part in reducing the need to operate on-island hydrocarbon generation during peak

[21] https://windeurope.org/newsroom/press-releases/offshore-wind-wins-big-in-worlds-largest-wind-energy-capacity-auction/

times, it is unlikely to result in no hydrocarbon generation. All local hydrocarbon-fuelled generating assets will be subject to a regime of test running necessary to ensure their healthy availability, so a small proportion of on-island generation will always need to occur.

10. Managing the decline of hydrocarbons – proposed next step

10.1 The long term stability of the supply chain for hydrocarbons has been identified by the States of Guernsey and the private sector as a subject that requires better understanding for some time.

10.2 Historically, the focus of debate has tended to be on the vulnerabilities associated with how fuel is transported and uploaded to the Island. More recently, an increased recognition of the rapidly shifting political and technological environment has added other dimensions to be considered.

10.3 The question of the way forward for hydrocarbon delivery is far more complex than the stability of and risks within the current supply chain. The wider context of energy transition to electricity, the reduction in hydrocarbon volumes in the medium to long term, the long-term (25+ years) nature of infrastructure investment, the drive towards decarbonisation and other government programmes such as the States' Trading Supervisory Board's St Peter Port Harbour Development Programme must be considered.

10.4 The programme of work that began life as "Deep Water Berth Investigations" in 2013 has therefore become much more complex and multi-faceted.

10.5 The requirement has moved on from a simple review of a replacement for the current import facilities at St Sampson's Harbour to a review of the Hydrocarbon Supply Chain. The programme of work to investigate supply of hydrocarbons to the Island has been under way since November 2016. This programme of work has involved a number of studies and has provided pivotal information on future requirements which can now be viewed in the context of the Energy Policy and current programmes of work with the States. Key work carried out includes:

- Hydrocarbon demand forecasts;
- Stakeholder engagement;
- Risk assessment of the current supply chain;
- A long list of options for each element of the supply chain;
- Evaluation of the supply options and risks to create a shortlist;
- Total life costs assessment for short list options.

10.6 The hydrocarbon supply chain

10.6.1 The existing hydrocarbon supply chain is almost entirely provided by the private sector. Multiple fuel types are imported categorised as heavy fuel oil (used for the on-island electricity generators), liquid petroleum gas (used for mains and bottled gas supply) and light liquid fuels (petrol diesels, heating oil, marine fuel, and aviation fuel). Each category has been reviewed for supply, transport, upload, storage, and delivery. A schematic of the current provisions is provided in Appendix C.

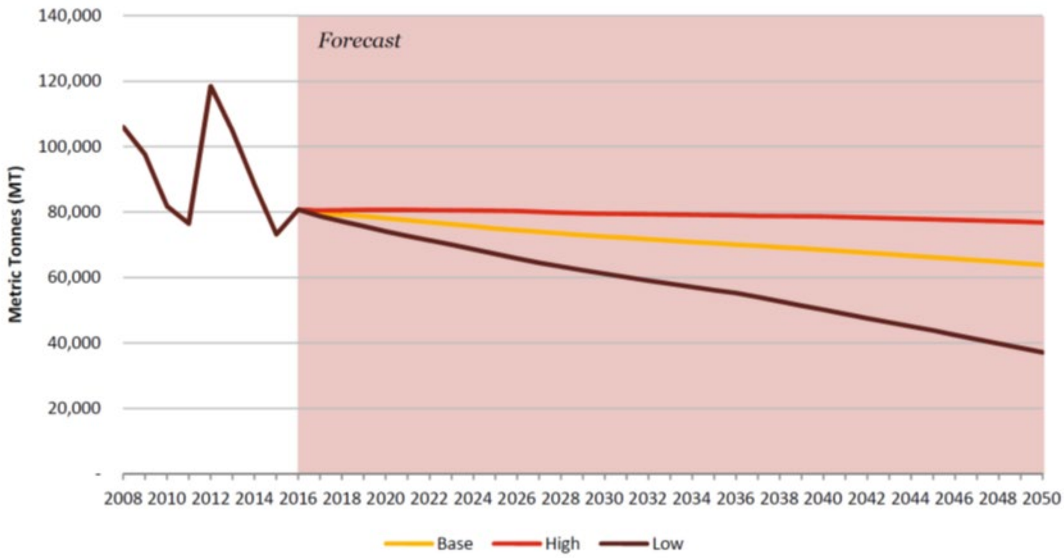
10.6.2 The hydrocarbon suppliers form part of an overall competitive energy market on the Island. Whilst individual energy types such as electricity and gas may have only one supplier on the Island, the overall island energy market is currently a competitive market.

10.7 The hydrocarbon work was undertaken with the following general requirements applying to all elements of the supply chain (for full details see the Statement of Requirements at www.gov.gg/fuels). Some or all these baseline requirements are influenced or negated by changes in policy, advancements in technology and drive towards decarbonisation. These requirements were the basis from which the hydrocarbon work was formed from, however they are not necessarily the basis from which we would work now.

- Future solutions need to allow for continued importation of all the currently supplied fuels;
- Future supply chains should be adaptable to cope with the forecast decline in fuel demand in the range 20-50% by 2050;
- Future supply chains should allow for total hydrocarbon imports in the range of 40,000 to 80,000 MT (tonnes) by 2050;
- Where possible, a diversity of supply and suppliers should be maintained;
- While it is expected there will be a premium to be paid on the price of hydrocarbon supply to Guernsey in comparison with larger markets in UK and Europe, future supply solutions should aim to minimise this;
- Any major new infrastructure should have a design life of more than 25 years; and
- Any new infrastructure should be considered in relation to potential synergies with other capital projects.

10.7 Reducing demand

10.7.1 The demand forecast for hydrocarbons on Guernsey concluded that demand is most likely to decrease over the forecast period to 2050 with the baseline case indicating a volume decline of -21% in total between 2016 and 2050 and low case forecast decline of -54% whilst the high case is essentially flat. The chart below indicates Guernsey's estimated hydrocarbon demand for the three scenarios: base, high and low 2008-2050.



10.7.2 Heavy fuel oil (HFO) demand for Guernsey Electricity (GEL) is the primary driver of historical volatility.

10.7.3 In aggregate, the forecast decline in demand is the net impact of the following key factors:

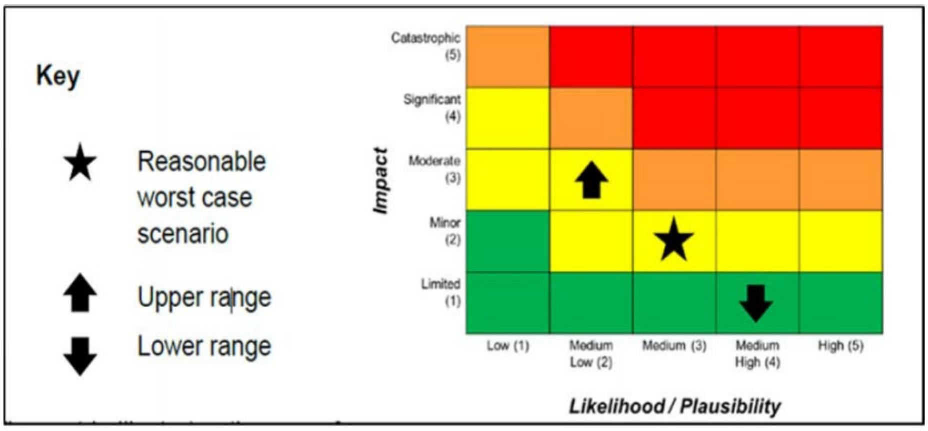
- Broadly flat population forecasts;
- An economy that is forecast to grow slowly but without any structural changes in the mix of economic activity conducted on the Island;
- Increases in fuel efficiency across most segments, particularly the road transport and heating markets;
- Gradual electrification in some segments, most notably the uptake of electric vehicles (EVs).

10.7.4 The full report hydrocarbon demand study can be found at www.gov.gg/fuels. The forecasts within the hydrocarbon programme were key in the development of Energy Policy which has since gone on to forecast total energy demand. The updated baseline forecasts are contained within the "Baseline future energy demand in Guernsey" section of this policy letter at paragraph 5.4.

10.7.5 It must be noted that stress testing short listed supply and upload solutions concluded policy intervention did not change the options. However, the forecast report notes changes to the States of Guernsey's policies could have a significant impact on the use of hydrocarbons on the Island. Similarly, as acknowledged in the Energy Policy, external jurisdictions policies are also key influencers.

10.8 Risk

10.8.1 The existing supply chain was risk assessed by identifying the associated risks and scoring the reasonable worst case scenarios and indicating an upper and lower range. The graphic below shows the basis on which risks were assessed.



The risk appetite considered acceptable for the hydrocarbon supply chain includes risks assessed with a reasonable worst case scenario of green, yellow, or orange whereby planning strategies are included to limit impact for orange. Red risks were not considered tolerable. All options for hydrocarbon supply were evaluated on the same basis.

10.8.2 The evaluation of the current supply chain identified 16 risks, five of which were considered red. Continuation of the current supply chain, investing in new vessels to import fuel the same way, would require the acceptance of red risks over the longer term than other potential solutions. Any infrastructure decision for hydrocarbon supply is an investment decision for a period greater than 20 years.

10.8.3 The risk assessment looked at risks identified in previous reports, risks identified in stakeholder meetings other documented risks including industry best practice, standards, and guidelines on use of NAABSA (Not always afloat but safely aground) berths.

10.8.4 All hydrocarbon supply solutions were risk assessed on the same basis. Full details of the risk assessment and assessments reducing the long list of potential supply solutions to a short list can be found in the Statement of Requirements at www.gov.gg/fuels.

10.9 Short list and supply solutions

10.9.1 The long list of options for the hydrocarbon supply chain were evaluated against the key criteria set out at the commencement of the hydrocarbon supply programme and the risk tolerances as described in section 9.6.1. Based on this evaluation, stakeholder engagement and the demand volume forecasts, the following options are shortlisted in the programme:

- A multi-buoy mooring for lighter grades of fuel and pursue interim options for LPG and HFO import.
- Commissioning new vessels and continue the existing importation method. To continue supply of the existing hydrocarbon fuel types this requires a minimum of three vessels. This solution requires a higher risk appetite to be adopted than the programme of work deemed acceptable.
- Containerised/unitised hydrocarbon delivery by either Ro-Ro or Lo-Lo.
- Uploading fuel in St Peter Port, thereby removing some of the bespoke vessel requirements for delivery to St Sampson's Harbour and therefore opening alternative options for vessels delivering to the Island.
- Do nothing and depend on the private sector to evolve their supply chains. This would place the management of risk for continuity of supply of each individual hydrocarbon type (gas, light liquids, and heavy fuel oil) with the individual suppliers.

10.9.2 Some of the shortlisted options are more capital intensive and costs are less flexible as demand reduces. Infrastructure investment on, for example, new vessels or offloading at St Peter Port requires significant capital investment. If the supply chain continues to be operated on the same basis as today, privately, and commercially, the infrastructure investment costs would be passed on to the per unit price of the product and therefore the consumer. As volumes reduce these capital costs would be spread over smaller volumes, thereby increasing the unit cost.

10.9.3 A containerised or unitised delivery solution is operating expenditure intensive and potentially more flexible to reduce costs as volumes reduce.

10.9.4 All of the shortlisted options, outlined in 10.9.1, require further investigation to determine a preferred option for the long term delivery of liquid fuels to the Island. Properly investigating these options will ensure we are able to reach well-reasoned investment decisions for delivering the ongoing supply of hydrocarbons to the Island.

10.10 <u>Energy transition and key factors</u>

10.10.1 The findings of the hydrocarbon supply programme have helped to inform the Energy Policy to support the Island in a pivotal transition period for energy supply.

Key considerations for next steps of the hydrocarbon programme include:

- Energy Policy and decarbonisation;
- Advancement of technology;
- Policy decisions in other jurisdictions changing energy needs;
- Guernsey's energy demand forecasts;
- Aging assets in the current supply chain; and
- Concurrent States of Guernsey Programmes of work

10.10.2 The hydrocarbon supply chain requirements are a combination of:

- Policy and strategy adoption and implementation. This includes approval of Energy Policy and climate change policy followed by the implementation of actions associated with those policies.
- Changes to port infrastructure (note these are significantly dependent on decisions within the STATES' TRADING SUPERVISORY BOARD St Peter Port Harbour Development Programme); and
- Interim support for issues related to hydrocarbon supply continuity in the short term.

10.10.3 Therefore, it is recommended, based on 10.10.2, that the hydrocarbon programme is subsumed into Energy Policy, and the States' Trading Supervisory Board's St Peter Port Harbour Development Programme considers port infrastructure for the delivery of hydrocarbons. Establishing a third strand of work is recommended to work with energy providers and align decisions for interim supply solutions. Next steps are outlined in section 11.

11. Proposed actions and next steps

11.1 The proposed actions and next steps below will enable the States to meet the long-term Energy Policy objectives set out in section 2.4 and manage hydrocarbon supply decisions as set out in section 10. Further work will be undertaken on each of them if agreed by the States. The actions and next steps have been proposed to:

- Reduce the need for new legislation, regulation, government control or taxpayer funding as far as possible;
- Provide clear actions with a realistic timeframe;
- Be focused on the community rather than the market;
- Recognise and work with other States' programmes of work and policy work streams;
- Build on the existing energy system; and
- Be focused on delivering clear outcomes.

The transition to decarbonisation

Emissions reduction target

11.2 With a move to decarbonisation, it is important to create the conditions for investment, infrastructure development, product development and consumer choice to support that transition. It is the view of the Committee that a target is essential to create those conditions, as well as to ensure that Guernsey meets international standards.

11.3 The Committee, under its mandate to advise the States on energy and climate change, advises the States to set a target to reduce Guernsey's greenhouse gas emissions to net zero by no later than 2050. The United Kingdom recently enshrined in law this same target, following the advice of the Committee on Climate Change[22], the independent, statutory body established under the Climate Change Act 2008[23] to advise the United Kingdom Government on matters relating to climate change.

11.4 The States are further advised to adopt an interim target of reducing emissions by 57% on 1990 levels by 2030, in line with the target set out in the United Kingdom's fifth carbon budget (for the period 2028-2032)[24]. The committee is mindful that as well as reducing greenhouse gas emissions, it is important to consider other wider emissions (such as particulates, sulphur, and NO_x) which have wider environmental and Health impacts which are covered under the Committee's mandate for Environmental Health and Pollution Regulation. The Committee is also mindful that fiscal levers may be required to meet these targets in the future.

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[22] Committee on Climate Change (2019) 'Net Zero: The UK's contribution to stopping global warming', available at: https://www.theccc.org.uk/wp-content/uploads/2019/05/Net-Zero-The-UKs-contribution-to-stopping-global-warming.pdf (accessed 20.06.2019)
[23] Committee on Climate Change, 'About the Committee on Climate Change' available at: https://www.theccc.org.uk/about/ (accessed on 20.06.2019)
[24] Committee on Climate Change 'Carbon budgets: how we monitor emissions targets' available at: https://www.theccc.org.uk/tackling-climate-change/reducing-carbon-emissions/carbon-budgets-and-targets/ (accessed 20.06.2019)

Action – agree the vision for Guernsey's energy future and prioritise opportunities to reduce emissions faster where possible.

Resource implications – no new direct resource implications identified.

Outcomes – compliance with international standards and target; positive international reputation; ensure momentum in decarbonisation, provide clear policy direction enabling sound long-term energy infrastructure investment.

Licensing framework to support on-island (including offshore) renewables generation

11.5 The work undertaken by PwC and the targeted consultation with energy stakeholders has demonstrated that it is important to create the conditions for an increasingly competitive renewable electricity market. As well as supporting decarbonisation, this will support the economic growth and the development of a renewable energy sector and will support greater choice for consumers.

11.6 The role of the States is to support the creation of these conditions through an appropriate, proportionate, and cost-effective licensing framework. This could include the widening of the remit of the Electricity (Guernsey) Law, 2001, which the States of Deliberation has the power to amend by Ordinance in section 36(1). However, competition is the tool through which the objective of greater on-island (including offshore) renewables will be met – it is not an end in itself. Therefore, there will need to be an analysis of the market structure to ensure that we are able to deliver the aims of the policy in a cost effective manner. To ensure continuity of supply of electricity; it is important that Guernsey Electricity Limited can continue with their ongoing supply whilst awaiting the new licencing framework. The Energy Partnership (see 11.13) will be part of the process working with the Committee (and other Committees where relevant).

11.7 While part of the cost of the regulatory work will be met by GEL, it may be that part of it will need to be met by the States of Guernsey if it addresses matters that are not solely or directly related to GEL. In that case the Committee *for* Economic Development will need to submit a bid for funding as part of its 2021 budget submission to cover the non-GEL funded costs of this work.

11.8 The Energy Policy makes no recommendations on the licensing framework nor who the regulator would be. It would be possible for the new licensing system to be enacted through widening of the existing legislation (Electricity (Guernsey) Law, 2001), which the States of Deliberation have powers to amend by Ordinance under section 36(1). Currently the regulator is the Guernsey Competition and Regulatory Authority (GCRA), should there be a decision to change regulator there would be a requirement for various legislative and practical steps to enable the new regulator to undertake any proposed actions.

Additionally, the States have the power, under the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001, to issue directions to the GCRA, but a further power would need to be enacted for a new regulator to be given such direction. As the Policy does not form a view on this, the actions and propositions will refer to the “relevant regulator”, which could be the GCRA or any other authority as decided at a later date by the States.

Actions – the Committee to establish a target for renewable and low carbon/low emissions on-island energy by Q2 2021; the Committee *for* Economic Development to consult and bring proposals to the States of Deliberation to give direction on licensing matters to the relevant regulator by the end of 2021; the Committee *for* Economic Development to bring proposals to the States of Deliberation to give Direction to the relevant regulator ensuring continuity of electricity production; work in tandem with the removal of barriers to enable market entrants for renewable and low emissions generation whilst ensuring that the market structure will be compliant with the Bailiwicks future trading relationships.

Resource implications – the Committee *for* Economic Development to submit a request for funding to meet the costs of this work as part of the 2021 Budget cycle.

Outcome – support the development of competition to provide on-island (including offshore) renewables and low emissions electricity;

Security and resilience of supply

Improved interconnectivity to the European energy system

11.9 Improved interconnectivity to the European energy system will increase Guernsey’s access to more renewable and low carbon energy. As well as supporting the transition to decarbonisation, this will support greater security and resilience of supply.

11.10 GEL has been developing the business and investment case for a second interconnector to meet this requirement. The Committee’s view is aligned with Guernsey Electricity Limited, that a second interconnector is the best means by which to do this. It supports Guernsey Electricity Limited and the States’ Trading Supervisory Board in bringing to the States a detailed business case for investment in the Guernsey France interconnector (GF1).

Action – To give support in principle to the requirement for the second interconnector, subject to the final business case; direct the States’ Trading Supervisory Board to require Guernsey Electricity Limited to continue work on the introduction of a new interconnector cable between Guernsey and France;

in order to enable the Guernsey Electricity Limited to prepare a business case for the States' Trading Supervisory Board to bring forward for approval by the States.

Resource implications – see para 8.18.

Outcome – greater clarity and certainty for Guernsey Electricity Limited and the States' Trading Supervisory Board; increased resilience and security of supply, supports transition to decarbonisation.

Moving from N-2

11.11 The building of the second interconnector will enable a policy change from N-2 relaxing the on-island requirement for plant (to N-1 or another standard as deemed appropriate). With the resilience afforded by the additional interconnector the replacement of like-for-like generators as old generators are no long effective or efficient will no longer be required. This will enable a shift from N-2 to a lower requirement on-island. The Committee will bring a policy letter to the States when that position has been reached to amend the electricity strategy.

Action – support in principle the future move from N-2 to a lower on-island requirement for plant (N-1 or another standard as deemed appropriate).

Resource implications – as part of the business case for the required investment, work will be done to understand the savings this would deliver – for example – in on-island generators. This will be part of the business case developed by Guernsey Electricity Limited and brought to the States by the States' Trading Supervisory Board.

Outcome – greater clarity and certainty for Guernsey Electricity Limited, the States' Trading Supervisory Board and other businesses; supports the transition to decarbonisation; increased security of supply.

Managing the decline in demand for hydrocarbons

11.12 Managing the decline of the level of on-island demand for hydrocarbons is a critical component of ensuring the security and resilience of Guernsey's energy supply, and of the long-term Energy Policy. It also supports decarbonisation, and support ensuring equity and fairness in the provision of supply. It is important to create the conditions to ensure a level playing field for provision of security and transition to decarbonisation within the hydrocarbon supply market. When considering the introduction of licencing to hydrocarbons it is possible to widen the remit of the Electricity (Guernsey) Law, 2001 to include hydrocarbons, which the States have the power to amend by Ordinance in section 36(1) to allow for this.

11.12.1 The work undertaken to date through the Hydrocarbon Supply Chain Programme has identified four options which are set out in section 10. The States must consider these options in the context of diminishing volumes of hydrocarbon demand over the medium term, the current and on-going societal dependency on hydrocarbons, known issues with the current supply chain with existing vessels approaching their end of life and emissions reductions aims via demand reduction or lower emission energy sources. The States' Trading Supervisory Board's St Peter Port Harbour Development Programme will consider all shipping requirements, which includes the importation of hydrocarbons. The support programme for the interim supply options, working with the supplier, will be undertaken by the Committee, and will be informed by the St Peter Port Harbour Development Programme.

Actions – the Committee *for* Economic Development is asked to consult and bring proposals to the States of Deliberation to give direction to the relevant regulator on licensing matters to provide for hydrocarbon supply security on-island measures and reducing emissions from the supply of hydrocarbons by Q4 2021.

Resource implications – see section 10. The Committee *for* Economic Development to submit a request for funding to meet the costs of this work as part of the 2021 Budget cycle.

Outcome – improved on-island security and emissions reduction drive from the supply of hydrocarbons.

<u>Consumer value and choice</u>

Establishment of an Energy Partnership

11.13 The Committee is recommending the formal establishment of an Energy Partnership bring together the States, energy providers, and the relevant regulator. The purpose of the Energy Partnership will be to work with government on the delivery of a number of elements of the policy, pro-actively provide efficiency and demand reduction measures through energy providers, promote consumer awareness of the environmental and financial benefits of energy efficiency via energy providers, to devise and promote measures to reduce energy demand, and to ensure consumers are provided with clear information on energy use.

Action – the Committee to establish terms of reference and membership by Q4 2020.

Resource implication – no new resource implication. Funding to be prioritised from within the existing Energy Policy budget overseen by the Committee.

Outcome – a mechanism to deliver energy efficiency, demand reduction and education to enable informed consumer decisions bringing together the views of the States, energy providers, community representatives and the relevant regulator to deliver solutions via the energy providers.

11.13.1 In order to ensure greater consumer value and choice, the States will support consumers being able to trade surplus energy with other consumers to maximise the use of local renewables.

Action – the Committee *for* Economic Development, working with the Energy Partnership and the Committee *for the* Environment & Infrastructure, to undertake work on energy trading as part of the investigations into licencing and tariffs.

Resource implications – the Committee *for* Economic Development to submit a request for funding to meet the costs of this work as part of the 2021 Budget cycle.

Outcome – cross-sector agreement on the best method through which to achieve this objective.

Equity and fairness

Prevention of fuel poverty

11.14 It is a stated objective of the Energy Policy to ensure that the changes to our energy system work for everyone – and that, moreover, they actively mitigate against fuel poverty rather than exacerbate or maintain fuel poverty.

Action– to direct the Committee *for* Employment & Social Security to co-ordinate an investigation of the most effective means of addressing energy poverty (incorporating the existing review of winter fuel allowance) and report back to the States by the end of Q2 2021.

Resource implications – no new direct resource implications. There is the potential for additional officer support from the Strategy and Policy team to undertake the policy development work if the requirement for that resource is demonstrated and agreed.
Outcome – ensure that technological changes and market developments do not create an environment that works only for the wealthiest in our community.

Energy suppliers

11.15 Based on the targeted consultation that has been undertaken, the Committee is of the view that a cost reflective tariff system must be put in place across all forms of energy supplies. This will incorporate a consistent and transparent charge for commodity, security, and service. The outcome must be that cost should be reflected in tariffs and recoverable for energy providers. This will ensure greater clarity for investment by commercial providers; and greater transparency for consumers in respect of what they can choose to pay for. To achieve this, a full and expedient review of tariffs will be undertaken by the Committee to provide clear direction for the relevant regulator.

Action - the Committee *for* Economic Development, working with the Committee *for the* Environment & Infrastructure, to undertake a review of cost reflective tariff structures and to bring proposals to the States of Deliberation to give direction to the relevant regulator by Q4 2020.

Resource implications – the Committee *for* Economic Development to submit a request for funding to meet the costs of this work as part of the 2021 Budget cycle.

Outcome – Creation of an open and level playing field for competition in the generation market and wider energy market; prospective investors into the renewable generation market fully understand connection and power purchase arrangements.

Property Energy Efficiency

11.16 The Committee seeks to work with the Development & Planning Authority as it investigates opportunities to further improve and expand building regulations to contribute to the emissions reduction target, both for 'new builds' and (recognising the small proportion of 'new builds') existing properties undergoing alterations. The Committee is aware of initiatives in other jurisdictions which have looked to impose either minimum standards or the requirement to report the energy standard of a building to enable the sale or rental of that property. The Committee acknowledges that, given the age and status of some buildings, some will struggle to meet the highest standards. The Committee is open to the idea of having the rental and sales markets having potentially different rules, given the lack of control a tenant has over upgrades to a rented property. The Committee seeks to work with the Development & Planning Authority as they investigate the means of measuring the building energy efficiency standard of housing stock.

Action - The Committee to work with Development & Planning Authority as it brings forward further recommendations to improve energy efficiency of existing and future housing stock through building regulations together with the means of measuring the building energy efficiency standard of housing stock. The Committee to work with the Development & Planning Authority (and any other relevant expertise) to review the potential for, and impact of requirements to report building energy standards and/or to implement a minimum standard for the rental market and a reporting standard for the sales market and bring forward recommendations by the end of Q2 2021

Resources – no new direct resource implications identified.
Outcome – support a more efficient use of energy and demand reduction.

Support a vibrant economy

11.17 The work to date by Guernsey Finance and the Guernsey Financial Services Commission to support the development of green finance and investment is welcome. The Committee also welcomes the States in November 2019 supporting further funding of £300,000 from the Future Guernsey Economic Fund to support this initiative in 2020. It is important for Guernsey's reputation as a green finance centre that the States agree to the vision for Guernsey's energy future and prioritise the decarbonisation of the Island's energy system.

Action – the Committee *for* Economic Development Committee to consider appropriate States' support for further investment in green finance.

Resource implications – the Committee *for* Economic Development to submit a request for funding to meet the costs of this work as part of the 2021 Budget cycle.

Outcome – continuing development of green finance opportunities in Guernsey and support investment in decarbonisation and renewables.

Greater local independence

11.18 Changing the requirements for the merit order dispatch (the merit order dispatch defines the way of ranking energy dispatch and currently ranks purely based on ascending order of price) of energy can ensure that greater support is given to the on-island (including offshore) generation of renewables. This in turn will provide greater independence from other energy economies.

Action – the Committee *for* Economic Development to bring proposals to the States of Deliberation to give direction to the relevant regulator regarding the revision of the requirements for the dispatch of electricity by Guernsey Electricity Limited (known as the "merit order") to place any pre-committed energy production, prioritising on-island renewable generation, ahead of flexible dispatchable production.

Resource implications – the Committee *for* Economic Development to submit a request for funding to meet the costs of this work as part of the 2021 Budget cycle.
Outcome – provide greater support for the on-island (including offshore) generation of renewables.

Summary of actions and timeline

11.19 The Committee has set out in table 5 below, several key milestones in the process of achieving the Energy Policy objectives.

TABLE 5: MILESTONES		
Date	**Milestone**	**Responsible body**
Quarter 2, 2020	States to consider Energy Policy propositions and policy letter.	Committee *for the* Environment & Infrastructure
Quarter 2, 2020	Shareholder direction to be issued to Guernsey Electricity Limited, directing it to continue to progress its project to introduce a second interconnector.	States' Trading Supervisory Board
Quarter 3, 2020	Proposals for the revision of the merit order arrangements.	Committee *for* Economic Development
Quarter 4, 2020	Formal establishment of the Energy Partnership.	Committee *for the* Environment & Infrastructure
Quarter 4, 2020	Definition of "low carbon" and "low emission" energy sources.	Committee *for the* Environment & Infrastructure
Quarter 4, 2020	Proposals for Direction to the relevant regulator following a review of the structure of a cost reflective tariff system.	Committee *for* Economic Development
Quarter 4, 2020	Through the States' Trading Supervisory Board St Peter Port Harbour Development Programme report to the States' future ports requirements (which includes consideration of infrastructure options for Hydrocarbons).	States' Trading Supervisory Board
Quarter 2, 2021	Establish a target for the generation of locally sourced renewable energy	Committee *for the* Environment & Infrastructure

Quarter 2, 2021	Report back on the most effective means of addressing energy poverty.	Committee *for* Employment & Social Security
Quarter 2, 2021	Recommendations to improve energy efficiency of housing stock brought to the States of Deliberation for approval.	Committee *for the* Environment & Infrastructure
Quarter 2, 2021	Proposed Support programme for interim hydrocarbon supply solutions	Committee *for the* Environment & Infrastructure
Quarter 4, 2021	Proposals for direction to the relevant regulator on the licensing framework for the energy market and to support the on-island (including offshore) generation of renewables.	Committee *for* Economic Development
Quarter 4, 2021	Business case for second interconnector to be laid before the States of Deliberation for approval.	States' Trading Supervisory Board
Quarter 1, 2022	Expiry of Guernsey Electricity Limited's exclusive rights in the supply and conveyance sectors of electricity market, under present schedule (set in 2011) – Relevant Regulator to renew GEL licence in absence of further direction or the implementation of a new licencing system	Committee *for* Economic Development
Quarter 2, 2022	Revised Electricity Strategy to be laid before the States for approval.	Committee *for the* Environment & Infrastructure
2023	Position on introduction of environmental or energy-related taxes to be reviewed by May 2023 for inclusion in the 2023 budget.	Committee *for the* Environment & Infrastructure, working with the Policy & Resources Committee
Following cable installation and Electricity Strategy approval	Revised approach to on-island generating capacity to be brought to the States	Committee *for the* Environment & Infrastructure
2030	Achievement of States' interim greenhouse gas emissions reduction	Committee *for the* Environment &

	target of 57% on 1990 levels.	Infrastructure
2050	Achievement of greenhouse gas emissions target of net zero.	Committee *for the* Environment & Infrastructure

12. Extant States' Resolutions and Prioritisation of Legislation

12.1 The Committee has identified that if the States approve the Energy Policy, the following extant resolutions will be superseded and therefore, the Committee proposes, should be rescinded, and/or amended as follows:

TABLE 6: EXTANT STATES' RESOLUTIONS FOR RESCISSION AND/OR AMENDMENT

Resolution Date	30th September, 2011
Billet and Article	Billet d'État XV of 2011, Article XIV
Original Sponsor	Commerce and Employment Department
Title	Review of Utility Regulation
Resolution	11. To: d) Direct the Commerce and Employment Department to monitor the development of the energy sector in the Channel Islands and bring forward a review of these arrangements by 31st January 2022 or sooner in the event of any material changes to the structure of the sector.
Update	With regard to Resolution 6 of this policy letter, the proposals in this policy letter seek to open section(s) of the electricity market to competition in order to support the development locally of renewable energy generation and storage, and to increase energy security through increasing the contribution made by renewables to the Island's energy mix. The Committee considers that this Energy Policy serves to fulfil the function of the review of arrangements in the energy sector which is the subject of this aspect of the resolution. As a consequence of this policy letter, this extant States' resolution is superseded and should be rescinded.

Resolution Date	25th June, 2014
Billet and Article	Billet d'État XII of 2014, Article III
Original Sponsor	Policy Council, Commerce and Employment

	Department, and Treasury and Resources Department
Title	Guernsey Electricity Supply - Future Strategy
Resolution	4. To continue the present mandate for the Commerce and Employment Department to investigate and prepare for the use of renewable energy as part of the Island's energy mix as detailed in section 17 of that Report.
Update	Due to the changes in the machinery of government made in 2016, responsibility for advising the States on matters relating to energy including renewable energy now rests with the Committee for the Environment & Infrastructure. In addition, the Committee's policy proposals serve to supersede this extant States' resolution. The Committee therefore proposes that this extant States' resolution should be rescinded.

Resolution Date	9th April, 2015
Billet and Article	Billet d'État VI of 2015, Article III
Original Sponsor	Commerce and Employment Department, and Treasury and Resources Department
Title	Alternative Framework for the Oversight of Guernsey Electricity Limited and Guernsey Post Limited
Resolution	1. To direct that Guernsey Electricity Limited and Guernsey Post Limited be made exempt from the licensing and regulation provisions within the respective electricity and postal laws by no later than 1st January 2016.
Update	If the proposals in the Energy Policy are approved this extant States' resolution would become superseded to the extent that it relates to the regulation of Guernsey Electricity Limited and the wider electricity sector. The Committee therefore seeks States' approval to amend this extant States' resolution, but only insofar as it relates to regulation of Guernsey Electricity Limited and the wider electricity sector. The Committee makes no recommendations in respect of the regulatory oversight of Guernsey Post Limited and of the postal sector, which is outside of the scope of this policy. As a consequence of this policy letter, this extant States' resolution, so far as it relates to Guernsey Electricity Limited and the electricity sector is superseded and

	should be amended such that: • "Guernsey Electricity Limited and" and "respectively electricity and" are deleted; and • "law" is substituted for "laws".
Resolution	4. To direct the Commerce and Employment Department, in liaison with the Law Officers of the Crown, to report on the detailed legislative changes necessary to give effect to the Departments' joint proposals.
Resolution	5. To direct the Commerce and Employment Department to report on the effectiveness of the replacement oversight arrangements by no later than three years from the date on which these arrangements come into effect.
Update	As a result of this Energy Policy, this extant States' resolution would become superseded to the extent that it relates to the regulation of Guernsey Electricity Limited and the wider electricity sector. The Committee would like to clarify that by making the changes outlined to Resolution 1, resolutions 4 & 5 cease to relate to Guernsey Electricity and the wider electricity sector and so no further changes to the extant resolutions is required.

Resolution Date	18th February, 2018
Billet and Article	Billet d'État III of 2016, Article XVII
Original Sponsor	Commerce and Employment Department
Title	Legislative changes relating to the future oversight of Guernsey Electricity Limited and Guernsey Post Limited
Resolution	1. To direct that the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 is amended by removing postal and electricity services from the definition of "utility services" (as indicated at section 3.3 of that policy letter), in order that the regulation of those sectors is no longer a responsibility of the Guernsey Competition and Regulatory Authority.
Resolution	2. To direct that the Electricity (Guernsey) Law, 2001 and the Post Office (Bailiwick of Guernsey) Law, 2001, are amended, with the intention that the Commerce and Employment Department (or the committee of the States which has responsibility for utility regulation as successor to the Department) may discharge the regulatory functions under the Electricity (Guernsey)

	Law, 2001 and the Post Office (Bailiwick of Guernsey) Law, 2001, as indicated in sections to 3.15 of that policy letter.
Update	As a consequence of the proposals in the Energy Policy, these extant States' resolutions would become superseded to the extent that they relate to the regulation of Guernsey Electricity Limited and the wider electricity sector, and the Guernsey Competition and Regulatory Authority's responsibilities for the same. The Committee therefore seeks States' approval to amend these extant States' resolutions but only insofar as they relate to regulation of Guernsey Electricity Limited and the wider electricity sector, and the Guernsey Competition and Regulatory Authority's responsibilities for the same. The Committee makes no recommendations in respect of the regulatory oversight of Guernsey Post Limited and of the postal sector, which is outside of the scope of this policy. As a consequence of this policy letter, this extant States' resolution is superseded and should amended to delete: • in resolution 1, "and electricity"; and • in resolution 2, "the Electricity (Guernsey) Law, 2001 and" on both occasions it appears."

Resolution Date	16th March, 2016
Billet and Article	Billet d'État VII of 2016 Article IX
Original Sponsor	Social Welfare Benefits Investigation Committee
Title	Comprehensive Social Welfare Benefits Model
Resolution	2. To direct the Committee *for* Employment & Social Security to report to the States of Deliberation, no later than October 2017, with recommendations for reform of the arrangements for winter fuel allowances to householders receiving supplementary benefit.
Update	The Committee proposes that the work of this extant States' resolution should be incorporated into the recommendation which seeks States' approval to direct the Committee *for* Employment & Social Security, working with the Committee *for the* Environment & Infrastructure, to investigate the most effective means of addressing energy poverty. This resolution would therefore be superseded and would require rescission

	by the States.

13 Compliance with Rule 4

13.1 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.

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

13.3 In accordance with Rule 4(3), the Committee has included Propositions which, although they do not have immediate financial implications, could create a future need for the States to provide funding as set out in paragraphs 10.2 to 10.17. It is the expectation of the Committee that requests for funding will be made through future budget and capital investment rounds and expenditure prioritised alongside other spending requests.

13.4 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.

13.5 In accordance with Rule 4(5), the preparation and agreement of the propositions and content of the policy letter relate to the duties of the Committee *for the* Environment & Infrastructure. The Committee consulted the Committee *for* Employment & Social Security on the 21st January 2020, the States Trading Supervisory Board on the 23rd January, the Committee *for* Economic Development on the 30th January 2020, and the Policy & Resources Committee in relation to the propositions and policy letter.

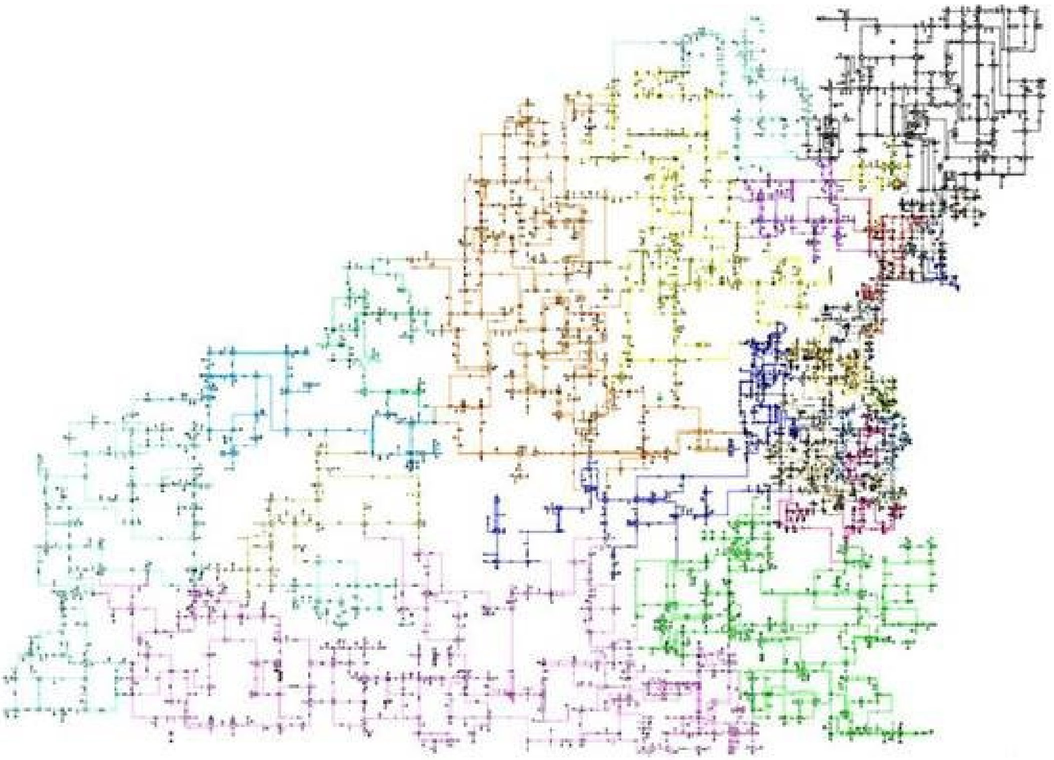
Yours faithfully

B L Brehaut
President

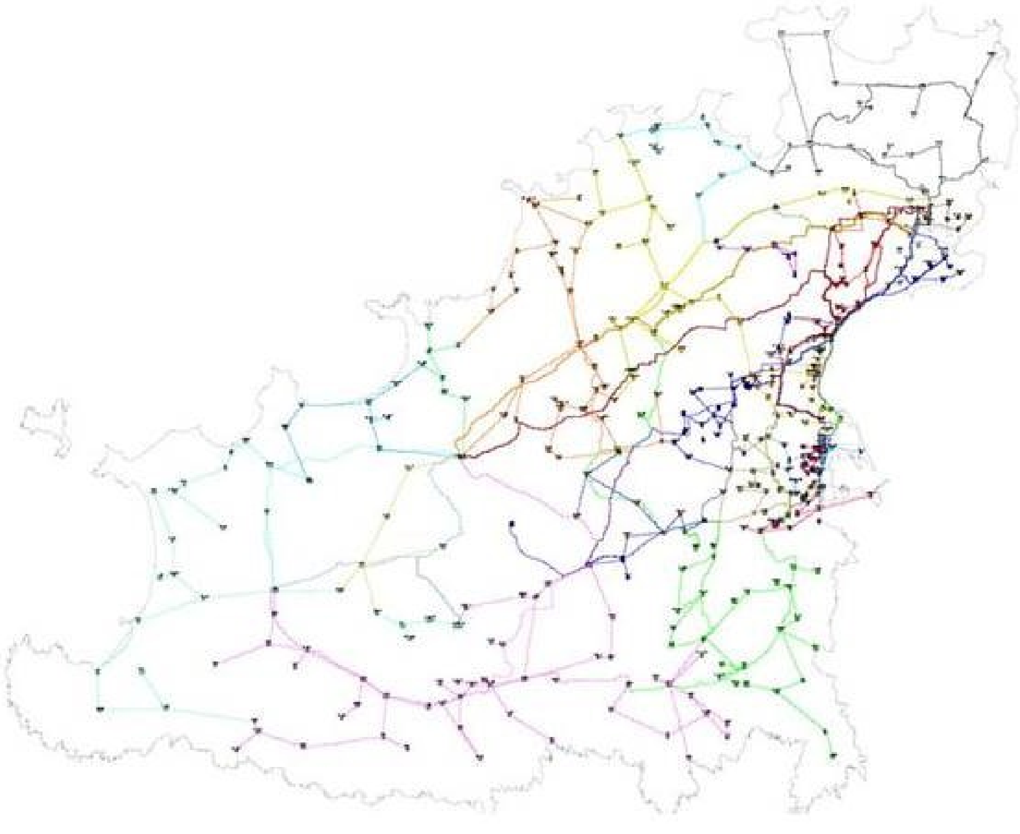
M H Dorey
Vice-President

H L de Sausmarez
S Hansmann Rouxel
S L Langlois

Network Schematic **APPENDIX A**



Low Voltage network



High Voltage network

<u>**Island Network**</u> <u>**APPENDIX B**</u>

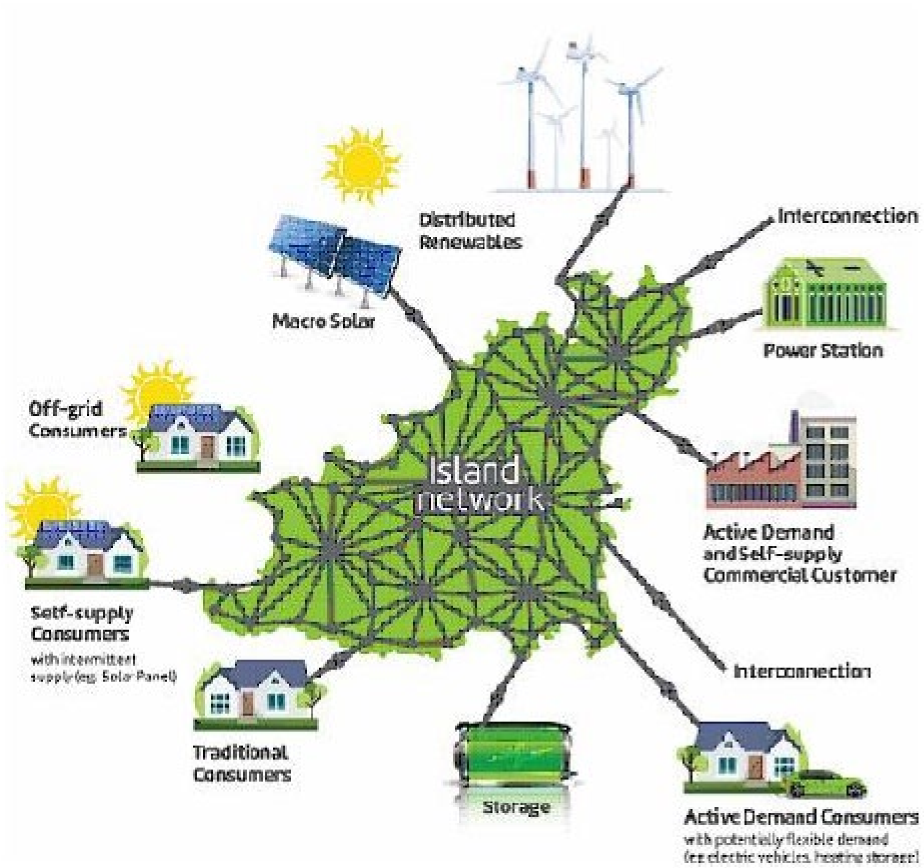


Figure 1: Fuel Supply Matrix Overview – All Fuel Grades **APPENDIX C**

	Heavy Fuel Oil	Liquid Petroleum Gas	Light Fuel Grades	Light Fuel Grades
SUPPLY	Multiple Refinery Options	Multiple Bulk Storage Options	Multiple Refinery Options	Multiple Bulk Storage Options
TRANSPORT	Ship Owner & Operator *(Whitaker Tankers)*	Ship Owner & Operator *(BGas)*	Ship Owner *(Jamesco 750 Ltd)* Ship Operator *(James Fisher Everard)*	Ship Lessee & Operator *(Channel Island Lines)*
UPLOAD	NAABSA Berth Northside St Sampson's Harbour Manifold and heat traced pipe	NAABSA Berth Southside St Sampson's Harbour Manifold and pipe to tanks	NAABSA Berths North and South St Sampson's Harbour Manifold and pipe to tanks	Berths 4 and 5 St Peter Port Harbour Crane
STORAGE	Tank farm onsite *(Guernsey Electricity Ltd)*	Bunded underground tanks at site close to Longue Hougue *(Guernsey Gas)*	Two separate tank farms near to Northside and Southside *(CIFL and FSCI)*	Imported and held in ISO containers near Northside *(ATF)*
DELIVERY	Energy produced delivered via electricity	Pipeline Bulk Tanker Bottled	Bulk Tanker	Bulk Tanker

Key

Private Sector *(Current entity)*	(grey shading)
States of Guernsey (STSB) *(Current entity)*	(no shading)
SUPPLY CHAIN	(chevron)

APPENDIX D

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Deputy Barry Brehaut
President
Committee for the Environment and Infrastructure
Raymond Falla House
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Via e-mail

5 February 2020

Dear Barry

Energy Policy 2020-50 – draft policy letter

Thank you for the further opportunity to comment on the emerging energy policy and the draft policy letter. The Committee welcomed the opportunity to discuss this with you and Deputy Dorey at its meeting on 30 January.

The Committee's view is that it is clear that much work has been undertaken since our previous meeting on this matter last year. The Committee welcomes the fact that many of the revisions have come as a result of the technical consultation carried out with stakeholders in 2019.

The Committee has a critical role in working with the Guernsey Competition and Regulatory Authority to ensure that the regulatory and licensing framework in Guernsey is fit-for-purpose for the future. The Committee welcomes the objectives set out in the draft policy that relate to those matters. The Committee will ensure that this role is discharged effectively, subject to the agreement of the States of Deliberation.

The Committee also has an important role in ensuring Guernsey's ongoing compliance to the rules of the World Trade Organisation. The Committee welcomes the fact that officers have been cognisant of the importance of this matter in developing the proposals in the draft policy letter. The Committee will continue to ensure that this approach is maintained as the further work set out in the policy letter is developed.

The Economic Development Strategy put forward by the Committee and approved by the States of Deliberation in 2018 included a commitment to redoubling Guernsey's efforts to developing a renewable energy sector. A clear energy policy has been needed in order to take that forward in a meaningful and effective way. The proposals in the draft policy are consistent with this, and the Committee welcomes the opportunity to have an active role in developing this sector as part of the energy policy.

The Committee notes that the UK Government has recently announced its intention to bring forward the introduction of a ban on selling new petrol, diesel, or hybrid cars in the UK from 2040 to 2035 at the latest, in order to achieve its target of emitting virtually zero carbon by 2050. In light of the UK's policy, the Energy Policy will therefore need to take into consideration the availability and potential infrastructure requirements of electric vehicles in the Bailiwick.

The Committee's view is that the resilience and security of Guernsey's energy supply is essential to Guernsey's economy continuing to develop and grow. The Committee – by majority - therefore welcomes the commitment for a detailed business case on a new interconnector to be brought to the States of Deliberation as early as possibly in the new term, so that the matter can be considered fully.

Yours sincerely,

Deputy Charles Parkinson
President

APPENDIX E

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26th February, 2020

Dear Barry

Draft States' Energy Policy 2019-2050

I am grateful to you for the opportunity to append a Letter of Comment from the States' Trading Supervisory Board (the "**STSB**") to your Committee's policy letter on the draft States' Energy Policy (the "**Policy**").

The STSB's mandate is to carry out the States' role as shareholder in their incorporated companies. These include both Guernsey Electricity Limited ("**GEL**") and Jamesco 750 Limited ("**Jamesco**"). It is also responsible for the management and operation of Guernsey Harbours. Each of these has significant interests in the Energy Policy. As the shareholder and custodian of these significant States' assets, the STSB has a responsibility to ensure it fully understands the opportunities and risks that the Policy presents for both companies (and the wider market) and that it advises the States accordingly.

General Observations

The STSB supports a number of the objectives and initiatives set out within the policy letter, including:

- The progressive decarbonisation of the Island's energy mix. This is consistent with the steps that GEL is taking in this area as part of the Environmental Sustainability Strategy it has already published, including:

    - switching its electricity imports from a mix of nuclear and hydroelectric sources to one made up completely of renewables such as solar, wind and hydroelectric;

    - investing in "grid scale" renewable generation, such as the solar PV installations at the power station and Guernsey Post Headquarters. The advantage of such "grid scale" initiatives is that all Islanders are able to benefit on an equitable basis from renewables. Further opportunities are being progressed, including the Waste Transfer Station and the colleges under the Transforming Education Programme, and GEL has set itself a target to ensure that total installed capacity across the Island reaches 20MW by 2050;

  - phasing out the use of high sulphur fuel at the power station by 2022;

  - eventually, phasing out the use of all hydrocarbons from its electricity generation.

- An increase in the Island's energy independence and security through the development of more local renewable energy sources and storage, together with the economic development opportunities this provides;

- An acknowledgement that, in an open energy market, all suppliers should have a shared responsibility for security of energy supplies. At the moment, the substantial cost burden that the States' current "N-2" electricity security policy places on GEL prevents it from operating more efficiently. There is a need to ensure that this burden is shared by all licensed electricity generating companies in the event that this market place is to be opened up to more competition;

- The need to ensure that a cost reflective tariff system should be put in place across all forms of energy supplies. In GEL's case, its cost base is split almost 50:50 between fixed and variable costs, but this is not reflected in its tariff structures, where approximately 10% of its revenues are generated through fixed charges and 90% through its variable charges. This means that the unit costs of electricity supplied by GEL compares poorly with the unit costs of alternative suppliers that might be available now or in the future, as fixed costs are being recovered through the variable charges. Therefore, a cost reflective tariff system must be a pre-requisite of a more open energy market; and,

- Confirmation that a second interconnector would be a critical component in delivering the Policy and would enable a review of the existing "N-2" security policy, with a view to relaxing this to a less costly standard.

There are a number of points within the Policy that the STSB would like to address in more detail and I have set these out below.

Competition in the Energy Market

The pillars set out in the Policy include facilitating a competitive energy supply market using shared critical infrastructure as appropriate. In support of that pillar, the propositions include a direction to the Committee *for* Economic Development to undertake a technical consultation on a licensing framework for targeted competition to support establishing on-island renewable energy.

Looking specifically at the electricity sector within the wider energy supply market, the STSB has previously made clear to you its concerns that there is insufficient evidence currently available to support competition in both the electricity supply and generation markets. A key concern is whether the costs of the regulation that will be required to enable a competitive market will be outweighed by the benefits. In 2020, GEL has been advised by CICRA that it anticipates charging the company £120,000 for its regulatory activity. These are costs which have to be met by consumers and the STSB would be concerned if any changes to the regulatory regime to enable competition resulted in material increases in those costs.

In its report for your Committee, PwC includes the following statements:

> *"Given the size of the Guernsey energy market, competition may not generate adequate benefits to outweigh the costs of that competition. While wholesale competition in supply may not be worthwhile, competition in renewable generation may be beneficial if niche suppliers have more expertise in developing renewable generation capacity."*
>
> *"A proportionate regulatory regime should be developed to allow Guernsey to realise the benefits of competition while minimising the costs. Further analysis of the costs and benefits may be required to determine what the appropriate level of regulation is."*
>
> *"The consequences of the changes to the regulatory regime that would be required should be carefully considered. A cost-benefit analysis would help to determine the proportionate level of regulation for a more competitive market."*

Therefore, the STSB welcomes the commitment in the Policy firstly to ensuring that any competition within the market place needs to be aligned to Guernsey's scale and size and, secondly, to reducing the need for new legislation and regulation. It also welcomes the assurances you have provided to it during the consultation process that the focus will only be on if and how changes to the market structures might facilitate the establishment of more <u>on-island renewable</u> energy, rather than opening the market to wholesale competition.

In considering these issues, we must, of course, acknowledge that GEL's licence exclusivity currently only exists in the supply and conveyance sector of the electricity market, whereas the generation sector is already open to licences being granted to competitors.

Against the background of the above, the STSB believes it is important that the proposed technical consultation on a licensing framework for targeted competition should include the following activity:

- A full cost-benefit analysis of any licensing framework being considered that addresses not just the regulator's costs and the licence fees payable, but also the administrative and operational compliance costs to licensees (GEL or other) of meeting the requirements of the regulator, which ultimately have to be recovered from customers. This would be consistent with the recommendations of the PwC report and would enable the States to determine whether the costs of the regulatory framework that will be required to enable a competitive market will be outweighed by the benefits;

- An assessment of the pros and cons of retaining the existing arrangements within the electricity sector, where GEL currently has exclusivity in the supply and conveyance markets, but where the generation market is already open to licences being granted to competitors. This would explore the opportunities that the States has to use GEL as a vehicle for decarbonisation, building on and developing the initiatives that it has or is already putting in place, examples of which I have set out earlier in this letter.

  In this scenario, GEL could source the electricity it supplies not just from imported renewables or its own on-Island generation facilities, but from local renewable generating companies. If necessary, appropriate direction could be given to GEL by the States, as shareholder, on the priority or "weighting" that it should give to procuring local renewables to assist in the stimulation of this market. This system could also accommodate peer-to-peer trading whereby "prosumers" could trade with each other through a system of metering offsets (or net metering) that GEL could administer, but without having to liberalise (and incur the cost of regulating) the supply markets;

- In the event that further liberalisation of the electricity supply markets is envisaged, an assessment of the impacts on GEL, its structure and its financial performance would also be required.

In suggesting the above, I should stress that the STSB's position should not be inferred as being "protectionist" of GEL. Indeed, it already operates in a competitive market place and it has been clear from our discussions that GEL itself is not opposed to competition within the generation markets where this can be used to encourage the development of locally based renewables. However, we need to be wary about the potential unintended consequences that could arise from changes in market structures and how this could prejudice the strategic role that the Policy anticipates GEL will play in delivering its objectives by adversely and materially affecting the Company's commercial viability.

Guernsey Electricity – Additional Interconnector

The STSB welcomes the proposition within the Policy that the States is asked:

- To approve the cable strategy set out therein and, specifically, the introduction of a new interconnector between Guernsey and France, subject to the development of a business case; and,

- To direct the STSB to report back to the States with a full business case for that new interconnector from GEL.

Installing a second interconnector between Guernsey and France (**"GF1"**) would deliver added resilience to the Island's electricity supplies by providing an alternative route to the existing interconnector between Guernsey and Jersey (**"GJ1"**). It would also provide the Island with a supply capacity which would remove virtually all carbon emissions associated with electricity generation from the Island, with imports being sourced from renewable sources. It will enable GEL to comply with the air quality and emissions legislation being introduced by the States and will enable the company to meet the forecast increases in demand for electricity arising from the energy market transition.

Importantly, GF1 would act as an enabler for the development of local renewable electricity generation over the energy market transition period. It would overcome the challenges associated with the intermittency of renewable sources and the difficulties that they can present for maintaining the stability of the grid. It would also allow the Island to adopt a lower security of supply standard, reducing it from its current “N-2” level to “N-1” or, possibly, just “N”. This would enable GEL to decommission much of the older on-island diesel generating plant at the power station.

The STSB acknowledges that the costs of the GF1 project are significant, with current estimates putting it at £85m. This includes estimated costs of up to £10m to reach a position where the required permissions and consents are approved by the various French authorities, prior to the placement of cable procurement contracts. It is estimated that between £6m and £7m of these costs will be incurred in developing the project to a full business case stage for submission to the States in early 2021. The costs are broken down as follows:

Activity	**£'000**	**Comment**
External project management and internal staff costs	1,350	
Route engineering, including surveys and UXO	3,200	
Environmental consultation and consenting	2,950	Includes EIA
Network studies, electrical engineering & design, land cable & equipment specification	2,350	
Total	**9,850**	

Whilst a focus of the full business case will be on identifying and finalising the costs of the project, we should acknowledge that it will also identify the transformational and savings opportunities it will present for GEL. These include:

- Reductions in operating expenditure arising from the decommissioning of diesel generating plant;
- Savings in capital expenditure that would otherwise be necessary for the replacement of the elderly diesel generating plant;
- Reduced costs associated with the importation, storage and use of heavy fuel oil;
- Savings arising from the operation of the power station in future on a back-up basis, rather than its current 24/7 basis;
- Reductions in transmission losses, which will be lower for imports direct from France rather than those via Jersey.

The full business case will demonstrate that there is no "do nothing" option. In the event that the GF1 project is not approved by the States, then in order to meet the Island's electricity security standards, GEL will need to start investing in the replacement of the generating plant at the power station, which by extension, will also entail the ongoing generation of electricity in Guernsey using fossil fuels, whilst foregoing the transformational opportunities associated with the changing role of the power station. Whilst there will be a difference in capital expenditure phasing between these two scenarios, previous financial modelling undertaken by GEL has so far shown there to be only marginal difference in the overall present value of costs between the scenarios when operational benefits are taken into account.

Timeframes

GEL has already undertaken a significant amount of work on the development of a business case for a second interconnector between the Island and France and this is continuing. The STSB welcomes the support set out in principle in the Policy for a second interconnector, but must caution that much greater clarity around the future market structure and, most importantly, the regulatory arrangements that underpin it, will be required before that business case can be completed with the necessary degree of confidence and certainty.

In this respect, the STSB would like to note that the milestones set out in the Policy do not anticipate a final decision being made on a future licensing framework for the energy market until Q4 of 2021. Given the potential complexity of the work that will be entailed, this is probably realistic, but it does mean that GEL will continue to operate in something of a regulatory vacuum which creates an extended period of strategic and financial uncertainty for it from a business planning perspective.

The STSB is also concerned that, with GEL's current period of exclusivity in the supply and conveyance areas of the electricity market due to expire in Q1 of 2022, there will be a wholly inadequate lead-in time for the company to adjust to any changes in those areas of the market, if that is eventually what is decided. We would therefore like to suggest that early consideration be given to a short to medium-term extension of the period of exclusivity to address that concern. This would also allow the States time to develop the necessary systems, structures and legislation that might be required to support whatever framework is eventually agreed.

Hydrocarbons Supply Chain

Whilst the majority of this letter is focused on the issues around the electricity market and GEL itself, the STSB should also flag the asset management and planning challenges that are beginning to face Jamesco.

Changes in the regulatory environment mean that Jamesco has recently had to invest circa £1.4m on the installation of a Ballast Water Management System (BWMS) on the Sarnia Liberty to enable it to continue trading. The same modifications are now being made to the Sarnia Cherie as they need to be completed prior to her next special survey in 2022.

Looking further ahead, both vessels are scheduled to be withdrawn from service in 2028. Whilst it is conceivable that this may be extended, there is a risk that the operation of the vessels could be restricted beyond that point. Quite properly, therefore, Jamesco needs to start considering whether or not they should be replaced, recognising that the lead-in period for their replacement is four years.

These issues have been fully articulated as part of the research and consultation that has taken place as part of the development and analysis of options for the future hydrocarbons supply chain. However, the STSB would like to reiterate the importance of the States establishing strategic clarity in this area, as this will be of fundamental importance in ensuring that we can make timely decisions with Jamesco on whether or not to make these strategic investments for the Island.

Of course, it is acknowledged that the issues in relation to Jamesco are not just a function of the future hydrocarbons supply chain, but also of the work that the STSB is undertaking on the Island's future harbour requirements. The three issues are inextricably linked. As the Policy notes, the STSB is carrying out a detailed analysis of the future harbour requirements, including:

- Considering any requirements for new berth facilities east of the QEII marina or nearer to St Sampson's Harbour; and,

- An assessment of the impacts, practicalities and potential benefits of relocating some commercial port operations away from St Peter Port.

The STSB anticipates reporting to the States with the results of the above by the end of 2020. It welcomes the short-list of options for the future hydrocarbons supply chain that has been set out within the Policy and will use these as inputs into the work that it is undertaking on the future harbour requirements.

Yours sincerely

P Ferbrache

Deputy Peter Ferbrache
President
States Trading Supervisory Board

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The President
Policy & Resources Committee
Sir Charles Frossard House
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2 March 2020

Dear Deputy St Pier

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee *for the* Environment & Infrastructure requests that the propositions relating to the States of Guernsey's Energy Policy 2020-2050 policy letter be considered at the States' meeting to be held on 22 April 2020.

This date is requested as it will enable the States to progress, within this political term, the policy priority area contained in the Future Guernsey Plan of "Meeting Guernsey's Energy Needs". This will enable work to begin on delivering the actions contained within the Energy Policy.

The propositions are asking the States to approve the adoption of an Energy Policy for the island which aims to facilitate decarbonisation, security, value, equity, economic enabling and energy independence. Consideration of the propositions in April 2020 will allow the actions required to deliver on the energy policy to begin this political term.

Yours sincerely

Deputy B L Brehaut
President
Committee *for the* Environment & Infrastructure

P.2020/53

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

REVIEW OF THE JURISDICTION OF THE ECCLESIASTICAL COURT IN RELATION TO GRANTS OF REPRESENTATION REGARDING PERSONAL PROPERTY

The States are asked to decide: -

Whether, after consideration of the policy letter titled 'Review of the Jurisdiction of The Ecclesiastical Court in relation to Grants of Representation regarding Personal Property', they are of the opinion: -

1. To approve the transfer of the customary jurisdiction in relation to grants of representation for personal property for:
   (a) the Bailiwick other than Sark, and
   (b) in the event of an affirmative resolution from the Chief Pleas of Sark, Sark,
   from the Ecclesiastical Court to the Royal Court on the basis set out in this policy letter.

2. To agree that any changes to the tariff in relation to grants of representation will be recommended by the Policy & Resources Committee as part of the Annual Budget of the States, and the Royal Court will be responsible for setting other fees.

3. To agree that a grant be made from General Revenue to the Social Investment Fund of £400,000 per annum for the first two years that the Royal Court operates grants of representation for personal property, with recommendations for the level of this grant for subsequent years to be included in future Annual Budgets.

4. To direct the Policy & Resources Committee to take into account the financial implications of this policy letter in setting the budget for 2021 and future years.

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

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

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

REVIEW OF THE JURISDICTION OF THE ECCLESIASTICAL COURT IN RELATION TO GRANTS OF REPRESENTATION REGARDING PERSONAL PROPERTY

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

2 March, 2020

Dear Sir

1. Executive Summary

1.1 This policy letter recommends the transfer of the customary jurisdiction of the Ecclesiastical Court in relation to Grants of Representation[1] relating to personal property to the jurisdiction of the Royal Court and the enactment of legislation to effect this transfer. For ease of comprehension, the process in relation to obtaining Grants of Representation will be referred to in this policy letter using the more commonly used term of 'probate'.

1.2 In March 2016, the former Treasury & Resources Department completed a review on the future funding arrangements of the Ecclesiastical Court. The review concluded that, while there were "no substantial matters of fundamental concern arising from the current funding arrangements associated with the Ecclesiastical Court", it recommended a further review be carried out by the former Policy Council to ascertain whether it remained appropriate for the Ecclesiastical Court to issue Grants of Representation in relation to personal property.[2] Responsibility for the review was then transferred to the Policy &

[1] A Grant of Representation may be required to allow a person to administer personal property in the Bailiwick. Where there is a will and an executor is willing and able to act as such, probate is granted. In any other case, Letters of Administration are granted.

[2] While personal property (or *meubles*, e.g. a car, a bank account or leasehold property) is dealt with by the Ecclesiastical Court, real property (or *immeubles*, e.g. a house) is dealt with by the Royal Court.

Resources Committee. This policy letter is the result of that review and the work since undertaken with the Dean of Guernsey, together with a working group of representatives which first met in October 2018 to explore and inform the policy proposal for a transfer of the jurisdiction from the Ecclesiastical Court to the Royal Court.

1.3 The Bailiwick of Guernsey (referred to in this policy letter as 'Guernsey') remains one of the very few jurisdictions outside the Islamic world where the legal jurisdiction to grant probate in relation to personal property is granted and administered by a court for which an ecclesiastical office holder, currently the Dean of Guernsey, has responsibility under the institution of the Ecclesiastical Court.

1.4 The Policy & Resources Committee considers that it is an appropriate time to reform these arrangements by transferring the probate jurisdiction to the Royal Court and thereby removing the close links to the Church of England. While the service and operation are considered to be high quality and efficient, it is no longer considered appropriate that probate is administered under these arrangements. The proposals to transfer the jurisdiction and function will ensure the same governance and standards as for similar public legal services, operating as a government led service.

1.5 The Ecclesiastical Court's probate jurisdiction is rooted in customary law, with the only recent statutory intervention being the Ecclesiastical Court (Jurisdiction) (Bailiwick of Guernsey) Law, 1994[3] ('the 1994 Law'). The 1994 Law sets out the jurisdiction of the Ecclesiastical Court for probate and provides for the Royal Court to exercise jurisdiction in disputed cases.

1.6 The current customary jurisdiction operates flexibly and efficiently. It is not therefore proposed to introduce a complex statutory framework which may impact upon these standards and practices. The proposal is to transfer the customary jurisdiction to the Royal Court by way of a projet de loi with the plan for the service to continue to be delivered as far as possible in its current form but under the oversight and responsibility of the Royal Court.

1.7 The Ecclesiastical Court's income from probate varies annually according to the value and number of estates for which probate is granted. The probate income derives from a tariff based on the estate value with additional charges made for the provision of documents. The current tariff and document fees structure and levels are considered to be reasonable when compared to similar jurisdictions. The Policy & Resources Committee proposes that the current structure is maintained, at least in the short term, with provision for future tariffs to be set by the States upon recommendation by the Policy & Resources Committee as part of the Annual Budget of the States. If the function is transferred, income from the probate tariff would in future accrue to General Revenue. The Royal

[3] The Ecclesiastical Court (Bailiwick of Guernsey) Law, 1994.

Court would be responsible for setting fees for any documents required and would receive this income.

1.8 Any surplus income from probate, following operational costs and the maintenance of a reserve, has in recent years been transferred to the Deanery Fund LBG and then utilised for charitable purposes and community initiatives. These projects have largely been for the benefit of Church of England in the Bailiwick and many have also benefited the wider community.

1.9 In terms of the future surplus income from probate, the Policy & Resources Committee considers it important that an allocation for charitable, social and community purposes is maintained and therefore recommends that an annual grant will be made to the Social Investment Fund for these purposes. It is proposed that an annual grant of £400,000 should be made by the States from General Revenue to the Social Investment Fund for the first two years of the Royal Court undertaking the transferred probate function. This grant will be paid regardless of the size or existence of a probate specific surplus in any one year, with the level of this grant being reviewed after two years of operation and then included in future Annual Budgets.

1.10 The customary jurisdiction for probate for Alderney and Sark is also vested in the Ecclesiastical Court. Alderney and Sark have been consulted about these proposals. In summary, Alderney has agreed with the proposal to transfer the customary jurisdiction to the Royal Court. There are ongoing discussions with Sark concerning its future arrangements. This is detailed in section 15 below.

1.11 In terms of the timescale for the transfer, it is proposed that the probate jurisdiction would transfer following the enactment of the legislation. An implementation group established under the responsibility of the Royal Court would plan and effect the transfer of the function, if States approval is given to this policy proposal.

2. Background and Overview of the Probate Function:

2.1 The Ecclesiastical Court may well have been instituted approximately 900 years ago when Guernsey formed part of the Diocese of Coutances. As such, it predates the States of Deliberation and is at least as old as the Royal Court. The Ecclesiastical Court is presided over by Dean of Guernsey, the Commissary of the Bishop of Winchester, to whose diocese the Channel Islands were annexed in 1568. Constitutionally, the Ecclesiastical Court derives its jurisdiction as a court from the Crown in the same way as the Royal Court.

2.2 In March 2014, the episcopal authority of the Bishop of Winchester for the Channel Islands was delegated to an assistant bishop in the Diocese of Winchester, the Right Reverend Trevor Willmott. The Archbishop of Canterbury's

Commission on the relationship of the Channel Islands to the wider Church of England published its report in October 2019, recommending the transfer of future episcopal oversight of the Channel Islands to the Bishop of Salisbury. It is understood that further legislation will be required to bring these changes into effect and will be relevant to the future governance of the Ecclesiastical Court as the Dean will exercise his jurisdiction as Commissary of the Bishop of Salisbury if these reforms are introduced.

2.3 In previous centuries, the Ecclesiastical Court had a broad jurisdiction in relation to ecclesiastical affairs, but now undertakes three principal functions: the issue of marriage licences, giving permission for alterations to churches, known as 'faculties', and issuing grants of probate in relation to personal property. It also has jurisdiction over the disposal or acquisition of church ornaments, the granting of permission for exhumation orders and the swearing in of notaries and churchwardens.

2.4 The Ecclesiastical Court is closely connected to the Church of England and its structure, with Anglican clergy presiding over the sitting of the Court and the Dean being responsible for the allocation of surplus funds to the Deanery Fund LBG. However, when undertaking the probate function and operating as a court, the Ecclesiastical Court applies the civil law in the same way as other courts in terms of meeting legal and procedural requirements.

2.5 The Dean presides over the Ecclesiastical Court and is responsible for the Ecclesiastical Court's staff. The Registrar and the two Deputy Registrars of the Ecclesiastical Court (referred to in this policy letter as "the Registrar" and "the Deputy Registrars" respectively), are legally qualified and provide specialist legal input to ensure that probate grants meet any legal requirements. The Dean also employs and contracts experienced staff who support and administer the probate function, including drafting documents, interviewing and advising service users and attending to Court matters.

2.6 Unlike in Jersey, which operates a similar probate system in terms of the separation of realty and personal property, there is no mandatory requirement in Guernsey to obtain probate before personal assets may be dealt with. The decision as to whether probate is required is determined by the policy of the third party holding the asset, such as a bank or a building society. Depending on the policy of the third party, it may not be necessary to obtain probate in order to release the asset, particularly where the asset is of low value. If the third party requires a Guernsey grant of probate before releasing the asset, an application must be made to the Ecclesiastical Court to obtain a grant.

2.7 There are a number of circumstances in which a grant of probate is not normally needed to transfer personal property. For example, if the personal assets are held in a trust fund or, generally speaking, where the assets are held in joint names and the other named person is still alive and inherits the assets automatically.

2.8 In Guernsey (excluding Alderney and Sark which operate their own systems for registering real property transfers), the transfer of real property operates as a completely separate process to probate in relation to personal property. It is not generally necessary to obtain probate to transfer real property as, in most cases, it will pass to the heirs automatically. Where the deceased has left a will regarding real property, the will must be registered at the Greffe following an application to the non-contentious Court. Where there is no will in existence, the process in respect of real property is more complex and may require an application to be made to the Royal Court, for an "administration order", which is an order to prove to any potential buyer of the deceased's property that someone is eligible to be in a position to provide good title on behalf of those who are the heirs.[4]

2.9 In accordance with the 1994 Law, the Royal Court has jurisdiction where there is a dispute in relation to probate. The Royal Court can also issue directions to the Ecclesiastical Court regarding probate matters, although this power has never been exercised.

2.10 The income from probate provides the majority of the Ecclesiastical Court's income. The current tariff for probate in Guernsey is based on a percentage of the value of the deceased's gross personal estate (which is calculated before debts and liabilities are deducted) at the time of death, currently set at approximately 0.35% of the estate value. The value of the estate is assessed based on the deceased's worldwide estate in relation to a first grant of probate, but assessed in relation to the value of the Guernsey estate where only Guernsey personal assets exist or where a probate grant has already been made in another jurisdiction. Additional fees are charged for the provision of any documents, as required by the particular application.

2.11 A financial reserve, equivalent to six months' operational costs, has been retained by the Ecclesiastical Court, to protect the Court due to the unpredictable nature of the revenue. Any remaining surplus after topping up this reserve is currently transferred to the Deanery Fund LBG. Once any surplus funds have been transferred from the Ecclesiastical Court to the Deanery Fund, the funds are no longer the responsibility of the Ecclesiastical Court. Surplus funds are currently used to support charitable causes, as determined by the directors of the Deanery Fund LBG.

[4] Reference regarding Guernsey: http://www.guernseybar.com/services/private-client/wills-and-probate.aspx

3. **Review Process**:

3.1 In 2011, the Chairman of the Parochial & Ecclesiastical Rates Review Committee (PERRC) approached the States of Guernsey to suggest that the future funding arrangements for the Ecclesiastical Court would be an appropriate subject for review. This was agreed by the former Policy Council who requested that the Treasury & Resources Department undertake this review.

3.2 In March 2016, the review was completed and the Treasury & Resources Department concluded that, while there were “no substantial matters of fundamental concern arising from the current funding arrangements associated with the Ecclesiastical Court”, it was recommended that a further review of whether it remained appropriate for the Ecclesiastical Court to undertake probate in relation to personal property was carried out by the former Policy Council. From May 2016, this review fell under the mandate of the Policy & Resources Committee.

3.3 The Policy & Resources Committee agreed that this review should be carried out, and approved the following terms of reference:

‘To consider whether it remains appropriate for the jurisdiction of the Ecclesiastical Court to include matters of probate. In pursuing this, the review will examine:

- The extent to which this practice affects the perception of Guernsey in the wider world and, in particular, whether it discourages investment in the island;
- How this matter is dealt with elsewhere;
- The potential options for Guernsey;
- The merits and demerits of those options.’

3.4 Since the start of this review, a number of changes have been introduced by the Ecclesiastical Court, including making improvements to its website and the introduction of a cap on probate fees in May 2018. In view of this, some of the responses received by the review did not accurately reflect the current practices of the Ecclesiastical Court. The responses were also made in relation to individual cases, and, therefore, needed to be considered in this context when informing any policy proposals to change the current probate function. This is referenced further at section 6 below.

3.5 Following completion of the first phase of Policy & Resources Committee review, in June 2019, by agreement of the President of the Policy & Resources Committee and the Dean of Guernsey, it was proposed that a working group be set up to consider and inform how the jurisdiction could be transferred, prior to the Policy & Resources Committee submitting a Policy Letter to the States. The working group first met in October 2018 and has included the Dean, representatives from the Ecclesiastical Court, including the Registrar and Deputy Registrars, together with civil servants supporting the Policy & Resources Committee. Her Majesty's Greffier later joined the group on behalf of the Royal Court.

3.6 If the proposed transfer of jurisdiction is approved by the States of Deliberation, the makeup of the working group will be reviewed and it will become an implementation group led by Her Majesty's Greffier on behalf of the Royal Court. The implementation group will plan and implement the transfer.

4. Governance of the Probate Function:

4.1 The governance of the probate function, as undertaken by the Ecclesiastical Court in the Bailiwick, is different to the governance of the probate function in similar jurisdictions.

4.2 In England and Wales historically the proving of wills and related testamentary matters, subject to certain exceptions, came within the jurisdiction of various courts administered by the Church of England. The Court of Probate Act 1857 reformed the traditional position and created a state controlled and centralised system for probate, now known as the Probate Registry, which operates as part of HM Court and Tribunal Service.

4.3 Probate in Jersey was originally granted and administered by its own Ecclesiastical Court. In 1949, the function was transferred to the Probate Division of the Royal Court of Jersey. The Jersey Probate Registry now operates as part of the Judicial Greffe.

4.4 In contrast, Guernsey's probate function in relation to personal property is still undertaken by the Ecclesiastical Court, which retains close links to the Church of England. Constitutionally, the Ecclesiastical Court derives its jurisdiction as a court from the Crown.

4.5 In terms of the Ecclesiastical Court, the Commissary of the Ecclesiastical Court is the Dean of Guernsey, appointed by the Crown on the nomination of the Lieutenant Governor, with the agreement of the Bishop of Winchester. The Dean, as the senior Anglican priest in the Bailiwick of Guernsey, has responsibility for the Ecclesiastical Court, presides over the sittings of the Court, directly employs the Ecclesiastical Court staff and Registrar and contracts the services of the Deputy Registrars.

4.6 If the probate jurisdiction were to be transferred, the obvious alternative corporate governance arrangement is for the probate jurisdiction to be transferred to the Royal Court. It is considered that the Royal Court offers the best siting for the function, rather than setting up a new and separate service which would be expensive and complex to establish and operate.

4.7 While the Royal Court is constitutionally independent from the States of Guernsey and States of Deliberation when discharging its judicial functions, the Royal Court operates within the States of Guernsey's financial and corporate governance structure and, particularly through the offices of the Bailiff and Her Majesty's Greffier, performs many public sector functions in a way that is compatible with other public services. This includes mandatory reporting requirements, accountability for its budgeting and auditing to the States of Deliberation; its administrative and non-judicial functions being performed by staff employed by the civil service.

4.8 A transfer to the Royal Court would see:

- Accountability and public access to information by following the States of Guernsey's financial and reporting procedures.
- Administrative oversight being provided by the Greffe alongside other legal functions utilising consistent public sector governance arrangements. The operation of the probate function by the existing staff, with the transferred staff under the line management of Her Majesty's Greffier, will enable the probate expertise to be developed following transfer.
- The operation of the probate function alongside the registration of wills of realty would enable both functions to operate subject to the same governance arrangements. In practice, the two functions, which are legally and procedurally distinct, will remain separate processes.

4.9 The Royal Court would be responsible for ensuring that, if transferred, the function operates with appropriate accountability and scrutiny and for implementing any changes required to modernise the operation of the function.

5. Transparency:

5.1 It is important that a public service is delivered with transparency in terms of its operations and costs. The transparency of the Ecclesiastical Court has increased in the recent past. The web presence[5] for the Ecclesiastical Court has been improved and provides the public with clearer access to information for probate matters. The Dean has also assisted the review process by sharing the accounts of the Ecclesiastical Court.

[5] www.guernseyprobate.gg

5.2 Transferring the probate function to the oversight of the Royal Court would allow additional measures to be taken. For example:

- Annual budgeting and accounts would be subject to standard States of Guernsey procedures. The probate accounts would be included in the annual accounts presented to the States of Deliberation and available to the public.
- The information regarding probate would be logically sited and accessible for customers on the Royal Court's website, alongside information regarding its other legal and public services, providing clear information regarding the tariff and fees for the service.
- The function could benefit from existing States' services which are already advertised/marketed, including coverage on the States' website and social media channels which have a significant level of customer interaction.
- Future modernisation could be considered by the Royal Court with its move towards digitalisation of its services and improved online access.

6. Wider Perception of Guernsey's Probate Service in terms of its links to the Church of England and in relation to its charges:

6.1 As stated in paragraph 3.3 and 3.4, the terms of reference for the Policy & Resources Committee review led to limited enquiries being made to inform the policy development and any proposals to change the current operation and jurisdiction.

6.2 Some of the responses were provided in relation to individual cases and experiences, and, therefore, needed to be considered in that context. However, the responses were positive in terms of the efficient service provided by the Ecclesiastical Court staff.

6.3 One of the terms of reference for the Policy & Resources Committee review was the extent to which the probate function being operated by the Ecclesiastical Court affects the perception of Guernsey in the wider world and, in particular, whether the close link between the Ecclesiastical Court and the Church of England discourages investment in the jurisdiction.

6.4 The Dean, in or about 2016, consulted with representatives of the finance industry and officers of the Church of England's National Institutions, including the Church Commissioners. The Dean's findings suggested that it was unlikely that investment decisions have been complicated or compromised by the involvement of a Christian institution. He also noted that in terms of Sharia (Islamic Law) investment, the primary driver would come down to risk and return, as charging interest is not considered ethical. Therefore, the concept of probate being run by a body with close links to the Church of England was not reported to be a concern in terms of investments in the Bailiwick.

6.5 In addition, from the enquiries undertaken, there was no evidence that the tariff charged for probate has influenced overseas investors as an incentive or disincentive to invest in the Bailiwick. Furthermore, the Ecclesiastical Court updated its tariff structure in 2018 by introducing a cap on fees of £100,000 which applies for estates worth £28 million or more to ensure that Guernsey remains internationally competitive for investors.

6.6 Taking into account the information obtained from stakeholders using the service, there was no evidence that the probate function being run by the Ecclesiastical Court or the charges applied have discouraged or affected investment from potential overseas investors or those who wish to move to Guernsey to live.

6.7 For the reasons outlined in this section and referred to in paragraph 3.4, the information obtained from the enquiries with stakeholders has not directed the policy proposals being made in this policy letter.

7. Levels of Service, Legal Expertise and Processes required for Grants of Probate:

7.1 The probate function, as operated by the Ecclesiastical Court, is acknowledged as being quick and efficient in comparison with obtaining probate in other jurisdictions.

7.2 The Policy & Resources Committee considers it important that these levels of service are maintained if the customary jurisdiction were to transfer to the Royal Court. There is also no intention to introduce a complex statutory system which may be slow to operate and may reduce the flexibility and efficiency of the current process.

7.3 Granting probate under the customary jurisdiction means that there is no statutory framework for processes, legal and procedural requirements for probate. Therefore, when considering applications for probate, the expertise, enquiry and judgment exercised by the Registrar, Deputy Registrars and court staff are essential in ensuring that applications meet any legal requirements and that grants are made with consistency and in the correct form.

7.4 The Ecclesiastical Court also regularly deals with complex cases concerning intestacy matters and applications for grants relating to assets held in the Bailiwick where the deceased lived outside the jurisdiction. These applications require legal expertise and judgment to be exercised.

7.5 When applying for probate in Guernsey, the process enables lay applicants to apply themselves (without necessarily instructing an advocate). The Ecclesiastical Court staff provide assistance to applicants, including the drafting and provision of required documents, such as powers of attorney, oaths and affidavits.

7.6 If the jurisdiction is transferred, it is proposed that the legally qualified and experienced staff would continue to deliver the function, subject to agreement. This includes planning the arrangements for both the employed staff and for the contracted legal staff which is continuing to be progressed alongside this policy letter. If the transfer of the jurisdiction is approved by the States, ongoing planning will be undertaken with the staff involved at the implementation stage of the project.

7.7 To help ensure the continuity of the current service provision and to achieve the smooth transfer of the employed staff providing the vital administration functions from the employ of the Ecclesiastical Court to the States of Guernsey, it is proposed that the employed staff are transferred by the same primary legislation that will transfer the jurisdiction. Similar legislative provisions have been used on previous occasions to effect a smooth transfer of staff from one organisation to another, such as in relation to the transfer of a limited number of States of Guernsey employees to the employ of the Data Protection Authority in 2017.

7.8 Using a legislative transfer approach will have significant benefits for all parties as it will mean that on the day of transfer, in effect all that will happen will be that the name of the employer will change. The staff will remain employed in their existing roles, at the same location (initially) and on the same terms and conditions as previously, but have the added security of knowing that their roles and terms and conditions remain unchanged and that accrued rights relating to their continuity of service are maintained. At the same time, the transferred staff will benefit from the application of certain States of Guernsey staff policies and directives which apply to States of Guernsey civil servants. Such a transfer will remove job uncertainty whilst at the same time helping to ensure that vital employee knowledge and service provision is retained for the function at a critical time.

7.9 In terms of the procedural and legal requirements for obtaining a grant, under the customary jurisdiction of the Ecclesiastical Court, the Dean of Guernsey or, in the Dean's absence, a Vice-Dean, presides over the sitting of the Court. The applicant swears an oath or makes an affirmation before the Dean as Commissary.

7.10 Following transfer of the jurisdiction, it is proposed that the Royal Court would be responsible for the implementation of the changes, the model for the delivery of the probate function and the structure of the probate service.

7.11 However, it is proposed that primary legislation would create new judicial posts of Registrar and Deputy Registrar (referred to in this policy letter as the "Court Registrar" and the "Court Deputy Registrar", respectively) and permit them to administer oaths and affirmations as required, as well as sit in the Ordinary Court and adjudicate on any disputes. The functions of the Court Registrar could also be performed by other judges who can constitute the Royal Court, with appeals being heard by the Court of Appeal. These changes will remove the current oversight of the Dean, while ensuring that the procedural and legal requirements for obtaining probate are met and that there is continuity in terms of the operation of the function. The primary legislation will also allow the introduction of future changes to the probate application process, including enabling online applications to be made. In future, the formalities could be changed to permit applicants to make legal declarations in place of oaths and affirmations.

7.12 In addition, if the probate function were transferred to the Royal Court, the following benefits could assist in maintaining or improving the current levels of service provided by the Ecclesiastical Court:

- Currently the Ecclesiastical Court office is open to the public on Mondays to Thursdays between 9am-12pm, with the Court sitting on Friday mornings. If required to meet demand, the administration of any oaths or affirmations required could take place on more than one day per week. This option, along with others, could be considered as part of any future planning for delivery of the service, including planning the digitalisation of the service in the longer term.

- Working as part of a much larger organisation could assist with the sharing of resources, including sickness absence and leave cover, and may provide the opportunity for the up skilling of other staff to provide more resilience for the function.

7.13 As stated above, any changes regarding the future structure of the function would become the responsibility and subject to the decisions and direction of the Royal Court, if approval is given by the States for the jurisdiction to be transferred.

8. Income of the Ecclesiastical Court:

8.1 The majority of the Ecclesiastical Court's income is derived from probate income, with the tariff based on a percentage of the gross value of the personal estate at the date of death. The current tariff applied is 0.35% of the value of the gross personal estate with additional fees for any documents, such as powers of attorney and certified copies of grants. The gross estate is the estate value before any fees or expenses are deducted. The fees for probate have been charged at these levels since 1987.

8.2 Where probate has been obtained in another jurisdiction first or there are only Bailiwick based assets, the tariff is calculated based on the value of the Bailiwick personal estate only. If probate has not already been obtained in another jurisdiction, the tariff is calculated according to the gross value of the deceased's worldwide personal estate at the date of death.

8.3 There are particular observations that can be made regarding the income. Firstly, it should be noted that the Ecclesiastical Court's income from probate varies each year depending on the number of grants made that year and the value of the personal estates for which the grants are made. Therefore, it is not possible to predict the annual income. From 2018, it is likely that the introduction of the cap in fees for high value estates will impact upon future income levels.

8.4 Secondly, it is also the case that an executor administering an estate will not necessarily apply for a grant in the year of death, as the application is made once the executor has ascertained the extent, location and value of the assets held and confirmed whether a grant is required to release the assets. The administration can sometimes be a lengthy process depending on the extent and distribution of assets.

8.5 In addition, whilst it is possible to compare the number of grants made annually, the individual applications have different complexities and requirements, resulting in varying workloads for the Ecclesiastical Court as each application is considered according to its individual requirements, regardless of the size or value of the estate.

8.6 The total income for the Ecclesiastical Court for the past five years and the number of grants per year are referenced in table 1 below. This also shows the average annual income per grant per annum.

Table 1:

Ecclesiastical Court Annual Income from 2014 – 2018:

YEAR	TOTAL INCOME (£)	NUMBER OF GRANTS	AVERAGE INCOME PER GRANT (£)
2014	938,534	491	1,911
2015	1,232,249	524	2,352
2016	603,452	488	1,237
2017	898,282	427	2,104
2018	629,047	499	1,260

8.7 It is proposed that following transfer of the jurisdiction, the tariff and fees charged would remain at their current level, at least in the short term, on the basis that the charges appear reasonable and that all future income from the probate tariff would be credited to General Revenue.

8.8 The proposed legislation will provide for the States to set the tariff in future following a recommendation from the Policy & Resources Committee as part of the Annual Budget of the States, with the Royal Court being responsible for setting other fees for the provision of documentation or the making of applications.

9. Expenditure of the Ecclesiastical Court:

9.1 The accounting for expenditure has changed in recent years. Prior to 2017, the Dean paid a sum to the Registrar in the form of the Registrar's service charge and this sum was used by the Registrar to pay for the staff and office costs, including rent. These expenses were not separately recorded until 2016. From 2017, as reflected in the annual accounts, the Dean has paid directly for the staff costs and office expenditure.

Table 2:

Ecclesiastical Court Expenditure from 2014 – 2018[6]:

Expenditure	2014 (£)	2015(£)	2016(£)	2017(£)	2018(£)
Staff/Registrar's Service Charge (in 2015/6)	311,524	321,746	276,115	273,497	268,621
Administration expenses	1,360	5,924	6,126	8,957	14,270
Operational costs (including rent)			30,012	35,842	39,505
Insurance					12,374[7]
Total expenditure	**322,370[8]**	**327,670**	**312,253**	**318,296**	**334,770**

9.2 Upon transfer of the jurisdiction, it is anticipated that the costs for providing the service will remain the same as currently and the Cash Limit of the Royal Court will be increased by this amount to fund the operation of the probate function.

9.3 Over time, savings could potentially be realised by the Royal Court in the following areas:

- Rent costs and building insurance costs could be eliminated if the probate service is moved to the Royal Court building in the future as this is a States' property which is already utilised for other States' functions; and
- There might be an opportunity to absorb the indemnity insurance expenditure currently paid by the Ecclesiastical Court into the States' insurance.

10. Surplus Income:

10.1 One of the key findings from the 1985 States' Report was that income from the probate function was usually at a level whereby the cost of running the function

[6] It should be noted that the format of accounts has changed over time so like for like comparisons can be difficult

[7] Insurance costs were not separately recorded in accounts before 2018.

[8] The 2014 expenditure included £9486 relating to Office of the Dean expenses. This has not been claimed/recorded in subsequent accounts.

was covered, with little or no surplus. However, recent figures show surplus funds from the function, as detailed in table 3 below.

10.2 Surplus income from probate income is initially used to top up the Ecclesiastical Court's reserve fund which provides a financial buffer in the event that insufficient income is received by the Ecclesiastical Court for a six month period. Following this, any remaining surplus and any other funds not required to maintain the reserves are transferred to the Deanery Fund LBG.

10.3 It should be noted that the surplus fluctuates annually, in the same way as the income, according to the number of grants issued and value of estates for which probate is granted.

Table 3:

Ecclesiastical Court Surplus Funds 2014 – 2018[9]:

YEAR	SURPLUS FUNDS
2014	620,000
2015	905,000
2016	290,000
2017	580,000
2018	295,000

10.4 Over this 5 year period, the surplus ranged from £290,000 to £905,000 and averaged £538,000. As stated in this policy letter, the introduction of a fees cap in 2018 for high value estates is likely to affect future levels of income and, therefore, any future surplus.

10.5 Any transferred funds have in the recent past been allocated to the Deanery Fund LBG, a charitable organisation with a mission statement to support charitable and community functions, including the advancement of the Church of England in the Bailiwick of Guernsey. Their distribution is determined by the directors of the Fund. A significant amount of these funds have then been made available for charitable and community purposes. While the total funds actually distributed for good causes is not publicly available, it is understood that a large proportion of the available funds have been allocated to Church of England projects, many of which also benefit the wider community.

10.6 If the probate jurisdiction is transferred, the Policy & Resources Committee considers it appropriate that charities and community projects continue to

[9] For ease of reference, approximations for the surplus income figures have been used in this section.

benefit from any surplus following the transfer of jurisdiction. The Committee proposes that an annual grant is made from General Revenue in future to the Social Investment Fund to be used to invest in the charitable and community sector within the Bailiwick of Guernsey. The establishment of the Social Investment Fund is the subject of a separate policy letter entitled "Establishment of the Social Investment Fund" to be consider by the States this term.[10] The making of an annual grant will provide certainty regardless of the size or existence of a probate specific surplus in any one year. The Policy & Resources Committee will make proposals for the grant in future budgets but considers that it should be in the range of £300,000 to £500,000. Initially, it is proposed that the grant is set at £400,000 for the two years following transfer of the jurisdiction and operation of the function, with the level of grant then being reviewed and provision made in future Budgets.

10.7 In terms of funding distributions, church and faith-based organisations will be eligible to apply for these funds alongside other charitable and third sector organisations in accordance with the Social Investment Fund's publicised criteria. It is considered that this proposal will ensure the fair and transparent distribution of any future surplus, for the benefit of the community.

10.8 Consideration has been given by the Committee to the human rights aspects of the proposals, in particular Article 1, Protocol 1 of the European Convention which entitles natural and legal persons to the peaceful enjoyment of their possessions. As set out in this paragraph, a significant amount of funds transferred by the Ecclesiastical Court to the Deanery Fund LBG have been made available for charitable and community purposes. On the basis that the probate income will in future be paid to General Revenue, out of which will be paid an annual grant of £400,000 to the Social Investment Fund, and Church of England organisations will be able to apply for grants from that Fund, the Committee considers that any claim for compensation based on the transfer of jurisdiction is theoretical.

11. Projected Costs for Transferring the Function:

11.1 An increased budget for the Royal Court will be required to cover the costs of administration once the transfer has been effected. These costs are expected to be no more than the current costs upon transfer but, in due course, it is anticipated that savings will be able to be made for items such as insurance and rent. In addition, ICT costs for the transfer of jurisdiction will be a maximum of £20,000 and a request will be made for an ICT minor capital vote.

11.2 Staff project management resources will be required to facilitate the transfer of the function and, if these cannot be funded within existing resources, the Policy

[10] Establishment of the Social Investment Fund Policy Letter

& Resources Committee will use its existing delegated authority to make one-off funding available from the Budget Reserve.[11]

12. Legislative Implications:

12.1 The probate jurisdiction of the Ecclesiastical Court is rooted in customary law with statutory intervention through the 1994 Law. The 1994 Law declares the jurisdiction of the Ecclesiastical Court regarding the inheritance of personal property in relation to grants of probate and letters of administration. It sets out that disputed probate applications fall within the jurisdiction of the Royal Court.

12.2 In order to support the recommendations in this Policy Letter and transfer the jurisdiction, the appropriate legislative route would be to draft a *projet de loi* which would establish the Royal Court's jurisdiction and responsibility for the probate function.

12.3 The legislation would:

- Transfer the customary jurisdiction in relation to personal property to the Royal Court sitting as an Ordinary Court;
- Make provision for the transferred probate jurisdiction to extend to Alderney and Sark(subject to Sark agreeing with this);
- For clarity, end the Ecclesiastical Court's customary jurisdiction in respect of probate matters and the receipt of probate income;
- Set out criminal offences for breaches under the legislation and applicable penalties, such as where a grant is obtained by the provision of false information;
- Create the judicial positions of Court Registrar and Court Deputy Registrar who would grant probate and sit in the Ordinary Court to hear any disputes;
- Permit the Policy & Resources Committee to recommend any change to the probate tariff to the States as part of the Annual Budget;
- Permit the Royal Court to make rules and set fees;
- Provide that the future income from probate (other than the Royal Court fees) will be paid into the States of Guernsey's General Revenue Account;
- Provide for an appeal from decisions of the Court Registrar and Court Deputy Registrars to be heard by the Court of Appeal; and
- Provide for the transfer of the employed staff from the Ecclesiastical Court to the new function.

12.4 The Law Officers' Chambers have advised that, with the proposal that the probate system will transfer as a customary jurisdiction in its current form to the

[11] It is possible that there may be additional costs for the Dean resulting from the transfer of the jurisdiction and probate function. These costs will need to be considered at the appropriate time.

Royal Court and with no intention to introduce a detailed statutory system, the drafting of the primary legislation should not be particularly time-consuming. Court Rules in the form of Orders of the Royal Court will set out the processes and other procedural requirements.

13. Residual Functions of the Ecclesiastical Court after transfer of the probate jurisdiction:

13.1 The transfer of the probate function from the Ecclesiastical Court to the Royal Court will see the Ecclesiastical Court continuing to operate its other functions following the transfer.

These functions include:

- Issuing licences for marriages according to the rites of the Church of England in the Bailiwick of Guernsey;
- Considering applications for permission to undertake any work proposed in the Anglican churches or churchyards in the Bailiwick and issuing of faculties to permit the work;
- Carrying out its duties in relation to the admission of clergy to benefices, the admission of churchwardens to their offices and the consecration of burial grounds;
- Carrying out the other responsibilities of the Court and of the Registrar, including in relation to clergy discipline[12];
- Considering requests for exhumation of bodies or cremated remains interred in consecrated ground, and issuing of permission for exhumation (or otherwise); and
- Admitting notaries in Guernsey on the instruction of the Master of the Faculties.

13.2 The Ecclesiastical Court will continue to deliver these services and be responsible for the operation and any charges for these services.

14. Consultation with the Ecclesiastical Authorities:

14.1 Given the long establishment of the Ecclesiastical Court operating the probate jurisdiction and the episcopal arrangements regarding the Channel Islands, consultation with both the Bishop of Winchester and the Right Reverend Trevor Willmott, who currently exercises episcopal jurisdiction in the Channel Islands. No objections to the proposals to transfer the customary jurisdiction made in this policy letter were raised by this consultation.

[12] See the Clergy Discipline (Bailiwick of Guernsey) Order, 2006.

15. Consultation with Alderney and Sark:

15.1 Consultation has been undertaken with Alderney and Sark over a period of several months concerning these proposals in relation to their probate for personal property. It is proposed that an agreement will set out the arrangements for the probate process within the Bailiwick.

15.2 On 23 January 2020, the Policy & Finance Committee of the States of Alderney resolved to approve the following policy proposals:

- The transfer of the probate jurisdiction from the Ecclesiastical Court to the Royal Court and the preparation of legislation to effect this transfer;
- For the transferred jurisdiction to extend to Alderney's probate, in relation to their deceased residents and assets held by their residents;
- To return any residue to Alderney regarding their deceased residents' estates and assets following any charges being applied for administering the probate process and returning income to the individual islands, at a Bailiwick tariff set by the Policy & Resources Committee and any document charges;
- The system will be reviewed after 2-3 years of operation.

For clarity, Alderney has elected to have its proportion of any funds returned following the costs of the service being met rather than apply to the Social Investment Fund for a grant.

15.3 Discussions with Sark are ongoing regarding the administration of their probate function. However, it is anticipated that the position will be clear at the time of the States' consideration of this policy letter and can be addressed at the time of the legislation, as required. This is covered by proposition 1a) and b) which are alternatives depending if Sark wishes to be part of the transferred arrangements.

Similarly Sark has elected to have its proportion of any funds returned following the costs of the service being met rather than apply to the Social Investment Fund for a grant.

16. Timeframe:

16.1 In terms of proposed timescale for the transfer, it is proposed that the customary jurisdiction should transfer to the Royal Court following the enactment of the required legislation. Pending this, the function will continue to operate as currently under the jurisdiction of the Ecclesiastical Court.

17. Conclusion and Recommendations:

17.1 To conclude, it is appropriate that the customary jurisdiction for probate be transferred to the Royal Court.

17.2 The transfer will remove the function from its current close association and governance of the Church of England and enable its delivery as a government-led service.

17.3 Based on the information contained within this policy letter, the Policy & Resources Committee recommends, as included in the propositions, that:

- The customary probate jurisdiction is transferred from the Ecclesiastical Court to the Royal Court, with future probate income from the probate tariff to accrue to General Revenue.
- For any changes to the tariff to be recommended by the Policy & Resources Committee as part of the Annual Budget of the States, with the Royal Court setting other fees.
- A grant will be made available for distribution to charitable and third sector causes through an annual grant made to the Social Investment Fund, to be reviewed after two years.

If the proposals are approved by the States, an implementation group will effect the next stage of the plan, including the transfer of the service and staff, processes and procedures to the Royal Court.

18. Compliance with Rule 4:

18.1 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.

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

18.3 In accordance with Rule 4(3), the Propositions request the States to approve funding as detailed in propositions 3 and 4.

18.4 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.

18.5 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee to develop and promote the States' overall policy objectives.

Yours faithfully

G A St Pier
President

L S Trott
Vice-President

J P Le Tocq
T J Stephens
A H Brouard

P.2020/72

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

AMENDMENTS TO THE LEGAL FRAMEWORK RELATING TO BENEFICIAL OWNERSHIP OF LEGAL PERSONS

The States are asked to decide:-

Whether, after consideration of the Policy Letter dated 2nd April, of the Policy & Resources Committee, they are of the opinion:-

1.1 To agree to amend the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017, so as to:

i. remove the reference to "no beneficial owners" of a legal person;
ii. clarify the circumstances in which a legal person is subject to the administrative enforcement powers of the Registrar of Beneficial Ownership or to those of the Guernsey Financial Services Commission;
iii. specify the particulars that must be recorded in respect of corporate beneficial owners;
iv. set out the criteria that must be applied by the Registrar of Beneficial Ownership before making a disqualification order;
v. confirm the application of the Registrar of Beneficial Ownership's powers to nominee relationships;
vi. widen the Registrar of Beneficial Ownership's information gathering powers to include matters relating to risk and to extend the application of those powers to third parties such as liquidators of a legal person; and
vii. permit the Director of the Revenue Service to inspect the beneficial ownership register.

1.2 To agree to amend the Foundations (Guernsey) Law, 2012 so as to:

i. ensure consistency of language with other commercial legislation on matters relating to resident agents and beneficial ownership;
ii. introduce information gathering powers that correspond to those outlined at paragraph 1.1.vi above.

1.3 To agree to amend the Limited Partnerships (Guernsey) Law, 1995, the Companies (Guernsey) Law, 2008, and the Limited Liability Partnerships (Guernsey) Law, 2013 so as to introduce information gathering powers that correspond to those outlined at paragraph 1.1.vi above.

1.4 To agree to amend the Income Tax (Guernsey) Law, 1975, to permit the Director of the Revenue Service to share information with the Guernsey and Alderney Registrars of Beneficial Ownership.

1.5 To direct the preparation of such legislation as may be necessary to give effect the foregoing, including any necessary consequential and incidental provision.

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

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

AMENDMENTS TO THE LEGAL FRAMEWORK RELATING TO BENEFICIAL OWNERSHIP OF LEGAL PERSONS

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

2nd April, 2020

Dear Sir

1. Executive Summary

1.1 The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 ("the Law") has been in operation for two and a half years and has been instrumental in the implementation of Bailiwick measures for combatting financial crime. A review of the Law is now timely, and a number of amendments to the Law and related enactments are recommended.

1.2 These amendments relate to the information to be recorded in the record of beneficial ownership by resident agents; to certain definitions in the Law; to the functions, enforcement and information gathering powers of the Registrar of Beneficial Ownership ("the Registrar"); to the provision of information to the Registrar or to the Alderney Registrar of Beneficial Ownership ("the Alderney Registrar") under income tax legislation; to the ability of the Director of Income Tax to inspect the register of beneficial ownership; and to aspects of the Foundations (Guernsey) Law, 2012 ("the Foundations Law") and other commercial legislation to ensure consistency across the legal framework.

2 Amendments

Record of Beneficial Ownership

2.1 The Law requires the resident agent of a Guernsey legal person to maintain a record of the beneficial owners of the legal person. Section 10(5) of the Law states:

If a resident agent has ascertained that there are no beneficial owners in relation to a relevant legal person, he must record that fact in the record of beneficial owners.

This provision was included so as to ensure that there was no possibility of any gap in the beneficial ownership framework. In the two and a half years during which the Law has been in force it has become clear that there are no cases in which the above condition would be applicable; i.e. there is always a beneficial owner. This reflects both a change in the international understanding of what comprises beneficial ownership and the fact that the Bailiwick's beneficial ownership framework has proved successful in always requiring and obtaining beneficial ownership information.

2.2 Section 10(5) of the Law is therefore redundant. Furthermore, its inclusion might lead to confusion about Guernsey's beneficial ownership framework, both locally and internationally. This is reflected by the reference to section 10(5) and accompanying recommendation in the latest OECD Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Review Report (on the Exchange of Information on Request) on Guernsey. Removing section 10(5) would prevent future confusion. A corresponding change would then be made to commercial legislation governing the incorporation of legal persons and to the Beneficial Ownership (Definition) Regulations, 2017, which make reference to the language of section 10(5) of the Law.

Definitions

2.3 The intention behind the Law, as set out in the Policy Letter recommending its introduction, was that the Registrar's administrative enforcement powers would not apply to firms licensed by Guernsey Financial Services Commission ("GFSC"). This was in order to avoid duplication of enforcement. Therefore, the Law distinguishes between those Guernsey legal persons that are controlled, administered or operated by a GFSC licensee (a legal person in this category is referred to in the Law as a "regulated relevant legal person") and those that are not (i.e. a "non-regulated relevant legal person" under the Law). The Registrar's enforcement powers do not apply to the former. However, over time it has become clear that in some circumstances a GFSC licensee will act as resident agent of a legal person but without controlling, administering or operating the legal person. For example, if a licensed firm acts as resident agent of a Guernsey company without providing any directors or administration services to it, the company would currently be defined as a non-regulated relevant legal person although it has a regulated resident agent. In this situation, the resident agent could then be subject to the Registrar's enforcement powers as well as to GFSC's powers applicable to all its licensees.

2.4 For consistency in this area, it is proposed to amend the Law to make it clearer that the Registrar's administrative enforcement powers do not apply to GFSC licensees. This will include amending the definitions of "regulated relevant legal person" and "non-regulated relevant legal person" so that the former will apply when the resident agent is a regulated person (including a person acting in the course of his or her duties as an employee of a regulated person). This will also include making it clear that when a legal person ceases to be a regulated person, that legal person will be subject to the powers of the Registrar.

2.5 A further amendment is proposed with regard to the definition of "required particulars", i.e. the particulars about a beneficial owner that must be maintained by a resident agent in the record of beneficial ownership. In the vast majority of cases, a beneficial owner will be a natural person. However, the Law also provides that a legal person may have a corporate beneficial owner in limited circumstances, i.e. where the legal person is a States Trading Company, so there is no realistic prospect of its being abused for criminal purposes, or where the corporate beneficial owner is listed on a recognised stock exchange or entered on the beneficial ownership register so is itself subject to transparency measures. As currently worded, the required particulars include matters such as date of birth and nationality that are only applicable to natural persons, and do not include corresponding particulars for corporate beneficial owners such as date and place of incorporation. It is therefore proposed that the required particulars should be revised to make provision for the particulars applicable to corporate beneficial owners in the limited situations in which they are permitted.

Functions and Powers of the Registrar

2.6 Section 3 of the Law specifies the functions of the Registrar. These include ensuring the accuracy of information relating to the beneficial ownership of Guernsey legal persons. As the Law, and regulations made under it (see paragraph 2.8 below), also include provisions relating to nominee relationships, for the avoidance of doubt, section 3 should be amended to also provide the Registrar with the function of ensuring the accuracy of information relating to nominee relationships in respect of Guernsey legal persons.

2.7 The Registrar's administrative enforcement powers in the event of breach of the Law are to impose a financial penalty, to make a public statement and to make an order disqualifying a resident agent from acting as such. A review of these powers has identified that it would be beneficial to introduce a requirement for the Registrar to consider specific factors before imposing a disqualification order, in line with the factors currently applicable to imposing a financial penalty or making a public statement. These factors include matters such as the seriousness of the failure, whether it was inadvertent, and the potential financial consequences of imposing the penalty. Requiring consideration of these factors would reflect the likelihood of disqualification having at least as much impact on the subject as a public statement or financial penalty.

2.8 The Law also gives the Registrar the power to make regulations governing nominee relationships. This power has been exercised with the enactment of the Beneficial Ownership of Legal Persons (Nominee Relationships) Regulations, 2017 and by corresponding regulations applicable to limited partnerships. However, the Registrar's oversight and enforcement powers do not specifically extend to compliance with these regulations. It is therefore proposed that the Law be amended to make it clear that the Registrar's powers to enforce compliance of the requirements relevant to beneficial ownership extend to the requirements relating to nominee relationships. This would be subject to the exclusion with regard to GFSC licensees referred to above, to avoid dual administrative enforcement.

2.9 In order to further strengthen the Bailiwick's beneficial ownership framework, it is also recommended that a provision be added to the Law enabling the Registrar to obtain information relating to legal persons so that he or she can identify, assess and understand risks to the Bailiwick of economic crime, money laundering and terrorist financing. This power should be capable of being exercised not only by the Registrar independently but also at the request of another authority with responsibilities in this area such as the Policy & Resources Committee, the Revenue Service or the GFSC. This will enable the Registrar to carry out his or her functions under the Law in a risk based way, in line with the existing approach taken by other authorities with functions relating to economic crime, money laundering and terrorist financing, as well as assisting other authorities to implement a risk based approach.

2.10 It is also proposed that the Registrar be given powers to obtain information from parties such as administrators or liquidators who will have control over a legal person in some situations. This will ensure that it will be possible for the Registrar to obtain information about a legal person even if its officials have resigned.

2.11 Finally, in order to ensure consistency across the legal framework, it is proposed that information gathering powers corresponding to those outlined above be introduced under commercial legislation governing the incorporation and operation of Guernsey legal persons.

Foundations

2.12 When the Law was introduced, it built upon the resident agent provisions that were already in place under commercial legislation applicable to companies and limited liability partnerships. However, those provisions differed from other resident agent provisions that were then in place with regard to foundations under the Foundations Law.

2.13 The Foundations Law was therefore amended to introduce resident agent provisions that would enable the beneficial ownership register to be populated effectively. However, as this was done by building on existing provisions, the language of the Foundations Law in this area is not fully in line with the language in the legislation applicable to other Guernsey legal persons. While this has not presented any practical difficulties to date, it is proposed that the opportunity be taken now to amend the Foundations Law so as to ensure consistency across the legal framework.

Collaboration between the Registrar and the Director of the Revenue Service ("the Revenue Service")

2.14 The recent process of assessing the money laundering and terrorist financing risks to the Bailiwick (referred to as the National Risk Assessment) has emphasised the need to ensure that the relevant authorities have the ability to work together to combat financial crime, money laundering and terrorist financing.

2.15 Both the Registrar and the Revenue Service have to undertake supervisory activities, which include ensuring the accuracy of beneficial ownership information that has been provided to each of them separately (i.e. through the Beneficial Ownership Register for the Registrar and the OECD Common Reporting Standard for the Revenue Service).

2.16 Whilst the Law includes provisions to enable the Registrar to exchange information with the Revenue Service, the Income Tax (Guernsey) Law, 1975 ("the Income Tax Law") does not include an equivalent provision. Similarly, although under Alderney's beneficial ownership legislation the Alderney Registrar may share information with the Revenue Service, there is no reciprocal provision under the Income Tax Law.

2.17 In order to ensure that the authorities are able to work collaboratively to compare the data that they hold, it is recommended that the Income Tax Law is amended to provide a legal gateway to exchange information that is relevant for the purposes of the Registrar and the Alderney Registrar carrying on functions. Furthermore, the Law should be amended to enable the Revenue Service to inspect the Register for the purposes of carrying on its functions.

3 Recommendations

3.1 To agree to amend the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017, so as to:

i. remove the reference to "no beneficial owners" of a legal person;
ii. clarify the circumstances in which a legal person is subject to the administrative enforcement powers of the Registrar of Beneficial Ownership or to those of the Guernsey Financial Services Commission;
iii. specify the particulars that must be recorded in respect of corporate beneficial owners;
iv. set out the criteria that must be applied by the Registrar of Beneficial Ownership before making a disqualification order;
v. confirm the application of the Registrar of Beneficial Ownership's powers to nominee relationships;
vi. widen the Registrar of Beneficial Ownership's information gathering powers to include matters relating to risk and to extend the application of those powers to third parties such as liquidators of a legal person; and
vii. permit the Director of the Revenue Service to inspect the beneficial ownership register.

3.2 To agree to amend the Foundations (Guernsey) Law, 2012 so as to:

i. ensure consistency of language with other commercial legislation on matters relating to resident agents and beneficial ownership;
ii. introduce information gathering powers that correspond to those outlined at paragraph 3.1.vi above.

3.3 To agree to amend the Limited Partnerships (Guernsey) Law, 1995, the Companies

(Guernsey) Law, 2008, and the Limited Liability Partnerships (Guernsey) Law, 2013 so as to introduce information gathering powers that correspond to those outlined at paragraph 3.1.vi above.

3.4 To agree to amend the Income Tax (Guernsey) Law, 1975, to permit the Director of the Revenue Service to share information with the Guernsey and Alderney Registrars of Beneficial Ownership.

3.5 To direct the preparation of such legislation as may be necessary to give effect the foregoing, including any necessary consequential and incidental provision.

4 Compliance with Rule 4

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

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

4.3 In accordance with Rule 4(4), it is confirmed that the proposition accompanying this policy letter is supported unanimously by the Policy & Resources Committee.

4.4 In accordance with Rule 4(5), the Policy & Resources Committee has consulted with the Registry and the GFSC.

Yours faithfully

G A St Pier
President

L S Trott
Vice-President

A H Brouard
J P Le Tocq
T J Stephens

P.2020/70

<u>THE STATES OF DELIBERATION</u>
<u>of the</u>
<u>ISLAND OF GUERNSEY</u>

POLICY & RESOURCES COMMITTEE

MINOR CHANGES TO THE DOCUMENT DUTY (GUERNSEY) LAW, 2017

The States are asked to decide:

Whether, after consideration of the policy letter entitled 'Minor Changes to the Document Duty (Guernsey) Law, 2017' of the Policy & Resources Committee, they are of the opinion:

1. To approve the proposals to introduce two further exemptions to the requirement to pay document duty under the Document Duty (Guernsey) Law, 2017 as set out in Section 3 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 Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4 (1) of the Rules of Procedure of the States of Deliberation and their Committees.

<u>THE STATES OF DELIBERATION</u>
<u>of the</u>
<u>ISLAND OF GUERNSEY</u>

POLICY & RESOURCES COMMITTEE

MINOR CHANGES TO THE DOCUMENT DUTY (GUERNSEY) LAW, 2017

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

2 April, 2020

Dear Sir

1 Executive Summary

1.1 In May 2017 (Billet d'État X, 2017) the States considered a policy letter entitled "Document Duty and Anti-Avoidance Duty" and approved the introduction of a regime, parallel to the existing document duty regime, which imposes a duty on transactions which have an effect comparable to the transfer of an interest in real property but which do not involve a conveyance or other registrable document and so do not attract document duty. The new regime came into effect on 15 November 2017. The existing Document Duty Law was also revised in order to clarify and modernise it, ensure that it is human-rights compliant with the introduction of an appeals procedure, and introduce anti-avoidance provisions to discourage the use of artificial transactions designed to avoid document duty.

1.2 In light of the experience with the operation of the new regime for in excess of two years, it is recommended that two further exemptions are added to include certain transactions which would in many cases have been treated as exempt under the previous regime. The 2017 Law includes provision in section 3(2) enabling the States to add exemptions by Ordinance.

2 Background

2.1 The Document Duty (Guernsey) Law, 2017 ("the 2017 Law") simplified the structure of the document duty regime so as to introduce a general liability to document duty on all transactions falling within the definition of "chargeable transaction" for the purposes of the Law, with specified exemptions. This contrasts with the previous regime, under the Document Duty (Guernsey) Law, 1973, which imposed different rates of duty on specified types of registered document and included very limited exemptions. Certain transactions such as conveyances between family members were treated as exempt at the discretion of H M Greffier but were not specified as exempt in the legislation.

2.2 Exemptions under the 2017 Law include: family transactions; transactions conveying real property to, or charging real property owned by, charities, friendly societies, affordable housing providers or the States; and other specified transactions such as transfers by will, between co-heirs and by order of a court.

2.3 The list of exempt transactions also includes (a) the transfer of real property owned by a company to the beneficial owner, or owners, of all the shares in the company (but not a transfer from the beneficial owner, or owners, to a company in which the beneficial owner, or owners, owns all the shares), and (b) the transfer of real property from the settlor of a trust to the trustee of the trust, or from a trustee to the beneficiary of the trust.

3 Proposed Exemptions

3.1 The first proposed additional exemption is where an individual, or more than one individual, conveys a property owned by that individual or individuals to a company of which that individual or individuals is/are the owner of all the shares. Such transfers are commonplace in family structures, etc and, given the enactment of the Document Duty (Anti-Avoidance) (Guernsey) Law, 2017, which imposes liability to tax on transfer of property by share transfer, there is no reason to discourage such transfers as a subsequent sale of the company would not result in the avoidance of document duty. Under the previous regime, these transfers were not treated as subject to document duty if the company was in the beneficial ownership of the individual or individuals who were conveying the property and the proposal would merely formalise the former discretionary exemption under that regime.

3.2 The second proposed additional exemption concerns transfers of property within trusts where the trustees do not own the real property directly and the transaction is a conveyance between an underlying company owned by the trustees and the beneficiaries of the trust, or between such an underlying company and the trustees. There are many reasons (including the personal liability of trustees, conveyancing issues each time a trustee retires or dies, the desirability of separating real property assets from personal estate, among others) why it might be considered desirable that an underlying company should hold the trust property rather than it being owned by the trustees directly. In many cases, where family trusts were involved, such transactions would have been treated as exempt under the previous regime. This was not taken into account when the original exemption was drafted to exempt transfers to and from trustees and it is considered appropriate that the exemption should be extended to cover such transactions.

4 Compliance with Rule 4

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

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

4.3 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Policy & Resources Committee.

4.4 In accordance with Rule 4(5), the Propositions relate to the duties of the Policy & Resources Committee to advise the States and to develop and implement policies and programmes relating to fiscal policy.

Yours faithfully

G A St Pier
President

L S Trott
Vice-President

A H Brouard
J P Le Tocq
T J Stephens

P.2020/73

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY

DIFFUSE MESOTHELIOMA PAYMENT SCHEME

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled 'Diffuse Mesothelioma Payment Scheme', dated 2nd April, 2020, they are of the opinion:

1. To approve the introduction of a Diffuse Mesothelioma Payment Scheme as set out in that Policy Letter.

2. To direct the preparation of such legislation as is necessary to give effect to their decision.

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

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY

DIFFUSE MESOTHELIOMA PAYMENT SCHEME

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

2nd April, 2020

Dear Sir

1. Executive summary

1.1. On 8th November, 2019, having debated the Committee for Employment & Social Security's ("the Committee's") annual Policy Letter on non-contributory benefit rates for 2020[1], and an amendment proposed by Deputy Fallaize having been carried, the States resolved:

> "13. To agree that with effect from the 1st of January 2021 there shall be a statutory scheme of compensation for persons resident in the Bailiwick who have been diagnosed with diffuse mesothelioma following exposure to asbestos in the Bailiwick; and to direct the Committee for Employment & Social Security to develop any legislation and policies necessary to establish such a scheme, which shall be along the lines of the mesothelioma compensation scheme recently introduced in Jersey; and to direct that from 2021 onwards the Policy & Resources Committee shall make provision for the estimated cost of the scheme when proposing the Cash Limit of the Committee for Employment & Social Security as part of the annual Budget process."

1.2. This Policy Letter addresses the above Resolution of the States and describes how a mesothelioma payment scheme could be implemented from 1st

[1] Billet d'État XXI of 2019, Article II – Non-contributory benefit rates for 2020

January, 2021, on an extra-statutory basis initially. It will then be written into the Income Support (Guernsey) Law, 1971, at the earliest opportunity.

1.3. The proposed scheme is a close copy of similar schemes now in place in the UK and in Jersey. The scheme will enable lump sum compensation payments to be made to sufferers of mesothelioma, or to their surviving family.

1.4. Based on medical information, the Committee estimates that approximately three payments will be made per year on average, at a total cost of around £100,000 annually.

2. Background

2.1. Asbestos is the name of a group of naturally occurring fibrous minerals and metallic silicates. Its characteristics of heat and chemical resistance made it an important material used in many industrial, manufacturing and building processes. It is still mined in a number of countries, in particular, Canada, South Africa and Russia.

2.2. The connection between asbestos exposure and a range of debilitating diseases became more widely recognised and accepted in the 1970s and its use subsequently began to decline. By 2003, there were full or partial bans on the use of asbestos in 17 countries and in 2005 it was banned throughout the European Community. Asbestos is classified as a Group 1 carcinogen.

2.3. Asbestos fibres are generally present in the environment in Great Britain, so many people are exposed to low level fibres. The risk of developing an asbestos-related disease relates to the number of fibres that are inhaled and penetrate deep into the lungs. People working in industries where asbestos was used extensively in the past, such as plumbing, electrical fitting and energy plant work were at high risk of developing asbestos-related diseases. Today the risk of asbestos exposure through employment is much reduced due to bans on its use and controls on how asbestos containing materials are handled. However, exposure to asbestos is not just work-related. Individuals can be exposed through contact with someone who has been exposed to asbestos at work or more generally from the environment in which they live.

2.4. In Guernsey, significant quantities of asbestos containing materials were imported in the last century for use in the construction of buildings and other structures. Considerable amounts remain. So long as the material is in good condition and is not disturbed, it does not present a significant risk to health. If the material is damaged, asbestos fibres may be released into the air resulting in a risk to human health when people breathe them in. If asbestos-containing materials are in poor condition, simply working near to them may result in them being disturbed.

2.5. An Approved Code of Practice, 2013 (revised 2017)[2] was issued by the States of Guernsey Health and Safety Executive to provide practical advice on how to meet the legal requirements set out in The Health and Safety at Work (General) (Guernsey) Ordinance, 1987. It revised the Approved Code of Practice titled "Management of exposure to asbestos in workplace buildings and structures", dated May 2010.

Asbestos related diseases

2.6. Although asbestos can affect other parts of the body, lung diseases are by far the most common. The four main asbestos-related diseases are:

- Non-malignant pleural disease – diffuse pleural thickening and pleural plaques
- Asbestosis – a non-malignant scarring of the lung tissue
- Asbestos-related lung cancer – although responsible for only a small number of lung cancer diagnoses, it is one of the most fatal asbestos-related malignancies
- Mesothelioma – asbestos exposure is the primary cause of this disease. The life expectancy of most mesothelioma sufferers is approximately twelve months after diagnosis, but can be as short as a few weeks.

Deaths associated with exposure to asbestos in Guernsey

2.7. In March 2018, the Medical Officer of Health provided statistical information on asbestos related disease in Guernsey. The statistics were compiled from death data over a ten year period and information from the Island's Respiratory Physician.

2.8. Mesothelioma, pneumoconiosis due to asbestos and other mineral fibres and pleural plaques with presence of asbestos were identified. Asbestos-related conditions which were detailed on the death certificate as having contributed to the death were also identified. These included mesothelioma, asbestosis and asbestos exposure.

2.9. The results showed that, between 2005 and 2015, exposure to asbestos was the underlying cause of death in nineteen cases and contributed to the death in a further four cases. Over the ten year period, the average number of deaths per year was two. Quantifying the number of deaths due to asbestos exposure is difficult as asbestos-related lung cancer is not always identifiable. However, of the 23 deaths associated with asbestos exposure, mesothelioma was the underlying cause of death in 70% of cases. The Health and Safety

[2] Available at: https://gov.gg/asbestos

Executive estimates that there are currently as many lung cancer deaths due to asbestos exposure as there are mesothelioma deaths and the Medical Officer of Health advises that the figures presented underestimate the true number of deaths.

2.10. Guernsey benefits data in April 2018 showed one person with mesothelioma, one person with asbestosis and one person with asbestos-related lung cancer. In 2019, benefits data showed one person with mesothelioma. In November 2019, the Respiratory Physician confirmed three mesothelioma cases were diagnosed per year.

3. Asbestos-related compensation/payment schemes

3.1. As explained, exposure to asbestos fibres can lead to a number of serious diseases. People suffering from some of these diseases can pursue compensation from their employers or bodies responsible for the use of asbestos. They may also be entitled to compensation payments from schemes administered by their government, although arrangements for compensation payments vary from country to country. In some jurisdictions, civil litigation is the main course of action while in others government schemes are the only source of financial recompense and may only provide payments for disease contracted through employment. Some countries provide no compensation.

3.2. Compensation for asbestos-related diseases contracted through employment is the most common type of claim, but there is an increasing number of claims for asbestos-related diseases contracted through contact with asbestos in the environment. Pursuing a compensation claim through court action can be complex and problematic. The long latency period for asbestos-related diseases means that, by the time a diagnosis is given, 30 or 40 years may have passed. In this time, employment records or other documentation may have been destroyed and former employers or businesses using, or processing asbestos, may no longer be trading or traceable.

Compensation payments in other jurisdictions

3.3. In the Netherlands, there are two compensation schemes for people who have contracted mesothelioma or other asbestos-related diseases. Both schemes provide a single payment of €20,730 (2019 rate). This is seen as an advance payment and will be recovered from any future civil award.

3.4. In France, there are social security-provided compensation payments for loss of earnings for employees who contracted asbestos-related diseases through their employment. However, in 2002, the Fonds d'Indemnisation de Victimes de l'Aimant (FIVA) was established. This scheme provides compensation for all asbestos-related diseases and covers employment and environmentally contracted diseases. The level of compensation is based on a number of criteria with standardised compensation awards which are far higher than the amounts traditionally received from social security. Average payments in 2018 range from €48,460 to €152,145 and are recovered by the Government if a civil action results in a higher award.

3.5. In the United Kingdom, while people who have contracted asbestos-related diseases can take a civil claim for compensation there are also three schemes administered by the Department for Work and Pensions.

- Pneumoconiosis etc. (Workers' Compensation) Act 1979 (PWCA): This scheme provides a lump sum payment to people suffering from certain dust-related diseases, including those caused by asbestos, or their dependants, if the person has died. To receive this payment a person must be, or have been, entitled to Industrial Injuries Disablement Benefit (IIDB), be unable to claim compensation from their employer, and not have brought an action for damages. Payments are made according to the assessed level of disability and age when first diagnosed. They vary from £14,578 to £93,827, at 2020 rates. All payments for mesothelioma are made at the 100% disablement rate.
- The 2008 Diffuse Mesothelioma Scheme[3]: This scheme provides lump sum payments for people suffering from diffuse mesothelioma who have been exposed to asbestos in the UK and face difficulties claiming compensation. It covers people who have been exposed to asbestos in the environment and the self-employed who are not entitled to IIDB and so are unable to claim under the PWCA. Awards cover dependants in the event the sufferer has died. The amount of the lump sum depends on the person's age when they were diagnosed with the disease. Payments (from April 2020) vary from £14,578 to £93,827, with rates payable to dependants at approximately half the amount.
- The 2014 Diffuse Mesothelioma Payment Scheme (DMPS)[4]: This new scheme was intended to address a particular problem of "market failure", whereby individuals diagnosed with diffuse mesothelioma after July 2012 because of exposure to asbestos in the workplace are unable to access compensation. The scheme is funded through a levy on insurance companies with payments similar to the level of awards in civil damages cases. Awards are based on the age at which a person is first diagnosed with the condition and range from £87,061 for someone over 90 years of age, to £271,120 for someone aged 40 years or under.

[3] This was introduced under the Child Maintenance and Other Payments Act, 2008

[4] This was introduced under the Mesothelioma Act, 2014

3.6. In Jersey, following public concern, a scheme was introduced in October 2019 to provide payments to individuals with diffuse mesothelioma. If the person has died without making a claim for payment, a close relative is entitled to make a claim under the scheme.

3.7. The payment takes the form of an interest-free loan, based on the age of the person at the time of their diagnosis. Loans are made under the Income Support (Jersey) Law, 2007, which allows the Minister to make loans to Jersey residents in exceptional circumstances. Recipients are not means-tested and the loan is only repayable if the recipient receives a further payment as a result of diffuse mesothelioma, such as from a civil claim against an employer. It has been estimated that, after the first year when there are likely to be additional costs, there will be up to five payments per year, which Jersey has anticipated will cost the States of Jersey approximately £150,000 per annum.

3.8. Applications for loan payments could be made from 1st October, 2019. The amounts payable have been set at the rates paid in 2019 by the UK 2008 Diffuse Mesothelioma Scheme. The amount payable to an eligible relative is half of the amount paid to a person with the condition. Payments will be increased in line with the Jersey RPI, or unchanged if there is a negative change in inflation.

3.9. A more detailed description of the UK and Jersey schemes appears at Appendix 1. The amounts of the lump-sum payments, described as loans because of the possibility of repayment following a civil action, appear at Appendix 2, showing the 2019 rates for Jersey and the UK. Similar payment rates will be adopted for the proposed Guernsey and Alderney scheme, uprated by relevant inflation figures to 2021 rates.

3.10. Compensation and benefits for asbestos related diseases and mesothelioma currently available in the UK, Jersey and Guernsey is summarised in Table 1 on the following page.

Table 1 – Comparison of current benefits for asbestos related diseases

Diseases	**Benefits available for asbestos related diseases (in addition to incapacity/disability benefits)**		
	UK	Jersey	Guernsey
Asbestos related diseases: • Diffuse mesothelioma • Pneumoconiosis (including silicosis, asbestosis, kaolinosis • Diffuse pleural thickening • Primary carcinoma of the lung (only if accompanies by asbestosis or pleural thickening) • Byssinosis	• Industrial injuries benefits - £35.80 to £179.00 per week, dependent on percentage of disability • Pneumoconiosis etc. (Workers' Compensation) Act 1979 - £14,578 to £93,837, dependent on age at diagnosis and percentage of disability (rates correct at 1st April 2020)	• No	• Industrial Disablement Benefits £35.87 to £179.37 per week, dependent on percentage of disability (rates correct at 1st January 2020)
Diffuse mesothelioma	• Industrial injuries benefits £35.80 - £179.00 per week dependent on % disability • (From April 2020) Pneumoconiosis etc. (Workers' Compensation) Act 1979 - £14,578 to £93,837, dependent on age at diagnosis and percentage of disability • The 2008 Diffuse Mesothelioma Scheme • £14,578 to £93,837, dependent on age at diagnosis and percentage of disability • The 2014 Diffuse Mesothelioma Payment Scheme - £87,061 to £271,120, dependent on age at diagnosis (rates correct at 1st April 2020)	• Diffuse Mesothelioma Special Payments £14,334 to £92,259 dependent on age first diagnosed. (rates correct at 1st October, 2019)	• No

4. A Diffuse Mesothelioma Scheme for Guernsey and Alderney

4.1. The Committee has undertaken to address the lack of support for individuals who have contracted asbestos-related diseases through exposure to asbestos. Due to its rapid and fatal progression, there is particular concern for those who have developed diffuse mesothelioma. The Committee proposes the introduction of a payment for individuals who have contracted diffuse mesothelioma through exposure to asbestos in Guernsey and Alderney. While the Fallaize amendment implied a Bailiwick wide scheme, Social Security schemes do not ordinarily apply to Sark. The payment would be available to anyone who had contracted the disease through exposure in the workplace or any other environmental source. The payment and arrangement would be the same as in the recently introduced Jersey scheme.

4.2. The essential requirements for the proposed scheme include:

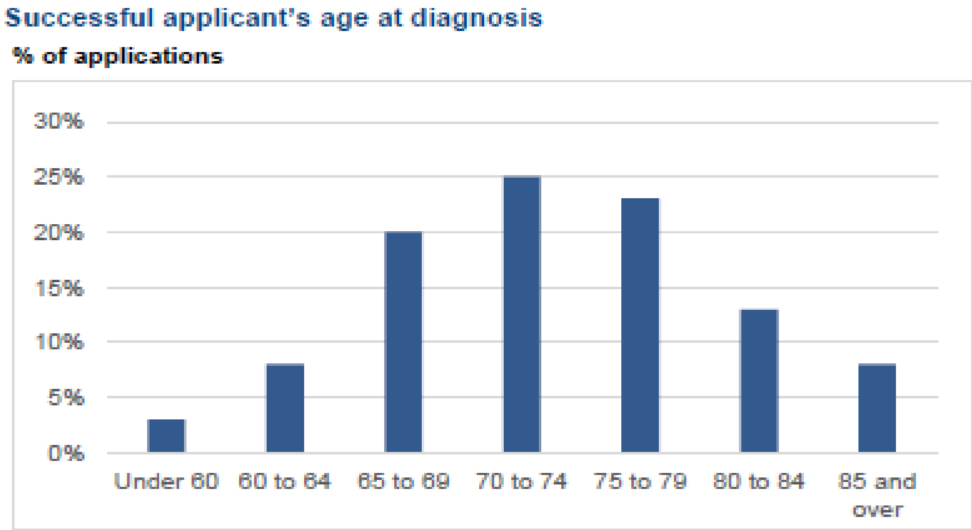
- Residency criteria
- Exposure to asbestos in Guernsey and Alderney from any source
- A formal diagnosis of mesothelioma or alternative specialist opinion for someone unable to undergo definitive investigation procedures
- A single payment for mesothelioma sufferers, or their dependent relative, where they have been unable to claim compensation from the party responsible for the source of the asbestos contamination.

4.3. The UK 2014 Diffuse Mesothelioma Payment Scheme was initially designed to make payments equivalent to 70% of the average civil compensation award. Since its introduction, the payment has been increased to 100% of a civil award. The 2019 payments range from 387, 061 for someone over the age of 90, to £271,120 for someone aged 40 years or under. These payments only apply to mesothelioma arising from contact with asbestos through employment and are funded through a levy on insurance companies.

4.4. Jersey's recently introduced mesothelioma compensation scheme has adopted the UK's 2008 Diffuse Mesothelioma Scheme 2019 payment rates as the starting point for their awards. These payments are considerably less than the UK's 2014 scheme, but are payable regardless of the source of the asbestos contamination. Payments range from £14,334 for people aged 77 and over, to £92,259 for people aged 37 and under, with awards of around half this amount paid to dependants in the event of claiming after the sufferer has died. It is anticipated there will be five claims a year, except in the first year. The scheme is to be funded in the first year by underspends within Social Security budgets, with the States of Jersey being asked to fund it from General Revenue as part of the Policy Plan from 2020 onwards. See Appendix 3 for a comparison between the UK and Jersey schemes.

4.5. The 2019 DWP Diffuse Mesothelioma Payment Scheme Official Statistics indicate that over two thirds of successful applicants (68%) were aged between 65 and 79 years (Appendix 4)[5].

Table 2 – DWP Diffuse Mesothelioma Payment Scheme age statistics



4.6. The UK Health and Safety Executive reports that, in Great Britain, the number of mesothelioma deaths in 2017 was 2,523 and would remain at around this number for the rest of this decade before annual numbers begin to decline. It also reports that more than half of annual deaths now occur in those over 75 years of age. Annual deaths in this age group continue to increase while deaths below 70 years are now decreasing.

4.7. Guernsey statistics suggest there are likely to be two cases of mesothelioma on average each year. If a Guernsey scheme were to be based on the Jersey Diffuse Mesoltheliома Payments Scheme, with an average of two claims per year, two cost scenarios would be:

- age 37 and under (worst case scenario) 2 x £92,250 = £184,500
- age 65 (reasonable assumption - 68% of claimants are this age or above) 2 x £25,440 = £50,880.

Funding and Administration

4.8. The compensation scheme in Jersey has been introduced under Section 8 of the Income Support (Jersey) Law, 2007, which allows exceptional needs payments to be provided for under Regulations. The beneficiary does not need to be entitled to income support to qualify. The compensation payments

[5] UK Department for Work and Pensions (2019) Diffuse Mesothelioma Payment Scheme: annual review 2018 to 2019.

are issued in the form of an interest free loan, repayable only if the person receives civil compensation. The UK has funded their 2014 Diffuse Mesothelioma Payment Scheme through a levy on insurance companies, while the 2008 Diffuse Mesothelioma Scheme was intended to be cost neutral over the long-term, with the scheme being financed from amounts recovered from later awards of civil compensation.

4.9. The Committee has considered how a mesothelioma payment scheme might be introduced by January 2021. Introducing the scheme under Section 10 of the Income Support (Guernsey) Law, 1971, would be preferable. This section of the Law allows the Committee to make arrangements deemed necessary or expedient to promote the welfare of disabled persons. A person does not need to be in receipt of income support to benefit under this section of the Law. The arrangements can include special payments in the form of a grant or a loan. Funding would be formula-led General Revenue. However, Section 10, as it stands, would not allow for a payment to be made to a dependent after the sufferer's death. It is therefore proposed that the mesothelioma payment scheme is introduced on a non-statutory basis6 until such time as a Law change can be made to enable the payments to be made on a statutory basis.

4.10. It should be noted that the resolution of the States on 8th November, 2019, directed that, from 2021 onwards, the Policy & Resources Committee shall make provision for the estimated cost of the scheme when proposing the Cash Limit of the Committee *for* Employment & Social Security as part of the annual Budget process.

Proposed Diffuse Mesothelioma Payment Scheme for Guernsey and Alderney

4.11. Having reviewed asbestos-related compensation schemes in other jurisdictions, the Committee has decided that the UK 2008 Diffuse Mesothelioma Scheme and the Jersey Diffuse Mesothelioma Special Payments Scheme offer models that can accommodate the requirements essential for a Guernsey and Alderney scheme. The main features would be a payment for individuals with mesothelioma which has developed through contact with asbestos in Guernsey and Alderney, either through their employment, or from the general environment. In the event of the sufferer's death, their dependent relative would be entitled to a payment. The claim process would be simple, with timely decisions and payments. Evidence of exposure would be based on whether someone is likely to have been exposed to asbestos in the Islands, supported by their history and employment, or other records, where available. The scheme would be administered on an extra-statutory basis, until an amendment can be made to Section 10 of the Income Support (Guernsey) Law, 1971, which provides for the welfare of

[6] The Medical Expenses Assistance Scheme was initially introduced on this basis

persons with disabilities. Awards would be single payments based on the person's age at diagnosis, with rates equal to the 2021 Jersey payments, uprated by Guernsey RPIX each year and repayable only if any other mesothelioma-related compensation award is received.

4.12. In accordance with the Resolution of the States on 8th November, 2019, the Diffuse Mesothelioma Payment Scheme for Guernsey and Alderney could commence on 1st January, 2021. Applications for compensation would be required within twelve months of diagnosis, subject to transitional provisions.

4.13. Jersey's Diffuse Mesothelioma Special Payment scheme was introduced from 1st October, 2019. Applications for a payment must be made within twelve months of being diagnosed with mesothelioma. However, a transitional arrangement was put in place that allowed individuals who had been diagnosed with mesothelioma before 1st January, 2019 to make an application up to 31st December, 2019. Similarly, in order to avoid a cliff edge for eligibility, the proposed Diffuse Mesothelioma Payment Scheme for Guernsey and Alderney will accept applications from mesothelioma sufferers diagnosed before 1st January, 2020 up to 31st March, 2021.

5. Resource requirements

5.1. The estimated cost of mesothelioma payments, based on there being up to three new cases per year, and assuming that the age of those people is in the range 60 to 65, is £100,000 per year. The source of funding will be General Revenu, formula-led expenditure under the Income Support budget. The States have already resolved that the Policy & Resources Committee shall make provision in the Committee's cash limit for the implementation of the Scheme from 2021 onwards. As the expected number of cases is so small, the administrative overhead is negligible.

6. Conclusions

6.1. In accordance with the Resolution of the States on 8th November 2019, the Committee has investigated the legislative and administrative requirements for implementing a compensation scheme for sufferers of mesothelioma. Mesothelioma is almost exclusively caused by contact with asbestos. The disease is invariably fatal, usually within twelve months of diagnosis. Other asbestos-related diseases, though debilitating, are not always fatal, and may respond to treatment. Although there are now strict controls in place for the management of asbestos, the long-term nature of the disease means that there is a delay before symptoms are presented. Pursuing a civil claim for compensation from an employer, or the body responsible for the source of asbestos, can be problematic. A compensation payment is therefore considered appropriate for mesothelioma sufferers.

6.2. Should the States agree, the Committee will be able to introduce a Diffuse Mesothelioma Payment Scheme on an extra-statutory basis on 1st January 2021, funded by the States-approved increase in the Committee's cash limit, from the same date. The Scheme will operate on that extra-statutory basis until such a time that the Income Support (Guernsey) Law, 1971, can be amended to enable the payment to be made under Section 10 of that Law.

7. Compliance with Rule 4

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

7.2. The Committee has set out its proposal for a Diffuse Mesothelioma Special Payment Scheme and seeks the States support for the propositions, which relate to 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."

7.3. In accordance with Rule 4(5), the Committee consulted the Committee *for* Health & Social Care, the Medical Specialist Group and the Health and Safety Executive in the early stages of the development of the Policy Letter. 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

M K Le Clerc
President

S L Langlois
Vice-President

J A B Gollop
E A McSwiggan
P J Roffey

M J Brown
Non-States Member

A R Le Lièvre
Non-States Member

APPENDIX 1

8. Description of UK Mesothelioma Payment Schemes

8.1. A mesothelioma sufferer in the UK may be able to get compensation from a civil claim for damages against one or more companies responsible for exposing them to asbestos negligently and/or in breach of a statutory duty. They may also be entitled to a weekly payment from the Industrial Injuries Disablement Benefit Scheme (IIDB). In addition there are three main schemes administered by the Department for Work and Pensions:

<u>Pneumoconiosis etc (Workers' Compensation) Act 1979 (PWCA):</u>

8.2. Under this scheme there is provision of a lump sum compensation payment to people suffering from certain dust related diseases, or their dependants if the person has died, where the disease was the result of dust exposure to dust in the course of their employment but are unable to claim damages because the employers have ceased business. The diseases covered are:

- Diffuse mesothelioma
- Pneumoconiosis (including silicosis, asbestosis, kaolinosis)
- Diffuse pleural thickening
- Primary carcinoma of the lung (only if accompanied by asbestosis or diffuse pleural thickening)
- Byssinosis

8.3. To receive this payment a person must be, or have been, entitled to IIDB, the relevant employer or employers have ceased trading and the sufferer or their dependants must not have taken any court action or received any compensation.

8.4. The amounts that can be paid under the scheme are now uprated annually by regulations made under the Act. The payments are dependent on the sufferer's assessed level of disability and their age when diagnosed with an asbestos related condition. From 1st April 2020, payments for a person of 37 years or less who is assessed as having less than 10% disability would be £38,258, while another person of the same age, assessed as having a disability of between 91% and 100%, would receive £93,827. A person aged 77, or over, would receive £3,305 for a disability of less than 10% and £14,578 if their disability had been assessed at 91-100%.

The 2008 Diffuse Mesothelioma Scheme

8.5. This scheme provides lump sum payments for people suffering from diffuse mesothelioma who have been exposed to asbestos in the UK but are unable to claim compensation from other sources and includes people who have been exposed to asbestos in the environment, such as from being in contact with or washing contaminated clothing, living near a factory using asbestos or self-employed people unable to claim under the PWCA.

8.6. This scheme is for people who are suffering from diffuse mesothelioma or the dependants of deceased sufferers who have been unable to make a claim under the PWCA, have not received a payment in respect of the disease from an employer or from a Ministry of Defence scheme or from a civil claim. Claims are for a lump sum and must be made within one year of diagnosis or, in the case of a dependant, within one year of the date of death. The person was required to submit medical evidence with their claim showing they suffered from mesothelioma caused by exposure to asbestos but no medical examination was required.

8.7. The amount of the lump sum depends on the person's age when they were diagnosed with the disease. For those first diagnosed with mesothelioma on or after 31st March 2014 the amounts in 2019 vary from £92,259 for people aged 37 and under to £14,334 for people aged 77 and over. The rates for dependants ranges from £48,013 to £7,949.

8.8. The Diffuse Mesothelioma Scheme was intended to be cost neutral over the long-term by recovering from later awards of civil compensation from people who had received awards from the scheme or the PWCA. Rules on compensation recovery were amended to enable the Government to claw back the sums paid.

The 2014 Diffuse Mesothelioma Payment Scheme (DMPS)

8.9. This new scheme was intended to address a particular problem of "market failure" whereby individuals diagnosed with diffuse mesothelioma because of exposure to asbestos in the workplace are unable to access compensation, because of the passage of time and a lack of effective record-keeping identifying the insurer responsible for covering the risk.

8.10. In proposing this scheme the UK Government explained there was a "unique case" for helping people with mesothelioma because it was almost exclusively caused through exposure to asbestos, which distinguished it from other asbestos-related diseases. As exposure to asbestos in the UK was largely due to negligent business practices, a levy on insurance companies was considered the most practical option for funding the scheme. The payment to sufferers would be based on a percentage of civil damages. The compensation rate was initially set at 70% of civil compensation levels but this was increased to 80% following negotiations with the insurance industry (100%) in 2015. The scheme was UK-wide and commenced in April 2014 but was able to make payments to people first diagnosed on or after 25th July, 2012.

8.11. The scheme makes payments to eligible persons with diffuse mesothelioma and to eligible dependants of people who have died with the disease. The criteria for eligibility are:

- The person must have been first diagnosed with diffuse mesothelioma on, or after, 25 July 2012 (the date on which the Government announced its intention to legislate to set up a scheme, following the public consultation);
- The person must have been employed at the time of exposure to asbestos and that exposure was due to negligence or breach of statutory duty on the part of a relevant employer;
- The person has not brought a claim for civil damages against an employer, or the employer's insurer, at the time of their exposure and they are unable to do so; and
- The person has not received damages or a "specified payment" in respect of the disease and is not eligible to receive a specified payment.

8.12. Claims for this payment must be made within three years of being diagnosed with mesothelioma. An applicant would need to provide evidence of negligence, the employer's identity and their medical diagnosis. Payments under the scheme are considerably more than the two previous mesothelioma schemes and are based on the age at which a person is first diagnosed with the condition. A person diagnosed with mesothelioma from 10th February 2015 aged 40 or under when diagnosed will receive £271,120 while someone who is 90 years or over will receive £87,061. The payment includes a £7,000 contribution to legal fees.

8.13. Where a payment has been made under this scheme but an employer is later identified, the recipient can be required to co-operate in a claim against the employer. If successful, the DMPS payment will be recovered from the final compensation award.

Lump-sum payments and the effect on universal credit

8.14. The same rules will apply to universal credit as under current working-age income-related benefits. For someone with a disease who receives a lump-sum payment under either of these schemes and also receives an income-related benefit, the payment is treated as capital, not income, and is disregarded for a 52-week period. After that time, if the money has been placed in a trust fund, the capital will be disregarded, as will any income from the fund. If the payment is made to a working-age dependant, the normal capital rules apply, meaning that if the dependant's total capital is more than £6,000, their income-related benefit may be reduced. If they have capital of £16,000 or more, their benefit entitlement will end.

8.15. Payments made under both schemes are paid by a lump sum and regarded as compensation. Therefore, they are not included as income for the purpose of income tax or tax credits. However, interest arising from the lump sum is subject to income tax and included in the income calculation for tax credits. For universal credit, payments are treated as personal injury compensation and, as previously said, disregarded for one year. If they are then placed in a trust, they are disregarded indefinitely.

9. Description of Jersey Mesothelioma Special Payment Scheme

9.1. Following public concern a scheme has been recently introduced to provide payments to individuals with diffuse mesothelioma or, if the person had died without receiving a payment, to a close relative.

9.2. The payment takes the form of an interest free loan based on the age of the person at the time of their diagnosis. The loans will be made under the Income Support (Jersey) Law 2007, which allows the Minister to make loans to Jersey residents in exceptional circumstances. The loan is only repayable if the recipient receives a further payment as a result of diffuse mesothelioma such as from a civil claim against an employer. They will not be means-tested and funding will be from the Customer and Local Services Department tax-funded cash limit. It was estimated that after the first year, when there were likely to be additional costs, there would be up to 5 payments per year at a cost of £150,000 per annum.

9.3. The loan payments became available from 1st October, 2019 and the amounts to be paid have been set at the rates paid in 2019 by the UK 2008 Diffuse Mesothelioma Scheme and range from £92,259 for an individual diagnosed at age 37 and under to £14,334 for an individual being diagnosed at the age of 77 years or over. The amount payable to an eligible relative ranges from £48,013 to £7,949. There will be an annual review of the payment values and the payments will be increased in line with the Jersey RPI or unchanged if there is a negative change.

9.4. Eligibility conditions to receive a payment are that the person:

- is aged 18 years or older;
- has been ordinarily resident in Jersey for the last 5 years;

- has a diagnosis of diffuse mesothelioma from a consultant in Jersey; and
- has at any time been exposed to asbestos-containing materials ("ACMs") in Jersey.

9.5. The eligibility conditions for a relative are that they:

- have been ordinarily resident in Jersey for the last 5 years
- are a close relative of the deceased person
- make an application in respect of the dead person who would have been eligible to receive payment on the date of their death.

9.6. If a payment is made to a child, the payment will be placed in a trust fund for the child's benefit.

9.7. Claims have been designed to be as simple as possible and can be made from 1st October, 2019. Where a diagnosis has been made prior to 1st January, 2019 the claim must have been made by 31st December, 2019. Where a diagnosis has been given after 1st January, 2019 the application must be made within twelve months of the diagnosis.

9.8. The question of whether a person has been exposed to ACMs in Jersey is based on whether someone was engaged in an activity in Jersey that is likely to have exposed them to ACMs. As far as possible, this will be verified with employment and other records. A decision as to whether it is more likely that the exposure took place in Jersey or somewhere else is not required and there is no set amount of time a person must have been exposed to ACMs.

9.9. A diagnosis of diffuse mesothelioma will usually take place in the UK in a specialist centre but where a person is unable to travel to the UK, a local specialist consultant can provide a letter confirming that a diagnosis of diffuse mesothelioma is very likely. The Health and Community Services Department will provide the necessary details direct to the Customer and Local Services Department, with the permission of the person claiming.

10. Minimum value of loan payments in UK and Jersey

10.1. The figures shown in Tables 3 and 4 below are the UK rates, which were valid until 31st March 2020, and were introduced in Jersey on 1st October 2019.

Table 3 – Amount of lump sum payment to eligible persons

Age of eligible person at date of diagnosis	Payment (£)
37 and under	92,259
38	90,465
39	88,675
40	86,885
41	85,091
42	83,300
43	82,407
44	81,506
45	80,614
46	79,717
47	78,821
48	76,318
49	73,810
50	71,298
51	68,793
52	66,278
53	64,489
54	62,700
55	60,912
56	59,112
57	57,322
58	52,666
59	48,006
60	43,355
61	38,695
62	34,038
63	31,170
64	28,301
65	25,440
66	22,572
67	19,707
68	19,123
69	18,537
70	17,961
71	17,378
72	16,798
73	16,302
74	15,797
75	15,314
76	14,828
77 and over	14,334

Table 4 – Maximum amount of lump sum payment to eligible relative

Age of eligible person at date of diagnosis	Payment (£)
37 and under	48,013
38	46,980
39	45,950
40	44,921
41	43,891
42	42,861
43	41,875
44	40,881
45	39,902
46	38,917
47	37,934
48	36,725
49	35,512
50	34,306
51	33,100
52	31,892
53	30,901
54	29,919
55	28,934
56	27,942
57	26,960
58	24,233
59	21,497
60	18,768
61	16,034
62	13,299
63	12,518
64	11,743
65	10,949
66	10,167
67 and over	7,949

APPENDIX 3

11. Comparison between the UK and Jersey Schemes

11.1. Table 5 below shows a comparison between the UK and Jersey schemes, alongside the proposed scheme for Guernsey and Alderney. Please note that the UK rates changed on 1st April, 2020, while the Jersey rates remain the same as they were, when implemented on 1st October 2019. The Guernsey and Alderney rates will be based on the latest available figures for the UK and Jersey at the time of implementation.

Table 5 – comparison between the UK, Jersey and proposed Guernsey and Alderney Schemes.

Criteria	**UK scheme (rates at 1st April 2020)**	**Jersey scheme (rates at 1st October 2019)**	**Proposed Guernsey and Alderney scheme**
Diagnosis	Formal diagnosis	Formal confirmation of mesothelioma or there is a high probability	Confirmation of diagnosis or high probability of the disease by a respiratory consultant
Place of exposure	In the UK	In Jersey	In Guernsey and Alderney
Evidence of exposure		Based on whether someone has been engaged in an activity in Jersey that is likely to have exposed them to asbestos – verification where possible	Based on evidence of exposure or probability of exposure to asbestos in Guernsey and Alderney – verification where possible
Age limit	No set age limit	18 or above	18 or above
Residency	Satisfied connection with the UK	5 years	5 years
Payment based on	Age at diagnosis	Age at diagnosis	Age at diagnosis
Payment rate	From £14,578 to £93,827	From £14,334 to £92,259	From £14,334 to £92,259
Payment to dependant	Yes – £8,084 to £48,829	Yes – £7,949 to £48,013	Yes – £7,949 to £48,013

Criteria	UK scheme (rates at 1st April 2020)	Jersey scheme (rates at 1st October 2019)	Proposed Guernsey and Alderney scheme
Person must pursue civil claim		May need to co-operate	No
Recoverable	From any civil claim award	From any civil claim award	From any civil claim award
Impact on other benefits / tax	Treated as capital but ignored for 52 weeks	May be disregarded under a Ministerial Decision	Disregarded under an income support claim (include in Regulations)
Time limit for claim	One year from diagnosis or one year from death if claimed by a dependant	One year from diagnosis or one year from death if claimed by a dependant	One year from diagnosis or one year from death if claimed by a dependant. Transitional arrangement for claims pre introduction
Uprating policy	Yearly	Yearly by RPI	Yearly RPIX
Funding source	Aims to be self-funding through recovery of civil award payments	Customer and Local Services Department but for review	General Revenue through Income Support Section 10
Legal framework	Child Maintenance and Other Payments Act 2008 and Mesothelioma Lump Sum Payments (Conditions and Amounts) Regulations 2008	Article 8(2) and (5) of the Income Support (Jersey) Law 2007. Paid under special payment in exceptional circumstances provision	The Income Support (Guernsey) Law, 1971 Section 10 – welfare arrangements for disabled persons
Name of the scheme	The Diffuse Mesothelioma Scheme	Diffuse Mesothelioma Special Payment	Diffuse Mesothelioma Special Payment
Administered by		C&LSD	ESS – Income Support

APPENDIX 4

12. 2019 DWP Diffuse Mesothelioma Payment Scheme Official Statistics

12.1. Table 6 below shows the number and percentage of applications received for the DWP Diffuse Mesothelioma Payment Scheme, by the age of the sufferer at the time of diagnosis.

Table 6 – Applications received by age of sufferer at time of diagnosis

	2014/15		2015/16		2016/17		2017/18		2018/19	
	Total	%	Total	%	Total	%	Total	%	Total	%
< 60	10	2%	15	4%	20	6%	15	4%	15	5%
60 - 64	45	11%	40	11%	35	10%	30	9%	25	7%
65 - 69	90	23%	80	21%	75	21%	65	18%	60	17%
70 - 74	90	22%	85	23%	60	17%	95	26%	95	26%
75 - 79	95	23%	80	21%	70	21%	75	21%	75	20%
80 - 84	50	12%	55	15%	50	15%	45	13%	50	14%
85 +	30	7%	25	7%	35	10%	40	10%	40	11%
Applications received	**410**		**375**		**345**		**370**		**370**	

P.2020/74

<u>THE STATES OF DELIBERATION</u>
<u>of the</u>
<u>ISLAND OF GUERNSEY</u>

COMMITTEE *FOR* HEALTH & SOCIAL CARE AND POLICY & RESOURCES COMMITTEE

URGENT CAPITAL BID – REPLACEMENT OF THE ELECTRONIC PATIENT RECORD SYSTEM

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled "Urgent Capital Bid – Replacement of the Electronic Patient Record System", dated 2nd April, 2020, they are of the opinion:-

1. To agree that the Replacement Electronic Patient Record system is formally included within the capital portfolio at a maximum cost of £20million, to be funded from the Capital Reserve.

2. To delegate authority to the Policy *&* Resources Committee and the Committee *for* Health *&* Social Care to approve the Outline Business Case.

3. To delegate authority to the Policy & Resources Committee to open a capital vote for the Replacement Electronic Patient Record system, of a maximum of £20million, subject to the Policy & Resources Committee approval of the Full Business Case.

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

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* HEALTH & SOCIAL CARE AND POLICY & RESOURCES COMMITTEE

URGENT CAPITAL BID – REPLACEMENT OF THE ELECTRONIC PATIENT RECORD SYSTEM

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

2nd April, 2020

Dear Sir

1. Executive Summary

1.1. The effective delivery of modern healthcare depends greatly on a capable digital infrastructure, a fact recognised by the Committee *for* Health & Social Care within its policy priority; a 'Partnership of Purpose'[1]. Electronic Patient Record ("EPR") systems form a vital component of such infrastructure and enable medical and care practitioners to efficiently and securely record, track and analyse patient data.

1.2. The States' Health & Social Care services currently use an EPR system known as TRAKCare 2012, provided by a company called InterSystems. The particular solution used by the States however, is a legacy version of the system which, when the agreed contract arrangements end on 31st March 2021, will no longer be formally supported by the provider. This lack of contractual support, combined with an ageing and increasingly vulnerable system, has the potential to result in an increased frequency of system issues and make any such issues more difficult, time consuming and expensive to resolve. As such, these circumstances generate a number of significant operational risks for vital services.

1.3. System issues and downtime have the potential to weaken the States' ability to deliver health and care services, particularly in the hospital where the system is

[1] A Partnership of Purpose: Transforming Bailiwick Health and Care, Billet d'État XXIV, 2017

most relied upon. It would also make it more difficult for professionals to share the data required for clinical decisions and for the States to monitor the performance of the Islands' overall health and care provision. In this context, it is essential that work on a new EPR solution is urgently progressed.

1.4. The procurement of a replacement EPR solution will protect healthcare provision across Guernsey and Alderney, however it also affords the opportunity to support the wider strategic goals of the Committee for Health & Social Care and the Partnership of Purpose. The transformation of health and care, through the 'Partnership of Purpose', will see providers brought together to deliver integrated care which places the user at its centre and provides greater focus on prevention, support and care in the community and making every contact count. It includes a clear commitment to introducing further digital services.

1.5. A modern replacement system is an essential building block for the desired improvements to Bailiwick health and care, such as greater interoperability of systems and enhanced data sharing across the professions within the Partnership of Purpose. These advancements will also contribute towards the agreed States' goals[2] for patients to be able to access their own health information and manage elements of their own healthcare, aims which would be far more difficult to achieve with the current less flexible and outdated EPR system.

1.6. The Committee *for* Health & Social Care and the Policy & Resources Committee ("the Committees") have recognised the need for system replacement. Substantive market research has been undertaken over the past 12 months to identify the state of the market for EPR solutions and an extensive requirements gathering exercise has taken place. This work was prioritised and accelerated when the contract with InterSystems was renewed in September 2019 and the supplier made it clear that a further year of contractual support would not be available. In light of the COVID-19 pandemic, InterSystems have confirmed that they will provide a further 6 months of contractual support, ending 31st March 2021. Despite the necessary acceleration of the analysis phase, the Committees do not believe that a different recommendation for change would have been reached over a longer period of investigation.

1.7. The end of formal support in 2021 and the current limited availability of clinicians means that the system replacement needs to be treated as urgent. Whilst defined funding is not yet in place, the timeline required to successfully identify

[2] Resolution 8 associated with the Policy Letter; A Partnership of Purpose: Transforming Bailiwick Health and Care, Billet d'État XXIV, 2017

a new system has necessitated the rapid initiation of a procurement process. Tender documentation was formally released to potential suppliers on 10th March with the intention to complete the procurement of a new EPR solution before the end of March 2021. This timeline is necessary, not only to rapidly address operational risk, but to manage the very limited availability of clinicians in current circumstances and to ensure that the States can trigger its contractual exit provisions with InterSystems if necessary. These provisions include some of the vital support arrangements for the TRAKCare system which may be required over the transition and implementation period.

1.8. The capital cost for the system replacement, including any software and hardware required and the implementation resources needed from the States and the supplier, is anticipated to be £15-20m. Whilst the project is not included in the present capital portfolio, the Committees recommend that funding be made available from the urgent and emergency allowance in the capital reserve in recognition of the pressing nature of the system replacement. As the process to procure a new system needs to commence this year, funding is required from the 2017-2020 Capital Reserve.

1.9. It is proposed that delegated authority be granted to the Policy & Resources Committee to release funding in stages based on the approval of the outline business case and full business case for the project. This will require the project to fully demonstrate that the chosen EPR solution meets the States' needs and delivers value to the organisation and the Islands, whilst ensuring that the necessary timelines for the procurement and replacement process can be maintained.

1.10. It is well-recognised that there is significant complexity involved in implementing such digital advancements. A Post Implementation Review ("PIR") of the project that developed and implemented the current EPR system cited a "lack of investment in change management" as a constraint. The lessons from this project have been woven into the plans for the implementation of the replacement system and the funding request includes provision for critical project and change management resources. The States' Strategic Partner for future digital services, Agilisys Guernsey Limited ("Agilisys"), has been, and will continue to be, involved in the identification and implementation of a solution. Advice from Agilisys will help to ensure the replacement delivers good value for money and is aligned with the Smart Guernsey protocols.

1.11. The outline business case was developed to consider the full range of options for the EPR solution, as well as to assess and plan the procurement process, understand and mitigate risks, and evaluate the costs and benefits for the project. A version of the business case will be made available to States Members.

2. Background – How are patient records currently managed?

2.1. EPR systems are digital solutions designed to manage a healthcare system, such as Health & Social Care services in the Bailiwick, holistically. In their most mature form, they use software that allows for capturing and integrating patient details such as symptoms, payments, x-rays, prescriptions, allergies, hospital stays and social worker visits into a permanent, digital record-keeping system.

2.2. EPR solutions can track, integrate and organise all of the healthcare data that has been entered for a specific patient, thus informing healthcare practitioners' decisions about diagnoses, tests and procedures, and providing an audit trail. Due to their capacity to integrate with other systems, modern EPR systems can enable both public and private sector healthcare providers to access, enter and analyse patient data. EPR solutions can also make it easier to provide a digital information platform to enable patients to access their own healthcare data, such as test results.

2.3. Such systems are also valuable public health tools in that they provide both health and business intelligence by monitoring work flows and identifying island-wide trends, allowing public health officials to pinpoint areas of concern and plan initiatives such as prevention or early intervention programmes accordingly.

2.4. As the digital backbones of a jurisdiction's healthcare system, EPR systems are business-critical structures and have a wide range of requirements. EPR solutions are highly complex constructions that need built-in flexibility to interface with other, often highly specialist digital systems, which is needed, for instance, when patients receive healthcare in other jurisdictions. They also need to be secure, with appropriate technical and organisational measures in place to safeguard the confidentiality, availability and integrity of patient data and ensure service continuity in the event of disruption. To facilitate these requirements, the provision of ongoing maintenance and specialised support for EPR systems form a crucial component of contracts with system suppliers.

2.5. Health & Social Care currently uses an EPR system known as TRAKCare 2012[3] which is supplied and supported by a company called InterSystems. The system

[3] TRAKCare 2012 is used to refer to a suite of software applications provided through the contract with InterSystems, these applications work together to provide the States' EPR solution.

spans Guernsey and Alderney and is used by many Health & Social Care providers including the Princess Elizabeth Hospital, mental health practitioners and community-based services. It is an essential component of the 'ecosystem' of Health & Social Care's IT solution, connecting with several specialist IT systems and playing a role in most day-to-day operations.

3. The Problem – Why does the EPR system need to change and why is an urgent capital bid required?

3.1. An effective EPR system is clearly critical for the delivery of acceptable health and care services. The TRAKCare 2012 system however, is at end of life and in urgent need of replacement. The status of the system and its ongoing support arrangements pose a number of serious operational risks and generate change constraints and financial burdens for the organisation.

3.2. The system used by the States is a legacy version of the TRAKCare solution. The Bailiwick TRAKCare system has a high level of customisation resulting from a desire to meet unique Island requirements and a long period of tailored system operation. This customisation prevents the system from being upgraded and benefiting from improvements over time. As such, the system has become outdated and is increasingly vulnerable to system issues and downtime. Any such issues have the potential to weaken the States' ability to deliver health and care services, share the data required for clinical decisions and monitor the performance of the Islands' health system. The impact of these issues would be particularly significant in hospital services where there is the greatest reliance on the system for day-to-day service delivery.

3.3. The need to replace the system has been recognised by the Committees and was referenced in the Policy & Resource Plan - 2018 Review and 2019 Update Report[4] which advised the Assembly that the preparation work for a TRAKCare upgrade was underway. This work included a comprehensive requirements analysis across 2018 and 2019 which successfully identified the necessary system functionality and interfaces that would be required in a future solution.

3.4. A support extension for the Bailiwick TRAKCare platform was agreed with InterSystems in September 2019, following two similar extensions in previous years. At this stage however, the supplier confirmed that further contract extensions would not be available when the agreement ended on 30th September 2020. Since then, support has been extended to 31st March 2021 in

[4] Partnership of Purpose - Policy Priority Update, Page 6, The Policy & Resources Plan – 2018 Review and 2019 Update, Billet d'État IX, 2019

recognition of the impact that COVID-19 will have on the availability of clinicians and consequently on the required timeline for a procurement process.

3.5. When this support term ends, access to specialist support will no longer be guaranteed and, where available, will be restricted to ad hoc responses to specific problems. Whilst InterSystems is likely to endeavour to provide this support, the States risks delayed problem resolution and significantly higher support costs (at the last contract extension, the cost of support increased 60% as a reflection of the challenges faced by the supplier). These risks are set to increase over time as the ability and capacity of the supplier to address issues with the outdated and customised system diminish further.).

3.6. Without the urgent identification of a new EPR solution, the States is at risk of not having an effective and reliable means of resolving a potentially increasing frequency of system issues. The possible impact that any resulting downtime might have on crucial services and patient care would be unacceptable at any point but given the evolving global picture in respect of COVID-19, it is particularly untenable at this time. The Bailiwick Security Policy[5] acknowledges "the importance of technology to the future prosperity, security and economic sustainability of the Bailiwick" and the importance of safeguarding the technological borders. The Committees consider that, in accordance with the Policy, it is a responsibility of government to ensure the security of, and support for, the critical systems which inform core operational services. In this context, it was essential that work on an EPR solution was prioritised for delivery before the end of March, 2021.

3.7. The time required for system replacement is at least 18 months. Considering this transition period, it is essential that the future system provider be confirmed and plans developed ahead of the end of the InterSystems contract. This will ensure that the contract exit provisions can be triggered if necessary[6], extending the support available for the current system. It will also provide clarity and reassurance to the EPR users and allow the service to safely plan for system changes.

3.8. Whilst more up-to-date versions of the TRAKCare system are available, a simple system update has been ruled out as an option. Due to the age and level of customisation of the Guernsey version of TRAKCare, it is not compatible with any upgrades. Irrespective of the chosen supplier therefore, the future EPR system will need to be treated as a replacement.

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[5] Bailiwick Security Strategy, Billet d'État XXIV, 2019

[6] If InterSystems were to be selected as the future supplier then the exit provisions may not be required.

3.9. In order to understand the options for accelerating the project, the suitability of a direct contract award to a supplier has been considered, however the options analysis raised concerns in regard to system suitability and value for money which require an appropriate procurement exercise to resolve. The Committees have also reviewed alternative funding routes, however the requirement for on-island infrastructure and the need to preserve data sovereignty necessitates capital investment, not the revenue based 'software as a service' solution that had been initially considered.

3.10. It is important to note that, in addition to the more urgent legacy and support issues faced by the current TRAKCare system, the solution also no longer fully meets operational or strategic requirements. For example, in more modern systems, the quality of functionality available to support the individual clinician has been improved. This includes the potential automation of administrative tasks to allow healthcare professional to focus on the work dependent on their expertise and support for the use of mobile devices as part of a clinician's activities. Furthermore, the legacy technology currently employed does not facilitate easy integration with any new States systems and will be difficult to change and update as the delivery of local healthcare is transformed. As such, the Committees do not believe that the recommendations for system replacement would be any different if more time had been available for options investigation.

4. An Opportunity – How will the replacement system enhance health and care services?

4.1. Effective digital transformation underpins many of the Future Guernsey Plan's ambitions[7]. This includes the Committee *for* Health & Social Care's Future Model of Care, encompassing its Policy Letter *A Partnership of Purpose: Transforming Bailiwick Health and Care*[8]. Section 4.39 says "Technology will be central to the future of the Bailiwick health and care system…In line with the States of Guernsey's Digital Strategy, the Committee is committed to ensuring that technology will serve a vital role in engaging the people of the Bailiwick in managing their own health and care, joining up health and care data to improve understanding of the population's needs and develop services to meet those needs by aggregating data to create a joined up view of health and care records."

[7] Information on the Future Guernsey Plan priorities is available at gov.gg/futureguernsey, including the latest update report to the States

[8] A Partnership of Purpose: Transforming Bailiwick Health and Care, Billet d'État XXIV, 2017

4.2. The Partnership of Purpose recognises the difficulties associated with implementing a more advanced EPR solution across the Bailiwick: Section 4.40: "The Committee is mindful of the inherent challenges associated with the delivery of digital and technological projects. The constant evolution of technology means that programmes need to adapt to the latest opportunity. The Committee will therefore seek to adopt an incremental and evolutionary approach, building a solid IT infrastructure which in turn has the capacity to act as an enabler for more innovative options in the future."

4.3. A Post Implementation Review ("PIR") of the project that developed and implemented the current EPR system from its inception to 2015 further emphasised the complexity associated with delivering IT based projects. It cited a "lack of investment in change management" as a significant problem which subsequently constrained the benefits and return on original investment. Lessons from this project will need to be used to ensure that the replacement EPR system is fully implemented and can effectively deliver benefits for the organisation and for patients.

4.4. Resolution 7 of the Partnership of Purpose Policy Letter addressed the need to advance how patient records are managed and maintained: "To agree that the Committee *for* Health & Social Care should investigate ways in which a technological interface could be developed that serves to create an aggregated service user record from the various patient records maintained across health and care providers." Whilst this project is limited to services using the current EPR system, rather than island-wide healthcare provision, and does not directly include the work required to establish the single record or fully integrate all systems, the implementation of a more advanced EPR solution is a key enabler for an aggregated record and for Islanders to have direct access to their records due to its greater flexibility and interoperability.. These are key long term ambitions for the Committee *for* Health & Social Care to improve the care provided, enable Islanders to take greater control of their own health and reduce the need for customers to repeat the same information multiple times.

4.5. An improved EPR system also sets the stage for further advancements in patient care envisioned in the Partnership for Purpose Policy Letter, section 9.36 states: "It is therefore essential that the Committee has a prioritised process of phased implementation which puts the essential structure in place first, before focusing on the more detailed aspects of the proposals." An effective EPR system is one of the essential components of the foundation structure that was envisioned in the Policy Letter and will have a positive impact on the service beyond operational replacement

4.6. The procurement of a new EPR solution will result in greater interoperability of systems, enhancing data sharing and making it easier for health and social care practitioners to work together. For instance, a new system would allow for Health & Social Care to more easily share data with Bailiwick GPs, which would be far more difficult with the current system. The new system will also support the Committee *for* Health & Social Care to better understand how resources are used in the organisation, this information will help to ensure that services are structured to make the best use of existing infrastructure. As an example, the Committee *for* Health & Social Care recently commissioned work aligned to the national Getting It Right First Time (GIRFT) programme – a well-established initiative designed to bring about higher-quality care in hospitals, at lower cost, by increasing reducing unwanted variations in services and practices – as part of ongoing work to reduce the orthopaedic waiting list. It is acknowledged locally that theatre management for example, would benefit from more usage data to support improved planning and patient experience.

4.7. A key improvement which will be made simpler to introduce by system replacement is the development of Islanders' access to their own health data, as described in Resolution 8: "To agree that, in line with the States of Guernsey's Digital Strategy, the Committee for Health & Social Care shall seek to provide user-friendly online access to services, including providing service users with secure access to their own summary care record, where appropriate, their Care Passport and information on maintaining their own health and wellbeing." A more up-to-date EPR system is crucial to the delivery of this advancement which also forms part of the Smart Guernsey ambition to increase the use of digital transactions between customers and the public sector through a single public sector portal.

4.8. As well as helping to progress Smart Guernsey, the new EPR solution will leverage the digital infrastructure investment made by the programme. For example, the new EPR system will utilise the network and server infrastructure being developed through the partnership with Agilisys and clinicians will be able to access the system on modern and appropriate devices due to the investment in refreshing the States' hardware.

5. The Aim – what will the project need to achieve?

5.1. In recognition of the issues with the current system and the opportunities available, three key objectives have been established for the EPR project;

1. **That the provision of health and care services is preserved and protected when the current contract with InterSystems comes to an end.** In this case, the procurement of a replacement EPR solution will, as a minimum, need to provide a solution for the functionality currently provided in the current TRAKCare system.

2. **That the replacement EPR system represents a good commercial deal for the States.** The new EPR solution will need to provide good value for money and ensure that the States has a long term agreement which provides for ongoing support, development and upgrades to the system over the contract period (anticipated to be 10 years).

3. **That the EPR solution has the ability to support the ambitions of the Partnership of Purpose and Smart Guernsey.** Whilst the potential for future service enhancements is not the main driver for the system replacement, it is vital that the chosen solution does not limit the options available for transformation and improvement in the future.

5.2. Given the urgency with which a new solution is required, the Committees are not, at this stage, looking to extend the replacement EPR system to additional healthcare providers, such as the GP surgeries, or replace functionality currently provided through other health and care systems (other than where clear and known instances of duplicated functionality have been identified). Effectively identifying the current status of these areas and breaking down requirements and associated costs is not possible within the time period available. The flexibility associated with the new system however, will ensure that any options for future development and data sharing are not restricted.

5.3. The Committee *for* Health & Social Care will be seeking, through a separate policy letter focusing on primary and community care, direction to return to the Assembly during 2021 with proposals for a costed digital solution enabling integration and/or the aggregation of data between primary care and the wider health and care system. This form a key part of plans towards an aggregated care record which would have significant benefit to both individual patients and healthcare professionals and importantly informing population health planning.

5.4. Given the high cost of an EPR solution, the number of suitable systems in the market and the development of EPR solutions over the past few years, it is considered that a competitive procurement process is required to identify the optimal solution. Given the urgency of the requirement and in order to meet the contract timelines, it was agreed that the formal release of the tender documentation would commence in March 2020. Should the propositions associated with this Policy Letter not be supported, the Committees will halt this process and are not obliged to enter a contract.

5.5. System replacement however, has been assessed to be the only practical means of addressing the significant operational risk. If the existing procurement process is halted, the States will be required to commence a similar process shortly or make a direct contract award to a supplier (there is no evidence that a direct award might result in a cheaper solution and it is likely to result in a less suitable future system). Delaying the identification and introduction of a suitable solution will also increase the risk to the overall provision of health and care in the Islands.

6. The Procurement Process – how will the best replacement system be identified?

6.1. The Committees are seeking to complete the procurement of a new EPR solution before the end of March 2021. The process will be profiled to remove all unnecessary call on clinicians during the management of the COVID-19 pandemic. This timeline is necessary not only to rapidly address operational risk and manage clinical involvement, but to ensure that the States can trigger its contractual exit provisions with InterSystems if an alternate supplier is selected. These provisions include some of the vital support arrangements for the TRAKCare system needed over the transition and implementation period.

6.2. Substantive market research has been undertaken over the past 12 months to identify the state of the market for EPR solutions. This has included analysis of the different routes to market which are available (i.e. an existing framework, States own tender route or a direct award) and the States seeking Expressions of Interest from those suppliers who are interested in participating. The research has also sought to identify indicative costs of varying solutions based upon key parameters such as the number of acute beds. This research has helped inform the procurement decisions which have since been made.

6.3. The accelerated procurement process has been enabled by the decision to pursue a restricted tender through the London Procurement Partnership (“LPP”). The LPP framework is an established and well recognised procurement route for health services. It includes a range of suppliers experienced in the provision of EPR solutions, including the associated data migration, change management and system maintenance services.

6.4. Initial market analysis has confirmed that the framework suppliers, of which the existing provider is one, have the potential to meet the States’ functionality and price requirements. To support the States to identify an appropriate solution, the procurement process has been structured to enable a primary supplier to partner with subcontractors and so deliver a suite of services beyond what they may ordinarily provide. As the States is seeking a comprehensive solution, supporting a wide range of hospital and community services, this approach may help enable best practice functionality to be provided across the organisation.

6.5. To ensure that any replacement solution is suitable for the States' needs, an extensive requirements analysis has taken place. The team has consulted with clinical experts in all of the services concerned, and with other key stakeholders involved in service provision, to identify the functionality required, its relative importance, and how it needs to be delivered. In specifying the requirements, the team has also considered the lessons learnt from the previous EPR project. The PIR of the project has provided valuable insight into the key risk areas and the importance of providing effective change and contract management. This is discussed further in sections 7 and 8.

6.6. The formal release of the tender documentation to potential suppliers of the new EPR solution commenced in early March 2020. It is anticipated that the lead bidder will be identified by the end of July, in keeping with the required timeline. This will be done once all material commercial elements have been resolved. The selected bidder will be chosen on the basis of quality and cost, with bids being evaluated by a specialist team, including clinical and procurement expertise, supported by assurance input from Agilisys.

6.7. Once the lead bidder has been selected, a contracting process will be carried out with the support of the Law Officers' Chambers and the procurement team. At this stage, the supplier and the health and care services will work closely together to refine the supplier's transition plans and ensure that the new system can be implemented effectively.

7. The Implementation Process – how will the new system be put into operation?

7.1. Implementing a new EPR system across the States' health and care services is not a simple operation. The implementation is expected to last at least 18 months, over which time functionality will be released in phases and by service area or profession. To achieve this will require robust project and change management over the course of the project.

7.2. Whilst detailed plans for the implementation of the new system will depend on the particular supplier's approach, the PIR of the States' last EPR project provides valuable guidance. The PIR identified that the project could have delivered more, and delivered it more quickly, if it had better captured and applied the change requirements, had better project and programme management, and had engaged with staff more effectively. The implementation of the new system will consider these issues on an ongoing basis to ensure that it is better placed to succeed.

7.3. The implementation of the new system will form part of the Digital Transformation programme within the wider Transforming Health and Social

Care (“THSC”) programme. The project will be directly governed by the Digital Transformation Programme Board, with appropriate oversight by, and escalation to, the Committee *for* Health & Social Care. By including the project in the THSC programme, it will benefit from the programme’s coordinated approach to benefits realisation, risk and change management and from the direct involvement of experienced senior staff.

7.4. The current project is also seeking, through the attached propositions, funding to invest in appropriate change and project management expertise. Without this funding, the service will be less able to apply best practice and identify potential problems or risk areas before they have an impact. Robust management is also likely to minimise the level of customisation required and help ensure that ongoing support arrangements are efficient and cost-effective.

7.5. The investment in change management resource will also support the ongoing engagement of the staff in health and care services and service users. This engagement will ensure the project is well informed and will help staff to shape, own and drive through beneficial change for patients. Without additional resource, existing staff would be relied on not only for their expertise but would be required to fulfil additional roles which may have a detrimental impact on day-to-day services.

7.6. The effective implementation of the system will also be supported by the States strategic partnership with Agilisys. As well as being able to source expert support for the States, Agilisys’ work will help ensure that the services have better digital capabilities and maturity to apply the system. Once the implementation of the new system is complete, the ongoing management of the supplier contract will also be carried out by Agilisys. This should help to identify any problems early and help protect the States from becoming overly reliant on legacy technology in the future.

8. The Risk Profile – what are the risks associated with implementing a new system?

8.1. Whilst the replacement of the EPR solution is vital to address the problems associated with the legacy system, there are a number of risks associated with a significant system replacement.

8.2. The key risk areas are summarised below. These will be continuously monitored and managed as part of the THSC programme risk management process. This includes a comprehensive risk register and mitigation plans.

- **That the system procured does not meet clinical needs.** In order for the replacement EPR system to be effective, it will need to reflect the requirements of its users. A comprehensive requirements gathering exercise was completed with clinicians from across all affected health and care services. These requirements have formed the basis of the procurement process and will continue to be emphasised by clinicians' involvement in the evaluation of any proposed solutions. This preparatory work will help ensure that the chosen system is suitable for the Bailiwick, whilst ongoing engagement with subject matter experts in the implementation period will ensure that the system is applied as needed and will help benefits to be realised.

- **The States may not have the capacity to support the implementation of the new system or the implementation may disrupt business-as-usual service provision.** As has been recognised previously, significant implementation and change management resources will be required to fully adopt the new system and to deliver the possible benefits. The States however, has limited internal change resources and a number of large ongoing transformation projects. In order to mitigate the risk of appropriate resources not being available, the funding request includes the costs for large-scale implementation and change management activity. This will not only help to ensure the project is managed robustly and by those with appropriate experience, but will also help to prevent specialist resources from being required to fulfil additional roles. Subject matter experts in the services will be relied upon to give advice and specialist support to the project, if further involvement was required, or this input was not effectively managed, it may disrupt day-to-day service provision or result in staff burn out.

- **The States is unable to secure the continued provision of support for the TRAKCare 2012 system whilst the States transitions to a new system.** It is likely to take at least 18 months of implementation activity before the current TRAKCare system can be discontinued, although some service areas or professions will be moved onto the new system before this time. Over this period, it will be essential that TRAKCare 2012 continues to have a degree of support. The States has had ongoing communication with InterSystems to ensure that the supplier is aware of the procurement process and its progress and to prepare them for any request for transition support beyond the end of March, 2021. The incoming supplier, whether it is InterSystems or another provider, will also be required to provide complimentary support during the transition period.

- **That the procured solution does not support the health and social care system's direction of travel.** The chosen solution will need to consider the future needs of health and care services in the Bailiwick. If it is selected based purely on the requirement to maintain existing business provision, it has the potential to constrain future change options and require considerable further investment to be suitable for the Committee *for* Health & Social Care's strategic plans. To address this risk, the team has considered the early drafts of the digital roadmap for the health and social care services to help inform the procurement requirements and ensure that the chosen solution is 'future proofed'. The roadmap articulates how delivery of local policy, in conjunction with national best practice should be supported by IT improvements. The team will continue to review the project's alignment with the roadmap over the course of the project lifecycle.

8.3. The risk mitigation plans have been informed by lessons from past States' projects, particularly the last EPR project.

9. **Funding Requirements – what is the cost for the new solution?**

9.1. It is proposed that the cost of the replacement EPR solution be divided between the initial capital costs, which should be met from the capital reserve and are the subject of this urgent capital bid, and the ongoing support and maintenance costs which would be met from general revenue.

9.2. The total capital cost of the system replacement is estimated to be £15-20m. The cost has been calculated based on market research and includes a wide range of cost items, such as the cost of procurement, the cost of the system hardware and software and the cost of supplier and States resources needed to manage business change and manage the supplier's activity over the transition period. The PIR of the previous EPR project clearly demonstrated that investing in change resource and business involvement is essential if the project is to be delivered in good time and fully realise its potential benefits

9.3. At present, a project for the replacement of the TRAKCare system is not included in the States' capital portfolio. Following confirmation that formal support for the Electronic Patient Record system is not available post March 2021, there is an urgency to complete the procurement process earlier than would otherwise have been necessary. Not completing the procurement would expose the organisation to an unacceptable risk of not having a supported EPR system from March 2021 and therefore this project should be admitted into the Capital Portfolio. The estimated cost of the Electronic Patient Record system is within is affordable within the allowance for urgent and emergency projects within the Capital Reserve which currently has a balance of £23.7m.

9.4. Given the tight timelines in which the project must operate and the existing pressure on Health & Social Care, it is proposed that the Policy & Resources

Committee have delegated authority to release the funding. The Committee would only release funding based on the provision of agreed and assured business cases and would look to manage funding distribution in a number of stages where possible to ensure that appropriate oversight and monitoring can be applied. The Policy & Resources Committee will not release any funding without the agreement of the Committee *for* Health & Social Care.

9.5. The ongoing support and maintenance costs for the future system will also have funding implications for the States' revenue. The support of the new EPR system is liable to generate two revenue pressures. The first of these is an increase in the annual support and maintenance costs paid to the supplier. The current forecast, based on market testing, is that this would be in the region of £115,000 more per year than is currently paid to InterSystems. This would be a cost to the Policy & Resources Committee budget via the Agilisys contract. It is not considered possible to absorb this cost as there is no contingency funding for any incremental IT related spend.

9.6. The second impact on revenue is to increase the capability and size of the team working to optimise use of the EPR system within health and social care. Based on high level advice from external advisors, it is estimated that this would be in the region of a £188,000 increase per year. This will be discretionary and may result in a service development bid through the annual budget process, by the Committee for Health & Social Care.

9.7. In both areas of revenue spend, the figures provided are early estimates that will be validated during the procurement process and early stages of implementation. The procurement process will seek the best system lifetime deal for the States and it is possible that one or both revenue costs will fall away. Given this it is proposed that these revenue implications are managed through annual budgeting cycles.

10. Compliance with Rule 4

10.1. 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.

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

10.3. In accordance with Rule 4(3), the Committee has included Propositions which request the States to approve funding of up to **£20m**. Further detail on the financial implications of the Propositions is provided in section 9.

10.4. To comply with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the Propositions attached to this Policy letter have the unanimous support of the Committee *for* Health & Social Care and the Policy & Resources Committee.

10.5. In accordance with Rule 4(5), the Propositions relate to the duties of the Committee *for* Health & Social Care in respect of its responsibility for health and care services and the Policy & Resources Committee in respect of its responsibility to set the framework for the planning, approval and control of public expenditure.

Yours faithfully

COMMITTEE *FOR* HEALTH & SOCIAL CARE	**POLICY & RESOURCES COMMITTEE**
H J R Soulsby President	G A St Pier President
RH Tooley Vice- President	L S Trott Vice-President
E A McSwiggan R G Prow D A Tindall	J P Le Tocq T J Stephens A H Brouard
R H Allsopp, OBE Non-States Member	

APPENDIX 1

FREQUENTLY ASKED QUESTIONS

	Question	Answer	Further Information
01	Why do we need to replace the existing system?	Health & Social Care is currently using a legacy version of the TRAKCare system. It is at end of life and in urgent need of replacement. The status of the system, particularly the upcoming end of supplier support, poses significant operational risks which have the potential to harm patient care Aside from the system risks, the current EPR solution constrains the service's transformation objectives. The legacy technology used is more difficult to change, does not interface easily with newer systems and does not support the use of mobile devices.	Section 3
02	Could we identify alternative support for the current system?	At present, the States has no access to alternative support for the current EPR system. The system is an InterSystems product and has been tailored to Guernsey and Alderney requirements, this would make it extremely difficult to identify viable alternative support arrangements. It is important to note that, even without the systems support risk, it would still need to be replaced as a result of changing service requirements and the ageing technology.	-
03	Why is this good for patients?	Procurement and implementation of a new EPR solution is essential for Health & Social Care to maintain its current level of service to patients and eliminate the risk associated with an ageing system. In addition to removing the service risk, the new system will be easier to update and more simply interface with other elements of the IT infrastructure. This will support the ongoing efforts to transform healthcare in the Islands. A key improvement which the new solution could make much easier to deliver, is the development of Islanders' access to their own health data, as described in Resolution 8 of the Partnership of Purpose policy letter: "To agree that, in line with the States of Guernsey's Digital Strategy, the Committee for Health & Social Care shall seek to provide user-friendly online access to services, including providing service users with secure access to their own summary care record, where appropriate, their Care Passport and information on maintaining their own health and wellbeing."	Section 3 and section 4

04	How will the system support the Partnership of Purpose and the Future Guernsey Plan?	Effective digital transformation underpins many of the Future Guernsey Plan's ambitions. This includes the Committee *for* Health & Social Care's *Partnership of Purpose* Policy Letter. The new system is called for in the Partnership of Purpose's associated Resolution 7: "To agree that the Committee for Health & Social Care should investigate ways in which a technological interface could be developed that serves to create an aggregated service user record from the various patient records maintained across health and care providers."	Section 4
05	How will this impact Primary Care?	This EPR project will not be extended to the GPs at this stage, however will enhance future integration opportunities. The Committee *for* Health & Social Care is currently working on a wider Policy Letter on Primary Care which will include some consideration of the existing digital capacity and required integration.	-
06	What funding is required?	Approximately £15-20m of capital funding is required to purchase and implement the replacement solution. Ongoing revenue funding will also be required to support and maintain the system.	Section 9
07	How has the required funding been calculated?	The estimated cost of the project has been calculated based on market research and the known costs of project and programme management support.	Section 9
08	How long will it take to implement the system?	An EPR system is not straightforward to implement. It will require associated business change in addition to IT change and will rely on the availability of key staff members and periods of testing and improvement. It is anticipated that the implementation phase will last at least 18 months, over which time the new system will be rolled out in phases.	Section 7
09	Could the system be replaced with a more up-to-date version of TRAKCare?	The 'new EPR' that the States procures could be a new version of TRAKCare (should this prove to be the best value for money option on the basis of the procurement process followed). TRAKCare has been completely re-architected and otherwise enhanced since TRAKCare 2012, and now provides a significantly improved suite of functionality. Unfortunately, due to the age and heavy customisation of the States' version of TRAKCare 2012, the movement to a new version of the solution would be as costly and complex as moving to an EPR provided by a different supplier.	
10	Will Agilisys be involved in the replacement process?	In its role as strategic partner, Agilisys has supported the EPR replacement by examining Health & Social Care's digital needs and setting out technical parameters for the procurement process that align with Smart Guernsey overall.	Section 7

		Depending on the chosen supplier's implementation plan, it is expected that Agilisys Guernsey will play an integral part in the system roll-out and integration with the existing IT infrastructure,	
11	Why is the project not being funded from the money allocated to Agilisys?	At its meeting on 12th June 2019 (Billet d'État X[9]), the States agreed to enter into a ten-year contract with Agilisys. At this stage, funding was agreed for the provision of business as usual IT (budget reallocation), for the improvement of business as usual IT (£26.9m) and for some States-wide digital projects (£16.7m). As was stated in the Future Digital Services Policy Letter, the States' significant transformation projects and programmes, which extend far beyond IT change, will continue to make their own separate, funding and approval applications to the States.	-
12	Why can't Agilisys provide us with a replacement EPR system?	EPR systems are a form of digital infrastructure unique to health and care services. The delivery and support for a replacement EPR system requires the States of Guernsey to procure the services of a specialist EPR provider. Agilisys is not an EPR system provider but is able to provide advice on expertise on the technology involved.	
13	Is it intended to purchase an existing commercially available 'off the shelf' system?	An off the shelf system is the optimal solution for the new EPR system. To ensure it is suitable, it will be configured to the Islands needs where necessary. Developing an EPR system in house would require a significant investment in skills that are not available to the States in a realistic timescale. All risk associated with the development, support and maintenance of a complex piece of software would also remain with the States. Even if an external organisation developed a bespoke system for the States, it would expose the States to an ongoing, requirement to maintain Guernsey-bespoke code. Given the rapidly changing nature of health and care provision, and the need for Guernsey to stay closely aligned with accepted UK practice, this would generate an unnecessary and ongoing cost burden.	-
14	How will data protection be ensured?	Resolution 9, which was agreed by the States as part of the Partnership of Purpose says: "To agree that the processing of health and care data should be premised on the equally important dual functions of protecting the integrity and confidentiality of such data and its sharing, where in the interests of the service user or the delivery of a public health function, and to direct the Committee for Health &	-

[9] Future Digital Services, Billet d'État X, 2019

		Social Care and the Committee for Home Affairs to explore legal or practical mechanisms to achieve this." Data protection needs will be a key element of the procurement and implementation processes.	
15	Will the new system be secure?	Yes, Smart Guernsey has put in place overall directives and mechanisms designed to align to industry standards in ensuring security across the entire States' IT ecosystem.	-
16	How will this affect staff?	A more advanced EPR solution will make it easier for Health & Social Care staff to access and input patient records. Furthermore, the increased interoperability of a newer system will provide for better sharing of data, identification of trends and business intelligence for staff and public health officials.	Section 4
17	Why is this an urgent Capital Bid if the current system has presented operational and support challenges for a few years?	The Committee *for* Health & Social Care and the Policy & Resources Committee have recognised the need for system replacement. Substantive market research has been undertaken over the past 12 months to identify the state of the market for EPR solutions and an extensive requirements gathering exercise has taken place. This work was prioritised further and accelerated when the contract with InterSystems was renewed in September 2019 and the supplier made it clear that a further period of contractual support would not be provided. In the exceptional circumstances of the COVID-19 pandemic, InterSystems agreed to extend the support to 31st March 2021. The end of formal support in March2021 means that the system replacement needs to be treated as urgent. With Smart Guernsey now underway and Agilisys on board, the States are in a strong position to adopt and implement new IT solutions such as this one.	Section 3
18	Will C*f*HSC ask for further funding for digital transformation?	While new the EPR solution is crucial and is likely to be the most costly part of health services' digital transformation, there will be other significant IT development in the future. Clinicians increasingly rely on technology for more efficient and accurate service delivery. As well as improving the service provided to patients, this will also generate cost savings ensuring that funds can be directed where they are most needed.	Partnership of Purpose Policy Letter

P.2020/59

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *for* ECONOMIC DEVELOPMENT

PROPOSED AMENDMENTS TO THE PREFERRED DEBTS (GUERNSEY) LAW, 1983

The States are asked to decide:-

Whether, after consideration of the policy letter entitled 'proposed amendments to the Preferred Debts (Guernsey) Law, 1983 dated 12th March 2020, they are of the opinion:-

1. To approve the proposals to amend the Preferred Debts (Guernsey) Law, 1983 (the "**PD Law**") so that where the Guernsey Banking Deposit Compensation Board (the "**Board**") has, in respect of a qualifying deposit, exercised its right of subrogation pursuant to the provisions of the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008 the total, capped, amount paid by the Board as compensation under the Guernsey Banking Deposit Compensation Scheme takes priority (in the winding up of the defaulting bank) over all other preferred debts within the meaning of the PD Law (the "**Super Preference**").

2. To agree that any amounts recoverable in respect of a qualifying deposit in excess of the Preference, should rank behind the Preference and current preferred debts in the PD Law but above any remaining ordinary unsecured creditors.

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

EXTERNALDB.44400.7

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *for* ECONOMIC DEVELOPMENT

PROPOSED AMENDMENTS TO THE PREFERRED DEBTS (GUERNSEY) LAW, 1983

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

12th March 2020

Dear Sir

1 Executive Summary

1.1 This policy letter recommends the enactment, by the States of Deliberation, of amendments to the Preferred Debts (Guernsey) Law, 1983 (the "**PD Law**"). The aim of the proposed amendments is to place the total amount paid, in respect of a qualifying deposit[1], by the Guernsey Banking Deposit Compensation Board (the **"Board"**) as compensation, pursuant to the provisions of the Banking Deposit Compensation Scheme (Bailiwick of Guernsey Ordinance, 2008 (the **"Ordinance"**) in respect of which the Board has a right of subrogation[2] as a preferred debt (in the winding up of a defaulting bank) ahead of existing preferred debts in the PD Law (after liquidation costs, fees, expenses and secured creditors) [3] in the event of a bank default[4].

2 Background

2.1 One of the responsibilities of the Board is that it must ensure that, in the event of a licensed bank[5] default, qualifying claimants[6], in respect of qualifying deposits, are compensated within 3 months of a declaration of default or the date of receipt of an application for compensation, whichever is later.

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[1] As defined in the Ordinance.
[2] In accordance with section 23 of the Ordinance.
[3] It is noted that there are other debts which take priority over those referred to in section 1 of the PD Law and it is not intended that they will be affected by any of the proposals in this policy letter.
[4] As defined in section 9 of the Ordinance.
[5] An entity which has been licensed by the Guernsey Financial Services Commission pursuant to section 6 of the Banking Supervision (Bailiwick of Guernsey) Law, 1994.
[6] As defined in section 12 of the Ordinance.

2.2 In light of international developments, the Committee *for* Economic Development (the "**Committee**") wishes to amend the PD Law so that the amounts paid by the Board as compensation under the Guernsey Banking Deposit Compensation Scheme (the "**Scheme**"), in respect of qualifying deposits subrogated to the Board, rank as preferred debts, ahead of other debts which are currently referred debts under the PD Law and unsecured creditors, on the default of a licensed bank. This would put the Board in a better position to (i) recover monies from a licensed bank in default, (ii) repay monies drawn from existing facilities and from the licensed banks (not in default) and (iii) respond to another default in the following 5 year period.

2.3 The EU Bank Recovery and Resolution Directive (the "**BRRD**") was formally adopted by the European Council in May 2014 with the purpose of establishing a common framework for the recovery and resolution of credit institutions and certain investment firms throughout the EU. It also introduced a new hierarchy of creditors in respect of a bank which became insolvent, which member states were required to transpose into domestic legislation.

2.4 The new hierarchy now includes a mandatory 'super preference' for deposits protected by EU deposit guarantee schemes and the schemes themselves, such as the financial services compensation scheme (the "**FSCS**"), for amounts below £85,000. This means that, on the insolvency of a UK bank, the FSCS will be a senior class of unsecured creditor[7] and is likely to recover more of its costs than under the previous creditor hierarchy.

2.5 This new hierarchy has implications for the Bailiwick, the Board and Bailiwick resident parties who hold accounts with EU banks which operate branches and/or subsidiaries in the Bailiwick.

2.6 The new order of creditor priorities means that depositors with deposits (up to €100,000), placed in an EU bank (including EU branches of that bank) and covered by an EU deposit guarantee scheme ("**covered deposits**") now rank ahead of other creditors[8]. Other depositors with deposits in non-EU branches (including those covered by the Board) ("**eligible deposits**"), are ranked below these "covered deposits", but above other debts effectively existing as a 'secondary preference'.

2.7 Deposits from a Guernsey subsidiary placed with its EU parent bank (i.e. deposit monies which are "up streamed" to the EU parent bank) are treated as unsecured debts and will rank below (i) a covered deposit and (ii) a secondary preference on a bank default.

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[7] The FSCS will rank below certain creditors including, inter-alia, tax, social security and pension contributions as set out in categories 1-6 of schedule 6 of the Insolvency Act 1986.

[8] See footnote 7.

2.8 The Committee has noted that the legislative changes in the UK and EU referred to above, have prioritised the claims of EU covered deposits over those held in a Guernsey branch of a UK/EU bank covered by the Board and over other unsecured deposits (such as "up-streamed" funds from a Guernsey subsidiary to an EU parent as indicated above).

2.9 Given the exposure of the Bailiwick and its domestic depositors, the Committee is of the opinion that the domestic regime needs to be amended to protect, as far as is possible, the interests of the Bailiwick's depositors and the Board.

3 Debt Preference in Guernsey

3.1 The PD Law provides for the order of priority in which debts should be paid in the distribution of property of a person whose affairs have been declared to be in a state of "desastre" or on the winding up of an insolvent company[9] in Guernsey, Alderney, Herm and Jethou[10].

3.2 The Committee recommends amending the PD Law so that the initial capped amounts paid by the Board, as compensation to qualifying claimants, in respect of qualifying deposits, which have been subrogated to the Board, are the highest ranking preferred debts (the "**Super Preference**").

3.3 Any amounts, in respect of qualifying deposits, in excess of the Super Preference, shall rank behind the Super Preference, and preferred debts in the PD Law, but above any remaining ordinary unsecured creditors.

4 Recognition of other Crown Dependency Deposit Compensation Schemes

4.1 The States of Jersey approved the establishment of the Jersey Bank Depositors Compensation Scheme (the "**Jersey DCS**") in 2009. In 2012 Article 32 of the Bankruptcy (Désastre) (Jersey) Law 1990 was amended to give preferred creditor status to the Jersey DCS where the rights of an eligible depositor,[11] in respect of an eligible deposit, have vested in the Jersey DCS board, but not exceeding the total amount payable by the Jersey DCS Board in respect of that debtor as compensation. At this point in time no other depositor compensation schemes are recognised as having the same rights as the Jersey DCS though the intention is for discussions to be had in this regard.

4.2 On the 11th September 2015, the Isle of Man Department of Economic Development (the "**Economic Department**") issued a consultation paper on the

[9] Section 1 of the PD Law.
[10] Section 10 of the PD Law.
[11] As defined in the Banking Business (Depositors Compensation) (Jersey) Regulations 2009.

introduction of preferred creditor status for bank deposits compensated under the Isle of Man Depositors Compensation Scheme ("**IoMDCS**"). The Isle of Man Treasury has introduced preferred creditor status for "eligible protected deposits" in respect of amounts that do not exceed compensation payable under the IoMDCS regulations.

4.3 The Committee's view is that it is unlikely that a Guernsey branch, of a clearing bank subsidiary situated in a Crown Dependency, would be declared in default without the subsidiary also being declared in default in its home jurisdiction. In the event of a mutual default, both in the Bailiwick (in respect of a branch) and in another Crown Dependency (in respect of the relevant subsidiary), the intention is that the mutual recognition of each Crown Dependency's depositor compensation schemes (in respect of subrogated qualifying deposits) would take effect providing equivalent protection[12].

4.4 In the case of a UK incorporated bank (with a Guernsey branch) going into default, whilst the Board would pay out to parties who had qualifying deposits in accordance with the terms of the Ordinance, the Board would rank as a party with a secondary preference as referred to in paragraph 2.6 of this policy letter as result of its right of subrogation in respect of qualifying deposits.

5 Consultation

5.1 A consultation paper in respect of the above proposals was issued by the Committee. Following an analysis of the responses, the policy proposals were developed which set out the changes which the Committee intends to take forward.

6 Compliance with Rule 4

6.1 In accordance with Rule 4(1) of the Rules of Procedure, of the States of Deliberation and their Committees, the propositions have been submitted to Her Majesty's Procurer for advice on any legal or constitutional implications.

6.2 In accordance with Rule 4(4) of the Rules of Procedure, it is confirmed that the propositions above have the unanimous support of the Committee.

6.3 In accordance with Rule 4(5) of the Rules of Procedure, the Committee has consulted on these proposals and it is confirmed that that the propositions reflect the Committee's mandate.

Yours faithfully

[12] Subject to any relevant caps and relevant legislative changes being made across all the Crown Dependencies.

C N K Parkinson
President

A C Dudley-Owen
Vice-President

N R Inder
D deG de Lisle
J I Mooney

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The President
Policy & Resources Committee
Sir Charles Frossard House
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19th March, 2020

Dear Deputy St Pier,

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee *for* Economic Development (the "**Committee**") requests that the Policy Letter, entitled "Proposed Amendment to the Preferred Debts (Guernsey) Law, 1983" be considered at the States' meeting to be held on 5th May 2020.

The Committee requests that the Policy Letter be considered before the end of the political term, in order to maintain the effective functioning of the Guernsey Banking Deposit Compensation Scheme.

Yours sincerely,

Deputy Charles Parkinson
President