BILLET D'ÉTAT

XIII
2020

WEDNESDAY, 17th JUNE, 2020

ELECTIONS AND APPOINTMENTS

Appointments Laid Before the States

Appointment of Chairman of the Guernsey Competition and Regulatory Authority
Appointment of an Ordinary Member of the Guernsey Competition and Regulatory Authority

LEGISLATIVE BUSINESS

Legislation Laid Before the States

The Seat Belts (Exemptions) Order, 2020
The Customs and Excise (Relief for Hand Sanitiser) (Guernsey and Alderney) Order, 2020
The Liquor Licensing (Fees) Regulations, 2020
The Prison (Guernsey) (Amendment) Regulations, 2020
The Control of Poisonous Substances (Guernsey) (Amendment) Regulations, 2020
The Driving Licences (Amendment) Regulations, 2020
The Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No. 2) Regulations, 2020

CONTINUED OVERLEAF

Printed by Colour Monster Printshop

Legislation for Approval

1. Committee *for* Home Affairs - The Sexual Offences (Bailiwick of Guernsey) Law, 2020, P.2020/52
2. Policy & Resources Committee - The Income Tax (Independent Taxation) (Guernsey) (Amendment) Ordinance, 2020, P.2020/87
3. Policy & Resources Committee - The Income Tax (Guernsey) (Approval of Agreement with Anguilla) Ordinance, 2020, P.2020/88

OTHER BUSINESS

4. States' Trading Supervisory Board - Guernsey Airport Hold Baggage Screening System Upgrade, P.2020/32
5. Committee *for* Health & Social Care - Modernisation of the Abortion (Guernsey) Law, 1997, P.2020/42
6. Committee *for the* Environment & Infrastructure - Proposed Introduction of a General Housing Law, P.2020/30
7. States' Trading Supervisory Board - The Future Guernsey Dairy Project, P.2020/33
8. Policy & Resources Committee - Schedule for Future States' Business, P.2020/101

APPENDICES

Committee *for* Home Affairs – Guernsey Prison – Annual Report 2019
Committee *for* Home Affairs – Guernsey Prison – Independent Monitoring Panel 2019 Annual Report

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 **17th June, 2020** at **9.30 a.m.,** to consider the items listed in this Billet d'État which have been submitted for debate.

R. J. McMAHON
Bailiff and Presiding Officer

The Royal Court House
Guernsey

8th June, 2020

APPOINTMENT LAID BEFORE THE STATES OF DELIBERATION

APPOINTMENT OF CHAIRMAN OF THE GUERNSEY COMPETITION AND REGULATORY AUTHORITY

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

- Mr. John Curran as Chairman with effect from 27th April 2020.

Mr. Curran has been appointed as Chairman until 31st December 2020.

The States of Deliberation have the power to annul the appointment.

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

A summarised version of the curricula vitae of Mr. Curran is provided below.

Mr. John Curran

	Position/company:	**Dates:**
Career:	Independent consultant.	2012-current.
	Chief Executive, Channel Islands Competition and Regulatory Authority.	2010-2012.
	Director General, Office of Utility Regulation (Guernsey).	2005-2010.
	Deputy Director and Director of Regulation, Office of Utility Regulation (Guernsey).	2003-2005.
	Regulatory Advisor, Tesltra Corporation (Sydney).	2002-2003.
	Manager of Operations Divison, Commission for Communications Regulation (Comreg) (Dublin).	1997-2001.
	Irish Civil Service.	1990-1997.
Professional qualifications:	Diploma in Company Direction, Institute of Directors.	2010.
	Certificate in Electronic Engineering, Galway Institute of Technology.	1990.
Current Non-Executive Directorships	Non-Executive Director, Channel Islands Financial Services Ombudsman.	2014-current.
	Board Member, Guernsey Data Protection Authority.	2018-current.
	Non-voting member, Guernsey Transport Licensing Authority.	2016-current.
	Ordinary member, Guernsey Competition and Regulatory Authority.	2018-2020.
	Ordinary member, Jersey Competition and	2018-2020.

Regulatory Authority.	
Chairman, Guernsey Mind LGB.	2013-2019.

APPOINTMENT LAID BEFORE THE STATES OF DELIBERATION

APPOINTMENT OF AN ORDINARY MEMBER OF THE GUERNSEY COMPETITION AND REGULATORY AUTHORITY

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

- Ms. Caroline Chan as an ordinary member with effect from 22nd May 2020.

Ms. Chan has been appointed as an ordinary member until 12th March 2021.

The States of Deliberation have the power to annul the appointment.

The Committee *for* Economic Development has concluded that Ms. Chan is suitable to be an ordinary member of Guernsey Competition and Regulatory Authority.

A summarised version of the curricula vitae of Ms. Chan is provided below.

<u>Ms. Caroline Chan</u>

	Position:	Dates:
Career:	Advocate and Partner, Mourant Ozannes.	2015-2020
	Advocate and Partner, Ogier.	2008-2015
	Managing associate, Ogier.	2007-2008
	Associate, Ozannes.	1998-2007
	Solicitor, Allen & Overy (London and Hong Kong).	1991 to 1998
	Trainee solicitor, Allen & Overy (London and Hong Kong).	1989-1991
Professional qualifications:	Called to Guernsey Bar.	2003
	Admitted as a Hong Kong solicitor (non-practising).	1994
	Admitted as an English solicitor (non-practising).	1991
Current Non-Executive Directorships	Chair of the Board of Governors, The Ladies' College.	2019 to date
	Governor and Associate Governor, The Ladies' College.	2016-2019

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

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

No. 22 of 2020

THE SEAT BELTS (EXEMPTIONS) ORDER, 2020

In pursuance of section 13 of the Seat Belts Ordinance, 1988, The Seat Belts (Exemptions) Order, 2020, made by the Committee for Home Affairs on 9th March 2020, is laid before the States.

EXPLANATORY NOTE

This Order exempts unbodied vehicles from the requirement to fit three-point seat belts. Such vehicles satisfy the compulsory seat belt requirements if a lap belt is fitted in each of the driver's seat and the passenger seats.

These Regulations will come into force on the 9th March, 2020.

No. 40 of 2020

THE CUSTOMS AND EXCISE (RELIEF FOR HAND SANITISER) (GUERNSEY AND ALDERNEY) ORDER, 2020

In pursuance of sections sections 23G and 79 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972, The Customs and Excise (Relief for Hand Sanitiser) (Guernsey and Alderney) Order, 2020**,** made by the Committee *for* Home Affairs on 2nd April 2020, is laid before the States**.**

EXPLANATORY NOTE

This Order provides for spirits used in the production of hand sanitiser to be relieved from excise duty under the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 ("**the Law**").

Spirits used in the production of hand sanitiser are relieved from excise duty provided that the claimant is 18 years of age or over, that the hand sanitiser is produced in Guernsey or Alderney and that it is approved under the Control of Poisonous Substances (Guernsey) Regulations, 2014. There is a duty on claimants to answer questions and produce accounts and other information if so requested for the purpose of determining eligibility for relief, and authorises the Chief Officer of Customs and Excise to specify the form and manner of claims and give further directions for the administration of the relief. Samples may also be taken.

This Order will come into force on the 2nd April, 2020.

No. 23 of 2020

THE LIQUOR LICENSING (FEES) REGULATIONS, 2020

In pursuance of section 84(4) of the Liquor Licensing Ordinance, 2006, The Liquor Licensing (Fees) Regulations, 2020, made by the Committee for Home Affairs on 9th March 2020, is laid before the States.

EXPLANATORY NOTE

These Regulations amend Schedule 4 of the Liquor Licensing Ordinance, 2006 which sets the relevant fees for liquor licences etc. These Regulations come into force on 1st June 2020.

No. 37 of 2020

THE PRISON (GUERNSEY) (AMENDMENT) REGULATIONS, 2020

In pursuance of sections 30, 45, 49 and 51 of the Prison (Guernsey) Ordinance, 2013, The Prison (Guernsey) (Amendment) Regulations, 2020, made by the Committee *for* Home Affairs on 30th March 2020, is laid before the States.

EXPLANATORY NOTE

These Regulations amend the Prison (Guernsey) Regulations, 2013 ("the principal Regulations") to provide for schemes to be prescribed in Prison Orders for the release of prisoners on a temporary release licence under section 30 of the Prison (Guernsey) Ordinance, 2013.

Schemes may include procedures, restrictions and limitations for the grant of an early conditional release, licence conditions, an electronic tagging and monitoring scheme and apolicy for recall of prisoners released under the scheme.

These Regulations would allow the Governor to issue a Prison Order setting out an early conditional release scheme and a scheme for the temporary release for prisoners in the event of an emergency such as the current Covid-19 emergency. Such a scheme might require the electronic tagging and monitoring of prisoners released under the scheme.

These Regulations come into force on the 1st April, 2020.

No. 38 of 2020

THE CONTROL OF POISONOUS SUBSTANCES (GUERNSEY) (AMENDMENT) REGULATIONS, 2020

In pursuance of sections 1, 3 and 4 of the Poisonous Substances (Guernsey) Law, 1994, the Control of Poisonous Substances (Guernsey) (Amendment) Regulations, 2020, made by the Committee *for* Employment & Social Security on 30th March, 2020 are laid before the States.

EXPLANATORY NOTE

These Regulations repeal regulation 11(2) of the Control of Poisonous Substances (Guernsey) Regulations, 2014, which limits the approval by the Committee for Employment and Social Security of any poisonous substance to pesticides which have previously been approved under the UK Control of Pesticides Regulations 1986 or by the competent body of a Member State of the European Union (other than the UK). This repeal will accordingly permit the Committee to approve poisonous substances, including (but not limited to) pesticides, where it is appropriate to do so.

These Regulations will come into force on the 31st March, 2020.

No. 46 of 2020

THE DRIVING LICENCES (AMENDMENT) REGULATIONS, 2020

In pursuance of sections 2A(a) and 2B of the Motor Taxation and Licensing (Guernsey) Law, 1987 and of all other powers enabling it in that behalf, "The Driving Licences (Amendment) Regulations, 2020" made by the Committee for the Environment and Infrastructure on 9th April 2020 are laid before the States.

EXPLANATORY NOTE

These Regulations amend the Driving Licences (Guernsey) Ordinance, 1995 so that the following persons may also drive the following approved vehicles:

(a) a person holding a Category C driving licence may drive a vehicle (i) which has a maximum authorised mass of more than 7,500 kilograms and (ii) is for the time being approved in writing by the Committee for the Environment & Infrastructure for use as an ambulance;

(b) a person holding a Category C1 driving licence may drive a vehicle (i) which has a maximum authorised mass of more than 3,500 kilograms but not more than 7,500 kilograms and (ii) is for the time being approved in writing by the Committee for the Environment & Infrastructure for use for law enforcement purposes by Guernsey Police or as an ambulance; and

(c) a person holding a Category D1 driving licence may drive a vehicle (i) other than one falling into Category B, which has not more than 8 seats (in addition to the driver's seat) and (ii) is for the time being approved in writing by the Committee for the

Environment & Infrastructure for use for law enforcement purposes by Guernsey Police or as an ambulance.

These Regulations came into force on being made on 9th day of April, 2020

No. 55 of 2020

THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL BENEFIT) (AMENDMENT NO. 2) REGULATIONS, 2020

In pursuance of sections 10 and 35 of the Health Service (Benefit) (Guernsey) Law, 1990 and section 1 of the Health Service (Benefit) (Limited Lists) Ordinance, 2004, The Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No. 2) Regulations, 2020, made by the Committee *for* Employment & Social Security on 29th April, 2020 are laid before the States.

EXPLANATORY NOTE

These Regulations add three drugs to the list of drugs that may be prescribed as pharmaceutical benefit and limit the permissible dispensing of a drug already on that list to the Princess Elizabeth Hospital Pharmacy.

These Regulations come into force on the 30th April, 2020.

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

P.2020/52

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

PROJET DE LOI

Entitled

THE SEXUAL OFFENCES (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 Sexual Offences (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 introduces new sexual offences broadly based on those contained in the Sexual Offences Act 2003 of England and Wales.

Chapters I and 2 provide key definitions for the purposes of Part I, and define "consent", introducing evidential and conclusive presumptions where consent is not deemed to have been given in specific circumstances.

Chapter IV introduces 4 new non-consensual offences: rape, assault by penetration, sexual assault, and sexual coercion. Conviction of any of these offences would require the prosecution to prove that the victim did not consent and that the offender did not reasonably believe that the victim consented. By contrast, Chapter V (Non-consensual offences against children under 13) makes it a strict liability offence for an offender to commit any of the offences in Chapter IV where the victim is aged under 13.

Chapter VI lists the sex offences ("the basic offences") which can be committed against children under 16: sexual touching of a child, causing or inciting a child to engage in sexual activity, engaging in sexual activity in the presence of a child, and causing a child to watch sexual activity. That Chapter also introduces further offences of sexual communication with a child, grooming for sexual conduct with a child and meeting a child following communication. Chapter XIII introduces offences in relation to the sexual exploitation of children, while Chapter XIV criminalises the possession of "prohibited items", including child sex dolls.

Chapter VII (Familial child sex offences) criminalises sexual touching of a family member under 18 or inciting a family member under 18 to engage in sexual touching. Chapter XVIII criminalises sexual penetration of, and consenting to sexual penetration by, an adult relative.

Chapters VIII, IX X and XI introduces the basic offences in relation to adults who are in positions of trust over children who are 16 or 17, to careworkers against persons with a mental disorder, against persons with a mental disorder impeding choice and to persons using improper means in relation to persons with a mental disorder. Chapter XII introduces the offence of disclosing private sexual photographs and films with intent to cause distress (also described as "revenge porn").

Chapter XV criminalises causing, inciting, or controlling prostitution and soliciting a person's sexual services as a prostitute or paying for the sexual services of a prostitute subject to exploitation. Chapter XVI criminalises trafficking of people for sexual exploitation (in any part of the world) and allows the detention or forfeiture of a relevant vehicle used for the purposes of trafficking.

Chapter XVII criminalises preparatory conduct and Chapter XIX introduces offences of voyeurism and voyeurism towards a child under 16 (which includes "upskirting", and more generally observing or recording persons doing private acts).

Part II (Protection of children) is essentially a re-enactment of the Protection of Children (Bailiwick of Guernsey) Law, 1985 with relevant updates.

PROJET DE LOI

ENTITLED

The Sexual Offences (Bailiwick of Guernsey) Law, 2020

ARRANGEMENT OF SECTIONS

PART I
SEXUAL OFFENCES

CHAPTER I
KEY DEFINITIONS

CHAPTER II
CONSENT

CHAPTER III
EXCEPTIONS

CHAPTER IV
NON-CONSENSUAL OFFENCES

CHAPTER XII
PORNOGRAPHY AND DISCLOSURE OF SEXUAL IMAGES

CHAPTER XIII
SEXUAL EXPLOITATION OF CHILDREN

CHAPTER XIV
PAEDOPHILE MATERIALS

CHAPTER XV
PROSTITUTION

PROJET DE LOI

ENTITLED

The Sexual Offences (Bailiwick of Guernsey) Law, 2020

THE STATES, in pursuance of their Resolution of the 28th July, 2011[a], of the 27th February, 2020[b] and of the X X, 2020[c], 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

SEXUAL OFFENCES

CHAPTER I
KEY DEFINITIONS

Key interpretative provisions.

1. (1) The following key definitions apply for the purposes of this Part.

(2) Penetration is a continuing act from entry to withdrawal.

---

a Article IX of Billet d'État No. XIII of 2011.

b Article VII of Billet d'État No. V of 2020.

c Article ** of Billet d'État No. ** of 2020.

(3) References to a part of the body include references to a part surgically constructed (in particular, through gender reassignment surgery).

(4) "**Image**", except in relation Chapter XII (pornography and disclosure of sexual images) -

(a) means a moving or still image (produced by any means), and

(b) includes an image produced by any means such as drawing and, where the context permits, a three-dimensional image.

(5) References to an image of a person include references to an image of an imaginary person.

(6) "**Mental disorder**" has the meaning given by section 1 of the Mental Health (Bailiwick of Guernsey) Law, 2010[d].

(7) References to observation (however expressed) are to observation whether direct or by looking at an image.

(8) "**Touching**" includes touching -

(a) with any part of the body (including any bodily fluid),

---

[d] Order in Council No. XV of 2001; as amended by Ordinance No. IX of 2016 and No. I of 2017.

(b) with anything else,

(c) through anything,

and in particular includes touching amounting to penetration.

(9) "**Vagina**" includes vulva.

(10) In relation to an animal, references to the vagina or anus include references to any similar part.

(11) Where an offence is only committed where an act or activity takes place "for the purpose of obtaining sexual gratification" or "humiliating, distressing or alarming" a person, it is irrelevant whether the purpose is to obtain sexual gratification or humiliating, distressing or alarming a person at the time of the act or activity, or at a later time.

(12) For the avoidance of doubt -

(a) "**activity**" includes communication,

(b) "**communication**" includes (but is not limited to) electronic communication, and

(c) unless the contrary intention appears, it is not relevant whether a response is made to any communication.

(13) For the purposes of an offence committed by a person ("**A**") causing or inciting another person ("**B**") to do any thing or engage in any activity -

(a) the causing or inciting may itself take place through any activity, and

(b) any reference to B in this Law is a reference to a person whether or not they are physically present in the Bailiwick, and A may be convicted and punished for that offence accordingly.

Meaning of "sexual".

2. For the purposes of this Part (except sections 26, 65 and 99), penetration, touching or any other activity is sexual if a reasonable person would consider that -

(a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or

(b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

CHAPTER II
CONSENT

Meaning of "consent".

3. For the purposes of this Part, a person consents if that person -

(a) agrees by choice, and

(b) has the freedom and capacity to make that choice.

Evidential presumptions about consent.

4. (1) If in proceedings for an offence to which this section applies it is proved that -

(a) the defendant ("**A**") did the relevant act,

(b) any of the circumstances specified in subsection (2) existed, and

(c) A knew that those circumstances existed,

the complainant ("**B**") is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether B consented, and A is to be taken not to have reasonably believed that B consented unless sufficient evidence is adduced to raise an issue as to whether A reasonably believed it.

(2) The circumstances are that -

(a) any person was, at the time of the relevant act or immediately before it began, using violence against B or causing B to fear that immediate violence would be used against B,

(b) any person was, at the time of the relevant act or immediately before it began, causing B to fear that violence was being used, or that immediate violence would be used, against another person,

(c) B was, and A was not, unlawfully detained at the time of the relevant act,

(d) B was asleep or unconscious at the time of the relevant act,

(e) because of B's disability (whether permanent or temporary), B would not have been able at the time of the relevant act to communicate to A whether B consented, and

(f) any person had administered to or caused to be taken by B, without B's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling B to be stupefied or overpowered at the time of the relevant act.

(3) In subsection (2)(a) and (b), the reference to the time immediately before the relevant act began is, in the case of an act which is one of a continuous series of sexual activities, a reference to the time immediately before the first sexual activity began.

Conclusive presumptions about consent.

5. (1) If in proceedings for an offence to which this section applies it is proved that the defendant ("**A**") did the relevant act and that any of the circumstances specified in subsection (2) existed, it is to be conclusively presumed -

(a) that the complainant ("**B**") did not consent to the relevant act, and

(b) that A did not believe that B consented to the relevant act.

(2) The circumstances are that -

(a) A intentionally deceived B as to the nature or purpose of the relevant act, and

(b) A intentionally induced B to consent to the relevant act by impersonating a person known personally to B.

<u>Relevant acts for the purposes of presumptions.</u>

6. In relation to an offence to which sections 4 and 5 apply, references in those sections to the relevant act, to the defendant ("**A**") and to the complainant ("**B**") are to be read as follows -

Offence	*Relevant act*
An offence under section 11 (rape).	A intentionally penetrating, with his penis, the vagina, anus or mouth of B.
An offence under section 12 (assault by penetration).	A intentionally penetrating, with a part of A's body or anything else, the vagina, anus or mouth of B, where the penetration is sexual.

An offence under section 13 (sexual assault).	A intentionally touching B, where the touching is sexual.
An offence under section 14 (sexual coercion).	A intentionally causing B to engage in an activity, where the activity is sexual.

CHAPTER III
EXCEPTIONS

Exception for spouses and civil partners: Chapters VII, VIII and IX.

7. (1) Conduct by a person ("**A**") which would otherwise be an offence under Chapter VII (Familial child sex offences), VIII (Offences involving an abuse of a position of trust) or IX (Offences by careworkers against persons with a mental disorder) against another person ("**B**") is not an offence under the relevant Chapter if at the time -

(a) B is 16 or over, and

(b) A and B are lawfully married or civil partners of each other.

(2) In proceedings for such an offence, it is for A to prove that A and B were at the time lawfully married or civil partners of each other.

Pre-existing sexual relationships: Chapter VII.

8. (1) Conduct by a person ("**A**") which would otherwise be an offence under Chapter VII (Familial child sex offences) against another person ("**B**") is not an offence under that Chapter if -

(a) the relation of A to B is not within section 30(2),

(b) it would not be within section 30(2) if section 12(1) of the Adoption (Guernsey) Law, 1960[e] did not apply, and

(c) immediately before the relation of A to B first became such as to fall within section 30, a sexual relationship existed between A and B.

(2) Subsection (1) does not apply if at the time referred to in subsection (1)(c) sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under Chapter VII, it is for A to prove the matters mentioned in subsection (1)(a) to (c).

Pre-existing sexual relationships: Chapters VIII and IX.

9. (1) Conduct by a person ("**A**") which would otherwise be an offence under Chapter VIII (Offences involving an abuse of a position of trust) against another person ("**B**") is not an offence under that Chapter if, immediately before the position of trust arose, a sexual relationship existed between A and B.

(2) In proceedings for an offence under Chapter VIII, it is for A to prove that such a relationship existed at that time.

(3) Conduct by a person ("**A**") which would otherwise be an offence under Chapter IX (Offences by careworkers against persons with a mental disorder)

---

[e] Ordres en Conseil Vol. XVIII, p.192. There are amendments to this Law not relevant to this enactment.

against another person ("**B**") is not an offence under that Chapter if, immediately before A became involved in B's care in a way that falls within an Ordinance made under section 40, a sexual relationship existed between A and B.

(4) In proceedings for an offence under Chapter IX, it is for A to prove that such a relationship existed at that time.

(5) Subsection (1) and (3) do not apply if at that time sexual intercourse between A and B would have been unlawful.

CHAPTER IV
NON-CONSENSUAL OFFENCES

Interpretation of this Chapter.

10. (1) For the purposes of this Chapter, the presumptions set out in sections 4 and 5 apply.

(2) In determining whether a belief is reasonable for the purposes of section 11(c), 12(d), 13(d) and 14(d), regard is to be had to any steps A has taken to ascertain whether B consents and any knowledge that A has in relation to B.

Rape.

11. A person ("**A**") commits an offence if -

(a) A intentionally penetrates the vagina, anus or mouth of another person ("**B**") with A's penis,

(b) B does not consent to the penetration, and

(c) A does not reasonably believe that B consents.

Assault by penetration.

12. A person ("**A**") commits an offence if -

(a) A intentionally penetrates the vagina, anus or mouth of another person ("**B**") with -

(i) a part of A's body other than A's penis, or

(ii) anything else,

(b) the penetration is sexual,

(c) B does not consent to the penetration, and

(d) A does not reasonably believe that B consents.

Sexual assault.

13. A person ("**A**") commits an offence if -

(a) A intentionally touches another person ("**B**"),

(b) the touching is sexual,

(c) B does not consent to the touching, and

(d) A does not reasonably believe that B consents.

Sexual coercion.

14. A person ("**A**") commits an offence if -

(a) A intentionally causes another person ("**B**") to engage in an activity,

(b) the activity is sexual,

(c) B does not consent to engaging in the activity, and

(d) A does not reasonably believe that B consents.

Penalties.

15. (1) A person guilty of an offence under section 11 or 12 is liable, on conviction on indictment, to imprisonment for life.

(2) A person guilty of an offence under section 13 is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

(3) A person guilty of an offence under section 14, if the activity caused involved -

(a) penetration of B's anus or vagina,

(b) penetration of B's mouth with a person's penis,

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or

(d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for life.

(4) A person guilty of an offence under section 14, if the activity did not involve penetration as set out in subsection (3), is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on the uniform scale, or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

CHAPTER V
NON-CONSENSUAL OFFENCES AGAINST CHILDREN UNDER 13

Rape of a child under 13.

16. A person ("**A**") commits an offence if -

(a) A intentionally penetrates the vagina, anus or mouth of another person ("**B**") with A's penis, and

(b) B is under 13.

<u>Assault of a child under 13 by penetration.</u>

17. A person ("**A**") commits an offence if -

(a) A intentionally penetrates the vagina, anus or mouth of another person ("**B**") with -

(i) a part of A's body other than A's penis, or

(ii) anything else,

(b) the penetration is sexual, and

(c) B is under 13.

<u>Sexual assault of a child under 13.</u>

18. A person ("**A**") commits an offence if -

(a) A intentionally touches another person ("**B**"),

(b) the touching is sexual, and

(c) B is under 13.

<u>Causing or inciting a child under 13 to engage in sexual activity.</u>

19. A person ("**A**") commits an offence if -

(a) A intentionally causes or incites another person ("**B**") to engage in an activity,

(b) the activity is sexual, and

(c) B is under 13.

Penalties.

20. (1) A person guilty of an offence under section 16 or 17 is liable, on conviction on indictment, to imprisonment for life.

(2) A person guilty of an offence under section 18 is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(3) A person guilty of an offence under section 19, if the activity caused involved -

(a) penetration of B's anus or vagina,

(b) penetration of B's mouth with a person's penis,

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or

(d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for life.

(4) A person guilty of an offence under section 19, if the activity did not involve penetration as set out in subsection (3), is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on the uniform scale, or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

CHAPTER VI
CHILD SEX OFFENCES

Sexual touching of a child.

21. A person ("**A**") commits an offence if -

(a) A intentionally touches another person ("**B**"),

(b) the touching is sexual, and

(c) either -

(i) B is under 16 and A does not reasonably believe that B is 16 or over, or

(ii) B is under 13.

Causing or inciting a child to engage in sexual activity.

22. A person ("**A**") commits an offence if -

(a) A intentionally causes or incites another person ("**B**") to engage in an activity,

(b) the activity is sexual, and

(c) either -

(i) B is under 16 and A does not reasonably believe that B is 16 or over, or

(ii) B is under 13.

Engaging in sexual activity in the presence of a child.

23. A person ("**A**") commits an offence if -

(a) A intentionally engages in an activity,

(b) the activity is sexual,

(c) for the purpose of obtaining sexual gratification, A engages in it -

(i) when another person ("**B**") is present or is in a place from which A can be observed, and

(ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it, and

(d) either -

(i) B is under 16 and A does not reasonably believe that B is 16 or over, or

(ii) B is under 13.

Causing a child to watch a sexual activity.

24. A person ("**A**") commits an offence if -

(a) for the purpose of obtaining sexual gratification, A intentionally causes another person ("**B**") to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity,

(b) the activity is sexual, and

(c) either -

(i) B is under 16 and A does not reasonably believe that B is 16 or over, or

(ii) B is under 13.

Arranging or facilitating commission of a child sex offence.

25. (1) A person ("**A**") commits an offence if -

(a) A intentionally arranges or facilitates something that A intends to do, intends another person to do, or believes that another person will do, in any part of the world, and

(b) doing it will involve the commission of an offence under any of sections 16 to 19 or 21 to 24.

(2) Notwithstanding subsection (1), A does not commit an offence under this section if -

(a) A arranges or facilitates something that A believes another person will do, but that A does not intend to do or intend another person to do, and

(b) any offence within subsection (1)(b) would be an offence against a child for whose protection A acts.

(3) For the purposes of subsection (2), A acts for the protection of a child if A acts for the purpose of -

(a) protecting the child from sexually transmitted infection,

(b) protecting the physical safety of the child,

(c) preventing the child from becoming pregnant, or

(d) promoting the child's emotional well-being by the giving of advice,

and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence within subsection (1)(b) or the child's participation in it.

Sexual communication with a child.

26. (1) A person ("**A**") commits an offence if -

(a) for the purpose of obtaining sexual gratification or humiliating, distressing or alarming any person, A intentionally communicates with another person ("**B**"),

(b) the communication is sexual or is intended to encourage B to make (whether to A or to another) a communication that is sexual, and

(c) either -

(i) B is under 16 and A does not reasonably believe that B is 16 or over, or

(ii) B is under 13.

(2) For the purposes of subsection (1)(b), a communication is "**sexual**" if -

(a) any part of it relates to sexual activity, or

(b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider any part of the communication to be sexual, and

an activity is sexual for the purposes of paragraph (a) if a reasonable person would, in all the circumstances but regardless of any person's purpose, consider it to be sexual.

Grooming for sexual conduct with a child under the age of 16.

27. (1) A person aged 18 or over ("**A**") commits an offence if -

(a) A communicates, by words or otherwise, with -

(i) a person under 16 ("**B**"), or

(ii) another person ("**C**") under whose care, supervision or authority B is, and

(b) A intends that the communication facilitates B engaging or being involved in the commission of a relevant sexual offence by A or by another person who is 18 or over.

(2) Without limiting the generality of subsection (1)(a)(ii), the States may by Ordinance may make such provision as they see fit in relation to persons having the care or supervision of, or authority over, B.

(3) For the purposes of subsection (1)(b), A does not intend to

facilitate B engaging or being involved in the commission of a sexual offence by A or by another person who is 18 or over if, were the conduct constituting the sexual offence to occur, A or the other person would satisfy an exception, or have a defence, to that sexual offence.

(4) For the purposes of this section, it is immaterial that -

(a) some or all of the conduct constituting an offence under this section occurred outside the Bailiwick, if B or C was, or B and C were, in the Bailiwick at the time at which that conduct occurred,

(b) B or C was, or B and C were, outside the Bailiwick at the time at which some or all of the conduct constituting an offence under this section occurred, if A was in the Bailiwick at the time that conduct occurred, or

(c) A, B and C were all outside the Bailiwick at the time at which some or all of the conduct constituting an offence under this section occurred, if A intended that the sexual offence would occur in the Bailiwick.

Meeting a child following communication etc.

28. (1) A person aged 18 or over ("**A**") commits an offence if -

(a) A has met or communicated with another person ("**B**") on one or more occasions and subsequently -

(i) A intentionally meets B,

(ii) A travels with the intention of meeting B in any part of the world or arranges to meet B in any part of the world, or

(iii) B travels with the intention of meeting A in any part of the world,

(b) A intends to do anything to or in respect of B, during or after the meeting mentioned in paragraph (a)(i) to (iii) and in any part of the world, which if done will involve the commission by A of a relevant offence,

(c) either -

(i) B is under 16 and A does not reasonably believe that B is 16 or over, or

(ii) B is under 13.

(2) For the purposes of subsection (1) -

(a) the reference to A having met or communicated with B is a reference to A having met B in any part of the world or having communicated with B by any means from, to or in any part of the world, and

(b) "**relevant offence**" means -

(i) an offence under this Part, or

(ii) anything done outside the Bailiwick which is not an offence within subparagraph (i) but would be such an offence if done in the Bailiwick.

Penalties.

29. (1) A person guilty of an offence under section 21 or 22, if the touching, or the activity caused or incited (as the case may be), involved -

(a) penetration of B's anus or vagina with a part of A's body or anything else,

(b) penetration of B's mouth with A's penis,

(c) penetration of A's anus or vagina with a part of B's body, or

(d) penetration of A's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(2) A person guilty of an offence under section 21 or 22, if the touching, or activity caused or incited (as the case may be), did not involve penetration as set out in subsection (1), is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on the uniform scale, or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(3) A person guilty of an offence under section 23 or 24 is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

(4) Notwithstanding subsections (1) to (3), a person under 18 who commits an offence under any of sections 21 to 24 is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

(5) A person guilty of an offence under section 25 is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(6) A person guilty of an offence under section 26 is liable, on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both.

(7) A person guilty of an offence under section 27 or 28 is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

CHAPTER VII
FAMILIAL CHILD SEX OFFENCES

Interpretation of this Chapter.

30. (1) For the purposes of this Chapter, person ("**A**") is a "**family member**" of another person ("**B**") if -

(a) one of subsection (2) to (4) applies, or

(b) one of those subsections would apply but for section 12(1) of the Adoption (Guernsey) Law, 1960.

(2) This subsection applies if B -

(a) is A's child, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, nephew or niece, or

(b) is or has been A's foster child.

(3) This subsection applies if A and B live or have lived in the same household, or A is or has been regularly involved in caring for, training, supervising or being in sole charge of B, and -

(a) one of them is or has been the other's step-parent,

(b) A and B are cousins,

(c) one of them is or has been the other's stepbrother or stepsister, or

(d) the parent, or present or former foster parent, of one of them is or has been the other's foster parent.

(4) This subsection applies if -

(a) A and B live in the same household, and

(b) A is regularly involved in caring for, training, supervising or being in sole charge of B.

(5) For the purposes of this section -

(a) "**aunt**" means the sister or half-sister of a person's parent, and "**uncle**" has a corresponding meaning,

(b) "**cousin**" means the child of an aunt or uncle,

(c) a person is a child's foster parent if that person provides care to a foster child within the meaning of the Child Protection (Guernsey) Law, 1972[f],

(d) "**step-parent**" includes a parent's partner, and "**stepbrother**" and "**stepsister**" include the child of a parent's partner, and

(e) a person is another's partner (whether they are of different genders or the same gender) if they live together as partners in an enduring family relationship.

Sexual touching of a child family member.

31. A person ("**A**") commits an offence if -

(a) A intentionally touches a family member ("**B**"),

---

[f] Ordres en Conseil Vol. XXIII, p.238. There are amendments to that Law which are not relevant to this enactment.

(b) the touching is sexual,

(c) A knows or could reasonably be expected to know that B is a family member, and

(d) either -

(i) B is under 18 and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

<u>Inciting a child family member to engage in sexual touching.</u>

32. A person ("**A**") commits an offence if -

(a) A intentionally incites another person ("**B**") to touch, or allows B to touch, A,

(b) the touching is sexual,

(c) A knows or could reasonably be expected to know that B is a family member, and

(d) either -

(i) B is under 18 and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

Penalties.

33. (1) A person guilty of an offence under section 31 or 32, if the touching involved -

(a) penetration of B's anus or vagina with a part of A's body or anything else,

(b) penetration of B's mouth with A's penis,

(c) penetration of A's anus or vagina with a part of B's body, or

(d) penetration of A's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(2) A person guilty of an offence under section 31 or 32, if the touching did not involve penetration as set out in subsection (1), is liable -

(i) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both,

(ii) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(3) Notwithstanding subsections (1) and (2), a person under 18 who commits an offence under section 31 or 32 is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

CHAPTER VIII
OFFENCES INVOLVING AN ABUSE OF A POSITION OF TRUST

Interpretation of this Chapter.

34. (1) For the purposes of this Chapter, a person ("**A**") is in a "**position of trust**" in relation to another person ("**B**") if any condition specified by an Ordinance made under subsection (2) is met.

(2) The States may by Ordinance make such provision as they think fit in relation to positions of trust for the purposes of this Chapter.

(3) In proceedings for an offence under this Chapter, it is to be taken that A knew or could reasonably have been expected to know of the circumstances by virtue of which A was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know of those circumstances.

(4) Where in proceedings for an offence under this Chapter it is proved that B was under 18, A is to be taken not to have reasonably believed that B

was 18 or over unless sufficient evidence is adduced to raise an issue as to whether A reasonably believed it.

Position of trust: sexual touching of a child.

35. A person aged 18 or over ("**A**") commits an offence if -

(a) A intentionally touches another person ("**B**"),

(b) the touching is sexual,

(c) A is in a position of trust in relation to B in accordance with section 34,

(d) A knows or could reasonably be expected to know of the circumstances by virtue of which A is in that position of trust in relation to B, and

(e) either -

(i) B is under 18 and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

Position of trust: causing or inciting a child to engage in sexual activity.

36. A person aged 18 or over ("**A**") commits an offence if -

(a) A intentionally causes or incites another person ("**B**") to engage in an activity,

(b) the activity is sexual,

(c) A is in a position of trust in relation to B in accordance with section 34,

(d) A knows or could reasonably be expected to know of the circumstances by virtue of which A is in a position of trust in relation to B, and

(e) either -

(i) B is under 18 and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

Position of trust: engaging in sexual activity in the presence of a child.

37. A person aged 18 or over ("**A**") commits an offence if -

(a) A intentionally engages in an activity,

(b) the activity is sexual,

(c) for the purpose of obtaining sexual gratification, A engages in it -

(i) when another person ("**B**") is present or is in a place from which A can be observed, and

(ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it,

(d) A is in a position of trust in relation to B in accordance with section 34,

(e) A knows or could reasonably be expected to know of the circumstances by virtue of which A is in a position of trust in relation to B, and

(f) either -

(i) B is under 18 and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

<u>Position of trust: causing a child to watch a sexual act.</u>

38. (1) A person aged 18 or over ("**A**") commits an offence if -

(a) for the purpose of obtaining sexual gratification, he intentionally causes another person ("**B**") to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity,

(b) the activity is sexual,

(c) A is in a position of trust in relation to B in accordance with section 34,

(d) A knows or could reasonably be expected to know of the circumstances by virtue of which A is in that position of trust in relation to B, and

(e) either -

(i) B is under 18 and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

Penalties.

39. A person guilty of an offence under this Chapter is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 of the uniform scale, or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

CHAPTER IX
OFFENCES BY CAREWORKERS AGAINST PERSONS WITH A MENTAL DISORDER

Interpretation of this Chapter.

40. (1) For the purposes of this Chapter, a person ("**A**") is involved in the care of another person ("**B**") in a way that falls within this section if any condition specified by an Ordinance made under subsection (2) is met.

(2) The States may by Ordinance make such provision as they think fit in relation to careworkers for the purposes of this Chapter.

(3) Where in proceedings for an offence under this Part, it is proved that B had a mental disorder, it is to be taken that A knew or could reasonably have been expected to know that B had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

Careworkers: sexual touching of a person with a mental disorder.

41. A person ("**A**") commits an offence if -

(a) A intentionally touches another person ("**B**"),

(b) the touching is sexual,

(c) B has a mental disorder,

(d) A knows or could reasonably be expected to know that B has a mental disorder, and

(e) A is involved in B's care in a way that is in accordance with section 40.

<u>Careworkers: causing or inciting a person with a mental disorder to engage in sexual activity.</u>

42. A person ("**A**") commits an offence if -

(a) A intentionally causes another person ("**B**") to engage in, or to agree to engage in, an activity,

(b) the activity is sexual,

(c) B has a mental disorder,

(d) A knows or could reasonably be expected to know that B has a mental disorder, and

(e) A is involved in B's care in a way that is in accordance with section 40.

<u>Careworkers: engaging in sexual activity in the presence of a person with a mental disorder.</u>

43. A person ("**A**") commits an offence if -

(a) A intentionally engages in an activity,

(b) the activity is sexual,

(c) for the purpose of obtaining sexual gratification, A engages in it -

(i) when another person ("**B**") is present or is in a place from which A can be observed, and

(ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it,

(d) B has a mental disorder,

(e) A knows or could reasonably be expected to know that B has a mental disorder, and

(f) A is involved in B's care in a way that is in accordance with section 40.

Careworkers: causing a person with a mental disorder to watch a sexual act.

44. A person ("**A**") commits an offence if -

(a) for the purpose of obtaining sexual gratification, A intentionally causes another person ("**B**") to -

(i) watch a third person engaging in an activity, or

(ii) look at an image of any person engaging in an activity,

(b) the activity is sexual,

(c) B has a mental disorder,

(d) A knows or could reasonably be expected to know that B has a mental disorder, and

(e) A is involved in B's care in a way that is in accordance with section 40.

Penalties.

45. (1) A person guilty of an offence under section 41 or 42 which involved -

(a) penetration of B's anus or vagina with a part of A's body or anything else,

(b) penetration of B's mouth with A's penis,

(c) penetration of A's anus or vagina with a part of B's body, or

(d) penetration of A's mouth with B's penis,

is liable, on conviction on indictment, to a term of imprisonment not exceeding 14 years.

(2) A person guilty of an offence under section 41 or 42 and which did not involve penetration as set out in subsection (1), is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on the uniform scale, or both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

(3) A person guilty of an offence under section 43 or 44 is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on the uniform scale, or both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

CHAPTER X
OFFENCES AGAINST PERSONS WITH MENTAL DISORDERS IMPEDING CHOICE

Interpretation of this Chapter.

46. For the purposes of section 47(c), 48(c), 49(d) and 50(c), a person ("**B**") is unable to refuse another person ("**A**") because of or for a reason related to a mental disorder if -

(a) B lacks capacity to choose whether to agree to the touching or any other form of activity (whether because B lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, or for any other reason), or

(b) B is unable to communicate such a choice to A.

Sexual touching with a person having a mental disorder impeding choice.

47. A person ("**A**") commits an offence if -

(a) A intentionally touches another person ("**B**"),

(b) the touching is sexual,

(c) B is unable to refuse because of or for a reason related to a mental disorder, and

(d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

Causing or inciting a person with a mental disorder impeding choice to engage in sexual activity.

48. A person ("**A**") commits an offence if -

(a) A intentionally causes or incites another person ("**B**") to engage in an activity,

(b) the activity is sexual,

(c) B is unable to refuse because of or for a reason related to a mental disorder, and

(d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

<u>Engaging in sexual activity in the presence of a person with a mental disorder impeding choice.</u>

49. A person ("**A**") commits an offence if -

(a) A intentionally engages in an activity,

(b) the activity is sexual,

(c) for the purpose of obtaining sexual gratification, A engages in it -

(i) when another person ("**B**") is present or is in a place from which A can be observed, and

(ii) knowing or believing that B is aware, or intending that B should be aware, that B is engaging in it,

(d) B is unable to refuse because of or for a reason related to a mental disorder, and

(e) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

<u>Causing a person with a mental disorder impeding choice to watch a sexual act.</u>

50. A person ("**A**") commits an offence if -

(a) for the purpose of obtaining sexual gratification, A intentionally causes another person ("**B**") to -

(i) watch a third person engaging in an activity, or

(ii) look at an image of any person engaging in an activity,

(b) the activity is sexual,

(c) B is unable to refuse because of or for a reason related to a mental disorder, and

(d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

Penalties.

51. (1) A person guilty of an offence under section 47 or 48 if the offence involved -

(a) penetration of B's anus or vagina with a part of A's body or anything else,

(b) penetration of B's mouth with A's penis,

(c) penetration of A's anus or vagina with a part of B's body, or

(d) penetration of A's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for life.

(2) A person guilty of an offence under section 47 or 48 if the offence did not involve penetration as set out in subsection (1), is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on the uniform scale, or both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(3) A person guilty of an offence under section 49 or 50 is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on the uniform scale, or both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

CHAPTER XI

USING IMPROPER MEANS IN RELATION TO PERSONS WITH A MENTAL DISORDER

Interpretation of this Chapter.

52. For the purposes of this Chapter -

(a) "**improper means**" includes -

(i) any inducement offered or given,

(ii) any threat made, and

(iii) any deception practised, and

(b) for the avoidance of doubt, the improper means do not need to have been used immediately before the activity set out in section 53(a), 54(a), 55(a) or 56(a) took place.

Improper means to procure sexual touching with person with a mental disorder.

53. A person ("**A**") commits an offence if -

(a) with the agreement of another person ("**B**"), A intentionally touches B,

(b) the touching is sexual,

(c) A obtains B's agreement by improper means for that purpose,

(d) B has a mental disorder, and

(e) A knows or could reasonably be expected to know that B has a mental disorder.

Causing a person with a mental disorder to engage in or agree to engage in sexual activity by improper means.

54. A person ("**A**") commits an offence if -

(a) by using improper means for that purpose, A intentionally causes another person ("**B**") to engage in, or to agree to engage in, an activity,

(b) the activity is sexual,

(c) B has a mental disorder, and

(d) A knows or could reasonably be expected to know that B has a mental disorder.

Engaging in sexual activity in the presence of a person with a mental disorder, procured by improper means.

55. A person ("**A**") commits an offence if -

(a) A intentionally engages in an activity,

(b) the activity is sexual,

(c) for the purposes of obtaining sexual gratification, A engages in it -

(i) when another person ("**B**") is present or is in a place from which A can be observed, and

(ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it,

(d) A obtains B's agreement to be present or in the place referred to in paragraph (c)(i) by improper means for that purpose,

(e) B has a mental disorder, and

(f) A knows or could reasonably be expected to know that B has a mental disorder.

<u>Causing a person with a mental disorder to watch a sexual act by improper means.</u>

56. A person ("**A**") commits an offence is -

(a) for the purpose of obtaining sexual gratification, A intentionally causes another person ("**B**") to -

(i) watch a third person engaging in an activity, or

(ii) look at an image of any person engaging in an activity, and

(b) the activity is sexual,

(c) A obtains B's agreement by improper means for that purpose to watch or look,

(d) B has a mental disorder, and

(e) A knows or could reasonably be expected to know that B has a mental disorder.

Penalties.

57. (1) A person guilty of an offence under section 53 or 54 which involved -

(a) penetration of B's anus or vagina with a part of A's body or anything else,

(b) penetration of B's mouth with A's penis,

(c) penetration of A's anus or vagina with a part of B's body, or

(d) penetration of A's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for life.

(2) A person guilty of an offence under section 53 or 54 which did not involve penetration as set out in subsection (1), is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on the uniform scale, or both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(3) A person guilty of an offence under section 52 or 53 is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on the uniform scale, or both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

CHAPTER XII
PORNOGRAPHY AND DISCLOSURE OF SEXUAL IMAGES

Interpretation of this Chapter.

58. (1) For the purposes of this Chapter -

(a) "**image**" means -

(i) a moving or still image (produced by any means), or

(ii) data (stored by any means) which is capable of conversion into an image within subparagraph (i), and

(b) an image is an "**extreme image**" if it -

(a) falls within subsection (2) or (3), and

(b) is grossly offensive, disgusting or otherwise of an obscene character.

(2) An image falls within this subsection if it portrays, in an explicit and realistic way, any of the following -

(a) an act which threatens a person's life,

(b) an act which results, or is likely to result, in serious injury to a person's anus, breasts or genitals,

(c) an act which involves sexual interference with a human corpse, or

(d) a person penetrating the vagina, anus or mouth of an animal (whether dead or alive),

and a reasonable person looking at the image would think that any such person or animal was real.

(3) An image falls within this subsection if it portrays, in an explicit and realistic way, either of the following -

(a) an act which involves the non-consensual penetration of a person's vagina, anus or mouth by another person with that other person's penis, or

(b) an act which involves the non-consensual sexual penetration of a person's vagina or anus by another person with a part of that other person's body or anything else,

and a reasonable person looking at the image would think that the persons were real.

(4) For the purposes of this section harm inflicted on a person is "**non-consensual**" harm if -

(a) the harm is of such a nature that the person cannot, in law, consent to it being inflicted on himself or herself, or

(b) where the person can, in law, consent to it being so inflicted, the person does not in fact consent to it being so inflicted.

(5) For the purposes of this Chapter and subject to subsection (6), an image is pornographic if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.

(6) Where an image forms part of a series of images found in a person's possession, the question whether the image is pornographic is to be determined by reference to -

(a) the image itself, and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.

(7) Without limiting the generality of subsection (6), where -

(a) an image forms an integral part of a narrative constituted by a series of images, and

(b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal,

the image may, by virtue of being part of that narrative, be found not to be pornographic, even though it might have been found to be pornographic if taken by itself.

Possession of extreme pornographic images.

59. A person ("**A**") commits an offence if A possesses an image ("**an extreme pornographic image**"), which is -

(a) an extreme image, and

(b) pornographic.

Exclusion of classified films etc.

60. (1) Section 58 does not apply to an image (an "**excluded image**") which forms part of a series of images contained in a recording of the whole or part of a classified work.

(2) Notwithstanding subsection (1), an image described in that subsection is not an excluded image if -

(a) it is contained in a recording of an extract from a classified work, and

(b) it is of such a nature that it must reasonably be assumed to have been extracted (whether with or without other images) solely or principally for the purpose of sexual arousal.

(3) Where an extracted image is one of a series of images contained in the recording, the question whether the image is of such a nature as is mentioned in subsection (2)(b) is to be determined by reference to -

(a) the image itself, and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.

(4) In determining for the purposes of this section whether a recording is a recording of the whole or part of a classified work, any alteration attributable to -

(a) a defect caused for technical reasons or by inadvertence on the part of any person, or

(b) the inclusion in the recording of any extraneous material (such as advertisements),

is to be disregarded.

(5) In this section -

"**classified work**" means a video work in respect of which a classification certificate has been issued (whether before or after the commencement of this section) for the purposes of the Video Recordings Act 1984[g], and "**classification certificate**" and "**video work**" have the same meanings as in that Act,

"**extract**" includes an extract consisting of a single image, and

"**recording**" means any disc, tape or other device capable of storing data electronically and from which images may be produced (by any means).

Defence: general.

61. Where a person ("**A**") is charged with an offence under section 58, it is a defence for A to prove -

---

[g] An Act of the Westminster Parliament, c. 39.

(a) that A had a legitimate reason for being in possession of the image concerned,

(b) that A had not seen the image concerned and did not know, nor had any cause to suspect, it to be an extreme pornographic image, or

(c) that A -

(i) was sent the image concerned without any prior request having been made by or on behalf of A, and

(ii) did not keep it for an unreasonable time.

Defence: participation in consensual acts.

62. (1) Subsection (2) applies where -

(a) a person ("**A**") is charged with an offence under section 59, and

(b) the offence relates to an image that portrays an act or acts within section 58(2)(a) to (c) or (3) (but does not portray an act within section 58(2)(d)).

(2) It is a defence for A to prove -

(a) that A directly participated in the act or any of the acts portrayed, and

(b) that the act or acts did not involve the infliction of any non-consensual harm on any person, and

(c) if the image portrays an act within -

(i) section 58(2)(c), that what is portrayed as a human corpse was not in fact a corpse, or

(ii) section 58(3), that what is portrayed as non-consensual penetration was in fact consensual.

Penalties.

63. (1) A person guilty of an offence under section 59 if the offence relates to an image that portrays any relevant act (with or without other acts), is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years or a fine not exceeding level 5 on the uniform scale or both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 4 years or a fine or both.

(2) A person guilty of an offence under section 59, if the offence relates to an image that does not portray any relevant act, is liable on summary

conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding level 5 on the uniform scale, or both.

(3) In this section, "**relevant act**" means an act within section 58(2)(a) or (b), or (3)(a) or (b).

Special rules relating to providers of information society services.

64. The States may by Ordinance make such provision as they think fit in connection with the operation of this Chapter in relation to persons providing information society services.

Disclosing private sexual photographs and films with intent to cause distress.

65. (1) Subject to subsection (2), a person ("**A**") commits an offence if -

(a) A discloses a private sexual photograph or film,

(b) an individual appears in that photograph or film ("**B**"), and

(c) the disclosure is made to a person other than B -

(i) without B's consent, and

(ii) with the intention of humiliating, distressing or alarming B or another.

(2) For the purposes of subsection (1), A is not to be taken to have disclosed a photograph or film with the intention of humiliating, distressing or

alarming a person merely because that was a natural and probable consequence of the disclosure.

(3) It is a defence for A to -

(a) prove that A reasonably believed that the disclosure was necessary for the purposes of preventing, detecting or investigating crime,

(b) show that -

(i) the disclosure was made in the course of, or with a view to, the publication of journalistic material, and

(ii) A reasonably believed that, in the particular circumstances, the publication of the journalistic material was, or would be, in the public interest, or

(c) show that -

(i) A reasonably believed that the photograph or film had previously been disclosed for reward, whether by B or another person, and

(ii) A had no reason to believe that the previous disclosure for reward was made without the consent of B.

(4) A is taken to have shown the matters mentioned in subsection (3)(b) or (c) if -

(a) sufficient evidence of the matters is adduced to raise an issue with respect to it, and

(b) the contrary is not proved beyond reasonable doubt.

(5) For the purposes of this section -

(a) "**consent**" to a disclosure includes general consent covering the disclosure, as well as consent to the particular disclosure, and

(b) "**publication**" of journalistic material means disclosure to the public at large or to a section of the public.

(6) A photograph or film is private if it shows something that is not of a kind ordinarily seen in public.

(7) A photograph or film is sexual if -

(a) it shows all or part of an individual's exposed genitals,

(b) it shows something that a reasonable person would consider to be sexual because of its nature, or

(c) its content, taken as a whole, is such that a reasonable person would consider it to be sexual.

(8) The photograph or film is not private and sexual if -

(a) it does not consist of or include a photographed or filmed image that is itself private and sexual,

(b) it is only private or sexual by virtue of its alteration, or combination with any other image or anything else, or

(c) it is only by virtue of its alteration or combination with any other image or anything else that B is shown as part of, or with, whatever makes the photograph or film private and sexual.

(9) A person guilty of an offence under this section is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years months or a fine not exceeding level 5 on the uniform scale, or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine, or both.

CHAPTER XIII
SEXUAL EXPLOITATION OF CHILDREN

<u>Interpretation of this Chapter.</u>

66. For the purposes of this Chapter -

(a) a person ("**B**") is sexually exploited if -

(i) on at least one occasion and whether or not compelled to do so, B offers or provides sexual services to another person in return for payment or a promise of payment to B or a third person, or

(ii) an indecent image of B is recorded,

and "**sexual exploitation**" is to be interpreted accordingly, and

(b) "**payment**" means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

Paying for sexual services of a child.

67. A person ("**A**") commits an offence if -

(a) A intentionally obtains for A's own benefit the sexual services of another person ("**B**"),

(b) before obtaining those services, A has made or promised payment for those services to B or a third person, or knows that another person has made or promised such a payment, and

(c) either -

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

<u>Causing or inciting sexual exploitation of a child.</u>

68. A person ("**A**") commits an offence if -

(a) A intentionally causes or incites another person ("**B**") to be sexually exploited in any part of the world, and

(b) either -

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

<u>Controlling a child in relation to sexual exploitation.</u>

69. A person ("**A**") commits an offence if -

(a) A intentionally controls any of the activities of another person ("**B**") relating to B's sexual exploitation in any part of the world, and

(b) either -

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

Arranging or facilitating sexual exploitation of a child.

70. A person ("**A**") commits an offence if -

(a) A intentionally arranges or facilitates the sexual exploitation in any part of the world of another person ("**B**"), and

(b) either -

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

Penalties.

71. (1) A person guilty of an offence under section 67 against a person under 13, where the offence involved -

(a) penetration of B's anus or vagina with a part of A's body or anything else,

(b) penetration of B's mouth with A's penis,

(c) penetration of A's anus or vagina with a part of B's body or by B with anything else, or

(d) penetration of A's mouth with B's penis,

is liable on conviction on indictment to imprisonment for life.

(2) Unless subsection (1) applies, a person guilty of an offence under section 67 against a person under 16 is liable where the offence involved -

(a) penetration of B's anus or vagina with a part of A's body or anything else,

(b) penetration of B's mouth with A's penis,

(c) penetration of A's anus or vagina with a part of B's body or by B with anything else, or

(d) penetration of A's mouth with B's penis.

is liable on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(3) A person guilty of an offence under section 67 against a person under 16 where the offence did not involve penetration as set out in subsection (2) is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(4) A person guilty of an offence under section 67 where subsections (1) to (3) do not apply is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years or a fine not exceeding level 5 on the uniform scale or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

(5) A person guilty of an offence under section 68, 69 or 70 is liable-

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

CHAPTER XIV
PAEDOPHILE MATERIALS

<u>Possession of prohibited item.</u>

72. (1) A person ("**A**") commits an offence if A is in possession of any item that contains advice or guidance about abusing children sexually (a "**prohibited item**").

(2) It is a defence for A -

(a) to prove that A had a legitimate reason for being in possession of the item,

(b) to prove that -

(i) A had not read, viewed or (as appropriate) listened to the item, and

(ii) A did not know, and had no reason to suspect, that it contained advice or guidance about abusing children sexually, or

(c) to prove that -

(i) the item was sent to A without any request made by A or on A's behalf, and

(ii) A did not keep it for an unreasonable time.

(3) Schedule 1 of this Law shall apply in relation to prohibited items as it applies in relation to indecent images of children within the meaning of Part II.

(4) The States may by Ordinance make such provision as they think fit in connection with the operation of this section in relation to persons providing information society services.

(5) In this section -

"**abusing children sexually**" means doing anything that constitutes -

(a) an offence under this Part against a person under 16,

(b) an offence under Part II of this Law involving indecent images (but not pseudo-photographs), or

(c) doing anything outside the Bailiwick that would constitute such an offence if done in the Bailiwick,

"**item**" includes anything in which information of any description is recorded, and

"**prohibited item**" means an item within subsection (1).

Possession of a child sex doll.

73. (1) A person ("**A**") commits an offence if A has in his possession a doll ("**a child sex doll**") which -

(a) fully or partially has the appearance of a child, and

(b) has been made or adapted for the purposes of sexual activity of any description.

(2) It is a defence for A charged with an offence under this section to prove that A had a legitimate reason for being in possession of the child sex doll.

(3) Schedule 1 of this Law shall apply in relation to child sex dolls as it applies in relation to indecent images of children within the meaning of Part II.

Penalties.

74. A person guilty of an offence under this Chapter is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years or to a fine not exceeding the statutory maximum, or to both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.

CHAPTER XV
PROSTITUTION

Interpretation of this Chapter.

75. For the purposes of -

(a) sections 76, 77 and 78, "**gain**" means -

(i) any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount, or

(ii) the goodwill of any person which is or appears likely, in time, to bring financial advantage, and

(b) section 78 -

(i) any reference to a person in a street or public place includes a person in a vehicle in a street or public place, and

(ii) "**street**" includes any bridge, road, lane, footway, subway, square, court, alley or passage, whether a thoroughfare or not, which is for the time being open to the public; and the doorways and entrances of premises abutting on a street, and any ground adjoining and open to a street, shall be treated as forming part of the street, and

(c) this Chapter -

(i) "**prostitute**" means a person ("**B**") who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to B or a third person, and "**prostitution**" is to be interpreted accordingly, and

(ii) "**payment**" means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

Causing or inciting prostitution for gain.

76. A person ("**A**") commits an offence if -

(a) A intentionally causes or incites another person to become a prostitute in any part of the world, and

(b) A does so for or in the expectation of gain for A or a third person.

Controlling prostitution for gain.

77. A person ("**A**") commits an offence if -

(a) A intentionally controls any of the activities of another person ("**B**") relating to B's prostitution in any part of the world, and

(b) A does so for or in the expectation of gain for A or a third person.

Soliciting.

78. A person ("**A**") commits an offence if in a street or public place A solicits another person ("**B**") for the purpose of obtaining B's sexual services as a prostitute.

Paying for sexual services of a prostitute subjected to exploitation.

79. (1) A person ("**A**") commits an offence if -

(a) A makes or promises payment for the sexual services of a prostitute ("**B**"),

(b) a third person ("**C**") has engaged in exploitative conduct of a kind likely to induce or encourage B to provide the sexual services for which A has made or promised payment, and

(c) C engaged in that conduct for or in the expectation of gain for C or another person (apart from A or B).

(2) For the avoidance of doubt, it is irrelevant for the purposes of this section -

(a) where in the world the sexual services are to be provided,

(b) whether those services are provided, and

(c) whether A is, or ought to be, aware that C has engaged in exploitative conduct.

(3) For the purposes of this section, C engages in exploitative conduct if -

(a) C uses force, threats (whether or not relating to violence) or any other form of coercion, or

(b) C practises any form of deception.

Penalties.

80. (1) A person guilty of an offence under section 76 or 77 is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years or a fine not exceeding level 5 on the uniform scale, or both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

(2) A person guilty of an offence under section 78 or 79 is liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

CHAPTER XVI
TRAFFICKING

Interpretation of this Chapter.

81. (1) For the purposes of this Chapter, unless the contrary intention appears -

"**aircraft**" includes hovercraft,

"**captain**" means master of a ship or commander of an aircraft,

"**land vehicle**" means any vehicle other than a ship or aircraft, and

"**ship**" includes every description of vessel used in navigation.

(2) For the purposes of section 82 -

"**country**" includes any territory or other part of the world,

"**relevant offence**" means -

(a) an offence under this Part or under section 105(1)(a), or

(b) anything done outside the Bailiwick which is not an offence within paragraph (a) but would be if done in the Bailiwick, and

"**UK national**" means -

(a) a British citizen,

(b) a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981[h] and who has the right of abode in the United Kingdom, or

---

h An Act of the Westminster Parliament, ch. 61.

(c) a person who is a British overseas territories citizen by virtue of a connection with Gibraltar.

(3) For the purposes of sections 83 and 84, a "**relevant vehicle**" is a vehicle which was -

(a) owned by the convicted person ("**A**") at the time the offence was committed,

(b) owned by a company, of which A was a director, secretary or manager at that time,

(c) in the possession of A under a hire purchase agreement at that time,

(d) in possession of a company, of which A was a director, secretary or manager at that time, under a hire purchase agreement,

(e) if the vehicle is a land vehicle, being driven by A in the course of the commission of the offence, or

(f) if the vehicle is a ship or aircraft -

(i) being chartered by A at the time the offence was being committed, or

(ii) under the command of A as captain while the offence was being committed,

and which the police officer or customs officer concerned has reasonable grounds for believing could, on conviction of A for the offence for which A was arrested, be the subject of an order for forfeiture made under section 83.

(4) For the purposes of sections 83 and 84 -

"**court**" means -

(a) if the arrested person has not been charged, or he has been charged but proceedings for the offence have not begun to be heard, the Magistrate's Court, and

(b) if he has been charged and proceedings for the offence are being heard, the court hearing the proceedings, and

a reference to being an "**owner**" of a vehicle, ship or aircraft includes a reference to being any of a number of persons who jointly own it.

<u>Trafficking people for sexual exploitation.</u>

82. (1) A person ("**A**") commits an offence if A intentionally arranges or facilitates -

(a) the arrival in, or entry into, the Bailiwick or another country of another person ("**B**"),

(b) the departure of B from the Bailiwick or another country, or

(c) the travel of B within the Bailiwick or another country,

with a view to the sexual exploitation of B.

(2) For the purposes of subsection (1)(a) and (b), A's arranging or facilitating is with a view to the sexual exploitation of B if -

(a) A intends to do anything to or in respect of B, or

(b) A believes that another person is likely to do something to or in respect of B,

after B's arrival, entry or departure (as the case may be) but in any part of the world, which if done will involve the commission of a relevant offence.

(3) For the purposes of subsection (1)(c), A's arranging or facilitating is with a view to the sexual exploitation of B if -

(a) A intends to do anything to or in respect of B, or

(b) A believes that another person is likely to do something to or in respect of B,

during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence.

(4) A person who is a UK national commits an offence under this section regardless of -

(a) where the arranging or facilitating takes place, or

(b) which country is the country of arrival, entry, departure or travel (as the case may be).

(5) A person who is not a UK national commits an offence under this section if -

(a) any part of the arranging or facilitating takes place in the Bailiwick, or

(b) the Bailiwick is the place of arrival, entry, departure or travel (as the case may be).

(6) A person guilty of an offence under this section is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

Forfeiture of relevant vehicle.

83. (1) Where a person is convicted on indictment of an offence under section 82, the court may order the forfeiture of a relevant vehicle used or intended to be used (as the case may be) in connection with the offence.

(2) Where a person ("**C**") who claims to have an interest in a relevant vehicle applies to a court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the vehicle, ship or aircraft unless C has been given an opportunity to make representations.

<u>Detention of relevant vehicle.</u>

84. (1) If a person ("**D**") has been arrested for an offence under section 82, a police officer or a customs officer may detain a relevant vehicle -

(a) until a decision is taken as to whether or not to charge A with that offence,

(b) if D has been charged, until he is acquitted, the charge against D is dismissed or the proceedings are discontinued, or

(c) if D has been charged and convicted, until the court decides whether or not to order forfeiture of the vehicle, ship or aircraft.

(2) A person ("**E**") who is not D may apply to the court for the release of a relevant vehicle on the grounds that -

(a) E owns the relevant vehicle,

(b) E was, immediately before the detention of the relevant vehicle, in possession of it under a hire-purchase agreement, or

(c) E is a charterer of the ship or aircraft which is the relevant vehicle.

(3) The court to which an application is made under subsection (2) may, on such security or surety being tendered as it considers satisfactory, release the relevant vehicle on condition that it is made available to the court if -

(a) E is convicted, and

(b) an order for its forfeiture is made under section 83.

CHAPTER XVII
PREPARATORY OFFENCES

Interpretation of this Chapter.

85. For the purposes of this Chapter, "**premises**" includes a structure or part of a structure.

Committing an offence with intent to commit a sexual offence.

86. A person ("**A**") commits an offence under this section if A commits any offence, including (but not limited to) kidnap or false imprisonment, with the intention of committing a relevant sexual offence.

Administering a substance with intent.

87. (1) A person ("**A**") commits an offence if A intentionally administers a substance to, or causes a substance to be taken by, another person ("**B**") -

(a) knowing that B does not consent, and

(b) with the intention of stupefying or overpowering B, so as to enable any person to engage in a sexual activity that involves B.

Trespass with intent to commit a sexual offence.

88. A person ("**A**") commits an offence if -

(a) A is a trespasser on any premises,

(b) A intends to commit a relevant sexual offence on the premises, and

(c) A knows that, or is reckless as to whether, A is a trespasser.

Penalties.

89. (1) A person guilty of an offence under section 86 is liable on conviction on indictment, where the offence committed is kidnap or false imprisonment, to imprisonment for life.

(2) A person guilty of an offence under section 86 is liable, where the offence committed is not kidnap or false imprisonment -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

(3) A person guilty of an offence under section 87 or 88 is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

CHAPTER XVIII
FAMILIAL ADULT SEX OFFENCES

Interpretation of this Chapter.

90. (1) For the purposes of this Chapter -

(a) the ways that a person ("**A**") may be related to another person ("**B**") are -

(i) as parent, grandparent, son, daughter, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece,

(ii) as one of those persons listed in paragraph (i) but for the effect of section 12(1) of the Adoption (Guernsey) Law, 1960, and

(b) for the avoidance of doubt -

(i) "**parent**" includes an adoptive parent,

(ii) "**son**" and "**daughter**" include an adopted son or daughter respectively,

(iii) "**uncle**" means the brother of a person's parent, and "**aunt**" has a corresponding meaning, and

(iv) "**nephew**" means the child of a person's brother or sister, and "**niece**" has a corresponding meaning.

(2) Where in proceedings for an offence under this section it is proved that A was related to B in any of the ways set out in subsection (1), it is to be taken that A knew or could reasonably have been expected to know that A was related in that way unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know that A was.

Sexual penetration involving an adult relative.

91. (1) A person aged 16 or over ("**A**") commits an offence if -

(a) A intentionally penetrates -

(i) the vagina or anus of another person ("**B**") with a part of A's body or anything else, or

(ii) B's mouth with A's penis,

(b) the penetration is sexual,

(c) B is 18 or over,

(d) A is related to B in a way mentioned in section 90(1), and

(e) A knows or could reasonably be expected to know that A is related to B in that way.

(2) A person aged 16 or over ("**A**") commits an offence if -

(a) another person ("**B**") penetrates -

(i) A's vagina or anus with a part of B's body or anything else, or

(ii) A's mouth with B's penis,

(b) A consents to the penetration,

(c) the penetration is sexual,

(d) B is 18 or over,

(e) A is related to B in a way mentioned in section 90(1), and

(f) A knows or could reasonably be expected to know that A is related to B in that way.

Penalties.

92. A person guilty of an offence under this Chapter is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

CHAPTER XIX
OTHER OFFENCES

Interpretation of this Chapter.

93. For the purposes of this Chapter, a person is doing "**a private act**" if -

(a) the person is in a place which, in the circumstances, would reasonably be expected to provide privacy, and

(b) any of the following subparagraphs applies -

(i) the person's genitals, buttocks or breasts are exposed or covered only with underwear,

(ii) the person is using a lavatory, or

(iii) the person is doing a sexual act that is not of a kind ordinarily done in public.

Voyeurism towards a child.

94. (1) A person ("**A**") commits an offence if for a purpose mentioned in subsection (7), A observes a child who has not attained the age of 16 years ("**B**") doing a private act.

(2) A person ("**A**") commits an offence if A operates equipment with the intention of enabling A or another person ("**C**") to observe, for a purpose mentioned in subsection (8), a child who has not attained the age of 16 years ("**B**") doing a private act.

(3) A person ("**A**") commits an offence if -

(a) A records a child who has not attained the age of 16 years ("**B**") doing a private act, and

(b) A does so with the intention that A or a third person ("**C**") will, for a purpose mentioned in subsection (8), look at an image of B doing the act.

(4) A person ("**A**") commits an offence if A operates equipment beneath the clothing of a child who has not attained the age of 16 years ("**B**") with the intention of enabling A or another person ("**C**"), for a purpose mentioned in subsection (8), to observe -

(a) B's genitals or buttocks (whether exposed or covered with underwear), or

(b) the underwear covering B's genitals or buttocks,

in circumstances where the genitals, buttocks or underwear would not otherwise be visible.

(5) A person ("**A**") commits an offence if A records an image beneath the clothing of a child who has not attained the age of 16 years ("**B**") of -

(a) B's genitals or buttocks (whether exposed or covered with underwear), or

(b) the underwear covering B's genitals or buttocks,

in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person ("**C**"), for a purpose mentioned in subsection (8), will look at the image.

(6) A person ("**A**") commits an offence if A installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to commit any offence under subsection (1) to (5).

(7) The purposes referred to in subsection (1) are -

(a) obtaining sexual gratification, and

(b) humiliating, distressing or alarming B.

(8) The purposes referred to in subsections (2) to (5) are -

(a) obtaining sexual gratification (whether for A or C), and

(b) humiliating, distressing or alarming B.

Voyeurism.

95. A person ("**A**") commits an offence if -

(a) for a purpose mentioned in subsection (7), A observes another person ("**B**") doing a private act,

(b) B does not consent to being observed doing a private act, and

(c) A does not reasonably believe that B consents to being observed doing a private act.

(2) A person ("**A**") commits an offence if -

(a) A operates equipment with the intention of enabling A or another person ("**C**") to observe, for a purpose mentioned in subsection (8), a third person ("**B**") doing a private act, and

(b) B does not consent to A's operating equipment with that intention, and

(c) A does not reasonably believe that B consents to A's operating equipment with that intention.

(3) A person ("**A**") commits an offence if -

(a) A records another person ("**B**") doing a private act,

(b) A does so with the intention that A or a third person ("**C**") will, for a purpose mentioned in subsection (8), look at an image of B doing the act,

(c) B does not consent to A's recording the act with that intention, and

(d) A does not reasonably believe that B consents to A's recording the act with that intention.

(4) A person ("**A**") commits an offence if -

(a) A uses equipment with the intention of enabling A or another person ("**C**"), for a purpose mentioned in subsection (8), to observe beneath the outer clothing of another person ("**B**") -

(i) B's genitals or buttocks (whether exposed or covered with underwear), or

(ii) the underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible,

(b) B does not consent to A's operating equipment with that intention, and

(c) A does not reasonably believe that B consents to A's operating equipment with that intention.

(5) A person ("**A**") commits an offence if -

(a) A records an image of -

(i) B's genitals or buttocks (whether exposed or covered with underwear), or

(ii) the underwear covering B's genitals or buttocks,

in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person ("**C**"), for a purpose mentioned in subsection (8), will look at the image,

(b) B does not consent to A's recording an image with that intention, and

(c) A does not reasonably believe that B consents to A's recording an image with that intention.

(6) A person ("**A**") commits an offence if A installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to commit any offence under subsection (1) to (5).

(7) The purposes referred to in subsection (1) are -

(a) obtaining sexual gratification, and

(b) humiliating, distressing or alarming B.

(8) The purposes referred to in subsections (2) to (5) are -

(a) obtaining sexual gratification (whether for A or C), and

(b) humiliating, distressing or alarming B.

<u>Exposure.</u>

96. A person ("**A**") commits an offence if -

(a) A intentionally exposes A's genitals, and

(b) A intends that another person will see them and be caused alarm or distress.

<u>Intercourse with an animal.</u>

97. (1) A person ("**A**") commits an offence if -

(a) A intentionally performs an act of penetration with A's penis,

(b) the penetration is of the vagina or anus of a living animal, and

(c) A knows that, or is reckless as to whether, that is what is penetrated.

(2) A person ("**A**") commits an offence if -

(a) A intentionally causes, or allows, A's vagina or anus to be penetrated,

(b) the penetration is by the penis of a living animal, and

(c) A knows that, or is reckless as to whether, that is what A is being penetrated by.

Sexual penetration of a corpse.

98. A person ("**A**") commits an offence if -

(a) A intentionally performs an act of penetration with a part of A's body or anything else,

(b) the penetration is of a part of the body of a dead person,

(c) A knows that, or is reckless as to whether, that is what is penetrated, and

(d) the penetration is sexual.

Sexual activity in a public lavatory.

99. (1) A person ("**A**") commits an offence if -

(a) A is in a lavatory to which the public, or a section of the public, has or is permitted to have access, whether on payment or otherwise,

(b) A intentionally engages in an activity, and

(c) the activity is sexual.

(2) For the purposes of this section, an activity is "**sexual**" if a reasonable person would, in all the circumstances but regardless of any person's purpose, consider it to be sexual.

Penalties.

100. (1) A person guilty of an offence under section 94 is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

(2) A person guilty of an offence under section 95, 96, 97, 98 or 99 is liable on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both.

CHAPTER XX
SUPPLEMENTARY

Exceptions to aiding, abetting and counselling.

101. (1) A person is not guilty of aiding, abetting or counselling the commission against a child of an offence to which this section applies if that person acts for the purpose of -

(a) protecting the child from sexually transmitted infection,

(b) protecting the physical safety of the child,

(c) preventing the child from becoming pregnant, or

(d) promoting the child's emotional well-being by the giving of advice,

and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence or the child's participation in it.

(2) This section applies to -

(a) an offence under Chapter V (non-consensual offences against children under 13),

(b) an offence under section 21 (sexual touching of a child),

(c) an offence under any of sections 31, 35, 41, 47 and 53 (sexual touching) against a person under 16.

(3) This section does not affect any other enactment or any rule of law restricting the circumstances in which a person is guilty of aiding, abetting or counselling an offence under this Part.

PART II
PROTECTION OF CHILDREN

CHAPTER I
HARMFUL PUBLICATIONS

Harmful publications.

102. (1) Subject to subsection (2), it is an offence for a person ("**A**") to -

(a) print,

(b) publish,

(c) sell,

(d) let on hire, or

(e) for the purposes of selling or letting on hire, have in A's possession,

a corrupting publication.

(2) Where A is charged with an offence under subsection (1) in respect of -

(a) selling,

(b) letting on hire, or

(c) for the purpose of selling it or letting it on hire, having in A's possession,

a corrupting publication, it shall be a defence for A to prove that A had not examined the contents of the work and had no reasonable cause to suspect that it was a corrupting publication.

(3) For the purposes of this section, a "**corrupting publication**" is any book, magazine, video or photographic film or other like work which is of a kind likely to fall into the hands of persons under 18 and consists wholly or mainly of stories told in pictures, words or sounds (with or without the addition of written matter) being stories portraying -

(a) the commission of a crime, or

(b) an act of violence or cruelty, or

(c) an incident of a repulsive or horrible nature, or

(d) human sexual activity,

in such a way that the work as a whole would tend to corrupt a person under 18 into whose hands it might fall.

Penalties.

103. A person is guilty of an offence under section 102 is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 4 on the uniform scale or both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or a fine, or both.

CHAPTER II
INDECENT IMAGES

Interpretation of this Chapter.

104. (1) For the purposes of this Chapter, an image includes -

(a) the positive and negative version of a photograph,

(b) a copy of a photograph,

(c) a photograph comprised in a film,

(d) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph,

(e) any form of video recording, and

(f) a pseudo-photograph.

(2) An image shall, if it shows a child and is indecent, be treated for all purposes of this Chapter as an indecent image of a child.

(3) For the purposes of subsection (1), "**pseudo-photograph**" means an image, whether made by computer graphics or otherwise, which appears to be a photograph, and includes -

(a) a copy of a pseudo-photograph, and

(b) data stored on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph.

(4) If -

(a) the impression conveyed by a pseudo-photograph is that the person shown is a child, or

(b) the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult,

the pseudo-photograph shall be treated for all purposes of this Chapter as showing a child.

(5) For the purposes of this Chapter, "**child**" means a person aged under 16.

Taking, making and distributing etc. indecent images of children.

105. (1) Subject to sections 106, it is an offence for a person ("**A**") -

(a) to take, or permit to be taken or to make, any indecent image of a child, or

(b) to distribute or show such indecent images, or

(c) to have in A's possession such indecent images, with a view to their being distributed or shown by A or others, or

(d) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent images, or intends to do so.

(2) For the purposes of subsection (1), A is to be regarded as distributing an indecent image if A parts with possession of it to, or exposes or offers it for acquisition by, another person.

(3) Where A is charged with an offence under subsection (1)(b) or (c) of this section, it shall be a defence for A to prove that -

(a) A had a legitimate reason for distributing or showing the image, or having it in A's possession (as the case may be), or

(b) A had not seen the image and did not know, nor had any cause to suspect it to be indecent.

(4) Where A is guilty of an offence under this section, A is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on the uniform scale, or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years, or to a fine, or to both.

Exception for criminal proceedings, investigations etc.

106. (1) In proceedings for an offence under section 105(1)(a) of making an indecent image of a child, a person ("**A**") is not guilty of the offence if A proves that -

(a) it was necessary for A to make the photograph or pseudo-photograph for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world,

(b) at the time of the offence charged A was a member of a relevant security service and it was necessary for A to make the image for the exercise of any of the functions of that service, or

(c) at the time of the offence charged A was a member of GCHQ, and it was necessary for A to make the image for the exercise of any of the functions of GCHQ.

(2) In subsection (1) -

"**GCHQ**" has the same meaning as in the Intelligence Services Act 1994[i], and

"**relevant security service**" means -

(a) the Security Service, which has the same meaning as in the Security Service Act 1989[j], or

(b) the Secret Intelligence Service which has the same meaning as in the Intelligence Services Act 1994[k].

Possession of indecent images of children.

107. (1) It is an offence for a person ("**A**") to have any indecent image of a child in A's possession.

---

i An Act of the Westminster Parliament, ch. 13.

j An Act of the Westminster Parliament, ch.5.

k An Act of the Westminster Parliament, ch. 13.

(2) Where A is charged with an offence under subsection (1), it shall be a defence for A to prove -

(a) that A had a legitimate reason for having the image in A's possession,

(b) that A had not seen the image and did not know, nor had any cause to suspect, it to be indecent, or

(c) that the image was sent to A without any prior request made by A or on A's behalf and that A did not keep it for an unreasonable time.

(4) Where A is guilty of an offence under this section, A is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on the uniform scale, or both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or both.

Evidence by spouse.

108. On a charge of an offence under section 102 or section 105(1)(a), the wife or husband of A shall be competent to give evidence at every stage of the proceedings, whether for the defence or for the prosecution, and whether A is charged solely or jointly with any other person:

Provided that -

(a) the wife or husband shall not be compellable either to give evidence or, in giving evidence, to disclose any communication made to her or him during the marriage by A, and

(b) the failure of the wife or husband of A to give evidence shall not be made the subject of any comment by the prosecution.

Liability of company officers for offences by company.

109. (1) Where an offence committed by a body corporate under section 102, 105, or 107 is proved to have been committed with the consent or connivance of any relevant officer of the body corporate, the relevant officer as well as the body corporate shall be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, this section shall apply in relation to the acts and defaults of a member in connection with that member's functions of management as if that member were a relevant officer of the body corporate.

(3) For the purposes of subsection (1), a "**relevant officer**" includes director, manager, secretary or other similar officer of the body corporate, and any person who was purporting to act in any such capacity.

Powers of arrest etc.

110. Schedule 1 shall have effect.

PART III

MISCELLANEOUS PROVISIONS

Amendments and repeals etc.

111. (1) Schedule 2 shall have effect.

(2) Notwithstanding subsection (1), the States may by Ordinance make such additional provision as they see fit in relation to savings and transitional provisions, including the making of consequential amendments and repeals.

(3) Subsection (2) is without prejudice to section 20 of the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016[l].

Interpretation.

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

"**civil partnership**" means a civil partnership which exists under the Civil Partnership Act 2004[m] or equivalent legislation in force anywhere in the British Islands,

"**the E-Commerce Directive**" means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), as from time to time amended or re-enacted,

---

l No. V of 2018; as amended by Ordinance Nos. XXII and XXVI of 2018.

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

"**genitals**" includes pubic area,

"**Information society service**" -

(a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and

(b) is summarised in recital 17 of the E-Commerce Directive as including any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service,

"**relevant sexual offence**" means any offence under Part I (including an offence of aiding, abetting, counselling or procuring such an offence),

"**the States**" means the States of Deliberation, and

"**structure**" includes a tent, vehicle or vessel or other temporary or movable structure.

(2) Unless the context requires otherwise, references in this Law to any enactment are references thereto as from time to time amended, varied, re-enacted (with or without modification), extended or applied.

(3) The States may by Ordinance amend this section.

Citation.

113. This Law may be cited as the Sexual Offences (Bailiwick of Guernsey) Law, 2020.

Commencement.

114. This Law shall come into force on such day as the States may by Ordinance appoint and such an Ordinance may appoint different days for different provisions and different purposes.

SCHEDULE 1

Section 111

POWERS OF ARREST ETC.

Power of arrest.

1. (1) A police officer may arrest without warrant a person who has committed, or whom the police officer with reasonable cause suspects of having committed, an offence under Part II.

(2) This section is without prejudice to any power of arrest conferred by law apart from this section.

Search and forfeiture.

2. (1) If the Bailiff is satisfied by information on oath that there is reasonable cause to believe that any person ("**A**") has in A's custody, possession or on A's premises -

(a) any work or copy of a work to which section 102 applies,

(b) any plate prepared for the purpose of printing copies of the said work or any other work to which section 102 applies or any video or photographic film prepared for that purpose,

(c) any indecent image to which section 105 or 107 applies,

(d) any prohibited item to which section 72 applies, or

(e) any child sex doll to which section 73 applies, the Bailiff may grant a warrant to search for and seize the same; but no warrant to search for such articles shall be addressed to a person other than a police officer except under the authority of an enactment expressly so providing.

(2) Where under this section a police officer is authorised to search premises, that officer may enter and search the premises accordingly and may seize -

(a) any copies of the work and any copies of any other work which the police officer has reasonable cause to believe to be one to which section 102 applies, and

(b) any plate which the police officer has reasonable cause to believe to have been prepared for the purpose of printing copies of any such work as is mentioned in paragraph (a) and any video or photographic film which the police officer has reasonable cause to believe to have been prepared for that purpose,

(c) any articles which the police officer has reasonable cause to believe to be or include indecent photographs of children taken or shown on the premises or kept there with a view to their being distributed or shown,

(d) any prohibited items, and

(e) any child sex doll.

(3) The court by or before which a person ("**A**") is convicted of an offence under section 102, 105, or 107 shall order any copies of the work in question and any plate prepared for the purpose of printing copies of that work or video or photographic film prepared for that purpose or indecent images of children being copies which have, or a plate or film which has or images which have, been found in A's possession or under A's control, to be forfeited:

Provided that an order made under this subsection shall not take effect until the expiration of the ordinary time within which an appeal in the matter of the proceedings in which the order was made may be lodged or, where such an appeal is duly lodged, until the appeal is finally decided or abandoned.

(4) The court by or before which a person ("**A**") is convicted of an offence under section 72 or 73 shall order any prohibited item or child sex doll which have been found in A's possession or under A's control, to be forfeited:

Provided that an order made under this subsection shall not take effect until the expiration of the ordinary time within which an appeal in the matter of the proceedings in which the order was made may be lodged or, where such an appeal is duly lodged, until the appeal is finally decided or abandoned.

SCHEDULE 2

Section 112

AMENDMENTS AND REPEALS

Amendments

1. In section 9(2) of the Theft (Bailiwick of Guernsey) Law, 1983[n], substitute "or inflicting on any person therein grievous bodily harm" for "of inflicting on any person therein any grievous bodily harm or raping any woman therein".

2. In section 11(1) of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004[o] -

(a) immediately after paragraph (f) of the definition of "sexual offence", insert the following paragraph -

"(fa) an offence under the Sexual Offences (Bailiwick of Guernsey) Law, 2020", and

(b) in paragraph (g), for "(f)" substitute "(fa)".

3. The Criminal Justice (Sex Offenders and Miscellaneous Provisions)

---

[n] Ordres en Conseil Vol. XXVIII, p.5. There are amendments to that Law which are not relevant to this enactment.

[o] Order in Council No. IX of 2015; as amended by Ordinance No. XXIX of 2013.

(Bailiwick of Guernsey) Law, 2013[p] is amended as follows -

(a) in section 1(1)(j), substitute "," for ".",

(b) immediately after section 1(2)(j), insert the following -

"(k) an offence under the Sexual Offences (Bailiwick of Guernsey) Law, 2020.",

(c) in section 4(3)(b), for "the notifier's home address or his having stayed for a qualifying period at any residence in the Bailiwick that has not been notified to an authorised officer", substitute "any information required to be given in accordance with subsection (1)(b) to (g)", and

(d) in section 4(8), for "Article", substitute "section".

Repeals

1. *Loi pour la punition d'inceste*, 1909.

2. *Loi relative à la protection des femmes & filles mineures*, 1914.

3. Articles 11, 12 and 51(2) of the *Loi ayant rapport à la Protection des Enfants et des Jeunes personnes*, 1917.

4. *Loi relative à la Sodomie*, 1929.

---

[p] Order in Council No. IX of 2014; as amended by Ordinances No. XI and XX of 2015, and No. IX of 2016.

5. Offences against Girls (Availability of Defences) Law, 1956.

6. Sexual Offences (Bailiwick of Guernsey) Law, 1983.

7. Protection of Children (Bailiwick of Guernsey) Law, 1985.

P.2020/87

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE INCOME TAX (INDEPENDENT TAXATION) (GUERNSEY) (AMENDMENT) ORDINANCE, 2020

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Independent Taxation) (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 further amends the Income Tax (Guernsey) Law, 1975 to provide that, in the case of married persons, each individual's income and entitlement to allowances will be assessed independently and separately, thereby terminating the historic position that the income of the wife was considered to be the income of the husband except in certain situations (e.g., where separate assessment had been expressly requested). The same principle of independent and separate assessment will apply to the parties to same sex marriages and same sex and opposite sex civil partnerships. It is not proposed to depart from the principle that the unused personal tax allowances of one party to the marriage or civil partnership may be transferred to the other party (a matter currently dealt with by resolution of the States under section 36 of the Income Tax Law).

The Income Tax (Independent Taxation) (Guernsey) (Amendment) Ordinance, 2020

THE STATES, in pursuance of their Resolution of the 8th November, 2017[a], and in exercise of the powers conferred on them by sections 203A and 208C of the Income Tax (Guernsey) Law, 1975[b] and all other powers enabling them in that behalf, hereby order:-

Amendment of 1975 Law.

1. The Income Tax (Guernsey) Law, 1975 is further amended as follows.

2. In section 36(1) for the words "and the conditions applicable to such allowances" substitute "and the limitations, conditions, restrictions and qualifications applicable to such allowances".

3. In section 36(2) in the first proviso after the words "where the conditions" insert "or qualifications".

4. In section 40(kk) the words "(or £100 for a married couple where each party to the marriage is in receipt of interest)" are repealed.

5. In Chapter III of Part IV -

---

a Billet d'État No. XX of 2017 (proposition 13).

b Ordres en Conseil Vol. XXV, p. 124; sections 75Q and 203A were inserted by Order in Council No. XVII of 2005 and section 208C was inserted by Order in Council No. V of 2011.

(a) for the cross heading ("Husband and wife") substitute "Married couples and civil partners", and

(b) immediately before section 43 insert the following section –

"**<u>Termination of applicability of sections 43 to 47.</u>**

42A. Sections 43 to 47 and 47AA(2) have effect only in respect of years of charge prior to such date as the Committee may determine by regulation.".

6. In section 47AA(1) –

(a) for the words "or a civil partnership" substitute "and two individuals of the same or of the opposite sex who have together entered into a civil partnership", and

(b) for "Ordinance or regulation" substitute "Ordinance, regulation or resolution".

7. For section 47AA(2) substitute the following subsection –

"(2) For the purposes of section 43(1) –

(a) any income of the younger partner to a same sex marriage or same sex civil partnership living with the elder partner thereto shall for the purposes of assessment, charge, collection, computation of total income, and reliefs be treated as if it were the income of the elder partner, and

(b) any income of the female partner to an opposite sex civil partnership living with the male partner thereto shall for the purposes mentioned in paragraph (a) be treated as if it were the income of the male partner,

and the other provisions of this Chapter shall apply accordingly, mutatis mutandis.”.

8. Section 64B(2) is repealed.

9. In section 81A(1)(c) after the words “as read with” insert “section 42A and”.

10. In section 81B(1)(c) after the words “as read with” insert “section 42A and”.

11. In section 135(2) the words “and then, to the extent to which it cannot be so set off, against income of the corresponding type belonging to that person’s spouse” are repealed.

12. In section 135(3) –

(a) the words “or belonging to that person's spouse” are repealed,

(b) the word “first” is repealed, and

(c) the words following "income belonging to that person" are repealed.

13. In the proviso to section 140 the words "or to that person's spouse" are repealed.

14. In section 148(1) the definition of "spouse" is repealed.

15. Section 148(2) is repealed.

16. In section 148(3)(b) the words "or one individual with his or her spouse," are repealed.

17. Section 157A(6) is repealed.

<u>Citation.</u>

18. This Ordinance may be cited as the Income Tax (Independent Taxation) (Guernsey) (Amendment) Ordinance, 2020.

<u>Commencement.</u>

19. This Ordinance shall come into force as follows –

(a) sections 6 and 7 shall come into force on the 1st January, 2021, and

(b) the remainder of this Ordinance shall come into force on the day appointed by the Policy & Resources Committee by regulation; and different days may be appointed for different provisions and different purposes.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

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

The States are asked to decide:-

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

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

EXPLANATORY MEMORANDUM

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

The agreement specified is the Arrangement between the States of Guernsey and the Government of Anguilla on the Exchange of Information relating to Tax Matters signed in Guernsey on the 13th February, 2020 and in Anguilla on the 19th February, 2020.

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

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

Approval of Agreement.

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

(2) The agreement is the Arrangement between the States of Guernsey and the Government of Anguilla on the Exchange of Information relating to Tax Matters signed by the duly authorised representatives of the participants at St Peter Port, Guernsey on the 13th day of February 2020 and at The Valley, Anguilla on the 19th day of February, 2020.

Citation.

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

---

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

Commencement.

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

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

STATES' TRADING SUPERVISORY BOARD

GUERNSEY AIRPORT HOLD BAGGAGE SCREENING SYSTEM UPGRADE

The States are asked to decide: -

Whether, after consideration of the Policy Letter entitled 'Guernsey Airport Hold Baggage Screening System Upgrade' of the States' Trading Supervisory Board dated 2nd March, 2020, they are of the opinion:-

1. To note the requirement for the urgent project to upgrade the Hold Baggage Screening system in accordance with Short List Option 2 (as set out in Table 4) including installing two new baggage scanning machines, modifying the conveyors and carousel, and extending an area of the terminal building to accommodate the new hold baggage screening system, at a maximum cost of £12.0million.

2. To agree that the Hold Baggage Screening system project is formally included within the capital portfolio (2017-2021), to be funded from the Capital Reserve, with a contribution of £150,000 from the Ports Holding Account and:

   i. To approve the sum of a maximum of £665,000, charged to the capital vote for the Hold Baggage Screening system upgrade, to fund all necessary steps for the development of the design stage and proposals for the procurement of Short List Option 2, as set out in paragraph 6.2 of this Policy Letter;

   ii. To delegate authority to the Policy & Resources Committee to approve the Outline Business Case and;

   iii. To delegate authority to the Policy & Resources Committee to increase the capital vote for the Hold Baggage Screening system upgrade project, to a maximum of £12.0million, subject to the Policy & Resources Committee's approval of the Full Business Case.

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

STATES' TRADING SUPERVISORY BOARD
GUERNSEY AIRPORT HOLD BAGGAGE SCREENING SYSTEM UPGRADE

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

2nd March 2020

Dear Sir

1 Executive Summary

1.1 The States of Guernsey recognises the importance of Guernsey Airport and the States' Trading Supervisory Board ('STSB') is mandated to ensure the efficient management, operation and maintenance of any States' unincorporated trading concerns and commercial interests, including Guernsey Airport.

1.2 The STSB, in accordance with its mandate, puts forward the following recommendations:-

1. To note the requirement for the urgent project to upgrade the Hold Baggage Screening system in accordance with Short List Option 2 (as set out in Table 4) including installing two new baggage scanning machines, modifying the conveyors and carousel, and extending an area of the terminal building to accommodate the new hold baggage screening system, at a maximum cost of £12.0million.

2. To agree that the Hold Baggage Screening system project is formally included within the capital portfolio (2017-2021), to be funded from the Capital Reserve, with a contribution of £150,000 from the Ports Holding Account and:

    i. To approve the sum of a maximum of £665,000, charged to the capital vote for the Hold Baggage Screening system upgrade, to fund all necessary steps for the development of the design stage and proposals for the procurement of Short List Option 2, as set out in paragraph 6.2 of this Policy Letter;

    ii. To delegate authority to the Policy & Resources Committee to approve the Outline Business Case and;

iii. To delegate authority to the Policy & Resources Committee to increase the capital vote for the Hold Baggage Screening system upgrade project, to a maximum of £12.0million, subject to the Policy & Resources Committee's approval of the Full Business Case.

1.3 In accordance with a Resolution of the States of Deliberation[1], the STSB is required to seek approval of the States for any Ports Capital projects that exceed a £2million spend. Further, in light of a review of funding for this project, the STSB is seeking approval to finance the investment through the Capital Reserve.

1.4 The upgrade to the Hold Baggage Screening system is a critically important investment in the islands' future. The airport provides vital connectivity and an essential social and economic lifeline for the Bailiwick of Guernsey. Guernsey Airport provides lifeline services to the residents of Guernsey and Alderney, 364 days per year.

1.5 Changes to the way in which hold baggage is screened are set in EU Regulation. The most recent deadline to meet regulatory compliance for a new standard of hold baggage screening has now passed, and an extension is sought from the Aviation Security Regulator. The project background is outlined in sections 2.2 to 2.15 of this Policy Letter.

1.6 This Policy Letter sets out the proposals for the preferred option for the Hold Baggage Screening system upgrade, and outlines the rationale for the recommended solution; Short List Option 2. It also describes why this is deemed to be the most appropriate option, representing the best value for money.

1.7 This essential investment represents a significant capital outlay, which reflects the specialist nature of the works. The estimated cost for the preferred option at this stage of the project has been identified in a range £10.5million - £12.0million. Whilst this cost estimate includes appropriate contingencies and a set of assumptions, it can only be indicative until final design and procurement. In addition there are costs already expended on the project estimated at £150,000, these enabling costs have been funded by the airport to date. Further design and professional fees in the order of £515,000 are required prior to the final stage of the procurement process which will take place upon approval of the Full Business Case. The States is asked to approve a total sum of £665,000 for these fees.

1.8 Financial analysis concludes that funding of the project through the Ports Holding Account or through obtaining a loan would lead to a requirement to raise passenger charges which will have a detrimental effect on the wider economy. Increasing charges to cover a loan would have a negative impact on the cost of air travel. The efforts by the airport to hold its charges in 2018 and 2019 to play its part in facilitating increased numbers through the airport would be undermined. Therefore

[1] Billet d'État XII of 2017, Article I, Resolution 9 - The Policy and Resources Plan Phase 2.

this Policy Letter is submitted as an urgent request for funding from the Capital Reserve. The urgency is dictated by deadlines for regulatory compliance on the new standard of Hold Baggage Screening systems currently being implemented at airports across the UK.

2 Introduction

2.1 This Policy Letter provides further information and the recommendation to procure a new fully integrated Hold Baggage Screening system in order to meet regulatory compliance and provide a reliable and resilient service. The key findings of a Strategic Outline Case (SOC) for the project are explained, and the urgency of completing the project as soon as possible is described. This project is the most urgent project in a programme of works to upgrade the security provision at Guernsey Airport. At this stage, the remaining programme of security works is considered to be affordable within the existing Ports Capital Portfolio although it is acknowledged that some future loan funding may be required depending on the future prioritisation and phasing of that portfolio.

2.2 The existing Hold Baggage Screening Explosive Detection System (HBS EDS) was installed in 2004 as part of the new terminal development. The system comprises of a series of conveyor belts and a single 'in-gauge'[2] x-ray device which is dedicated to screening of all bags which are checked in to an aircraft hold, through the check-in desks in the passenger terminal. Since its installation the existing device is estimated to have processed approximately 2.5million items of hold luggage, typically suitcases. The existing conveyor system servicing the scanner was installed in 2004, has been well maintained and upgraded, but is now coming to the end of its operational working life, with conveyor failures increasing in frequency and likelihood.

2.3 Guernsey Airport is classed as a UK 'Domestic' airport for the purposes of aviation security regulation and to that end the standards that apply are common throughout the UK. Those regulations change from time to time and such changes in the standard of screening devices used for hold baggage now require an upgrade to the x-ray device installed at Guernsey Airport. These changes are explained in more detail in paragraph 3.3.

2.4 The latest equipment required to be installed for hold baggage screening represents a significant step-change in technology. The devices now being specified are much larger and heavier than the devices they are replacing, they use slower scanning speeds and are similar to medical Computed Tomography (CT) devices, albeit set in a more 'industrial' environment. These changes have had a major influence on this project and limited the number of options for these upgrades. Consequently this has increased both the complexity and the cost of this project.

[2] 'In-gauge' refers to the fact that the x-ray machine is in line with the conveyor belts and all hold luggage is automatically routed through this device.

2.5 The requirement to upgrade the existing Hold Baggage Screening system to the new standard was first noted by the (then) Public Services Department in 2015, following advice issued by the UK Aviation Security Regulator (the UK Department for Transport (DfT)) in 2014. The Board approved the submission of a bid for funding of these upgrades in the 2017 States Capital Investment Portfolio cycle.

2.6 The bid for funding from the Capital Reserve was eventually withdrawn as a proposal to fund the device through private investment was advanced. This followed the principles of a similar model adopted in the provision of security scanning equipment at the time of the opening of the airport terminal in 2004. At this time Guernsey Airport's security provider was responsible for the capital funding of security equipment and it recovered those costs through its monthly charging of services. Those costs were, and in part continue to be, recovered through a security charge levied against all passengers, which currently stands at £2.35 per passenger movement. This unitary charge is relatively high when compared to similar jurisdictions. By way of comparison the security charge at Jersey Airport is currently £2.09 and the Isle of Man charge is currently £1.00. More generally, airport dues and charges at Guernsey Airport, which include the above security levy, are relatively expensive when compared to other jurisdictions. The average passenger is charged nearly £10.00[3] per passenger movement when taking into account all elements of the fixed and variable charges applied. The last comparison of published rates undertaken in 2018 identified Guernsey Airport charges as being more expensive than Jersey and Southampton Airports.

2.7 Separately and following a routine retendering of the general provision of security services at the Ports in 2016, it was clear that future funding of capital procurements from within the security provision contract were no longer considered viable, particularly as the indicative contract duration was set over a five year term. In any case, the Board considered that the debt servicing of these provisions were not in the overall best economic interests of Guernsey Airport, or the States of Guernsey. To that end a decision to wholly fund security devices and systems through the Ports Capital Programme was made and in late 2016 the responsibility for future funding of capital equipment was taken back by the Guernsey Airport. As well as proving less costly, this decision had the benefit of enabling shorter contract periods for security provision and the ability to test the market on such provision more regularly. Our contractor did however retain a role for technical advice on the preferred solution for upgrading of the Hold Baggage System.

2.8 Work to specify the replacement scanning device was then commissioned and initial advice on potential solutions was provided. This advice led the STSB to advance proposals in accordance with those outlined as Short List Option 1 in Table 4. This led to the purchase of a 'Standard 3' CT scanner in July 2018, funded through the Ports Holding Account (PHA). The capital cost of this device was £600,000. This device

[3] Based on an ATR72 travelling to or from the UK with 50 passengers.

remains available as a contingency in the event any additional regulatory requirements are identified before the main project works are completed.

2.9 For reasons explained elsewhere in this Policy Letter, Short List Option 1 is no longer considered to be acceptable. The original intention was to advance this option in order to minimise costs and expedite timelines. However, the impact on passengers and the potential for future proofing the investment had not been adequately understood at the time of the purchase of the equipment.

2.10 Following delivery of the new Hold Baggage Scanner, and ahead of the belt reconfiguration work being commissioned, feedback from a number of other airports which had embarked on similar upgrades began to indicate that the new CT scanners were not achieving theoretical maximum scan times and this would have negative impacts on check-in queues. It also became clear that the preferred solution identified was highly unlikely to provide sufficient resilience or redundancy and could lead to passenger delay and disruption particularly at peak times and during any technical malfunctions. At that time, the Airport was suffering from poor customer service in respect of its general aviation security provision, and the prospect of risking further deterioration in that service was deemed not acceptable to the Board. Feedback from other airports also identified that the core principle of providing redundancy through the provision of more than one CT scanner was essential.

2.11 In addition, modelling on the existing terminal baggage bay identified a number of constraints. These included limited access for the maintenance and replacement of equipment within the baggage hall, the need for existing baggage belts to operate at slower speeds to accommodate the more thorough processing time associated with new scanning technology, and the overall impact of this slower processing speed on customer service, particularly at peak travel times.

2.12 As a result of this additional information, Option 1 was revisited. An analysis of passenger numbers, baggage numbers and peak periods was undertaken by an industry subject matter expert. This advisor had direct experience of the installation of Hold Baggage Screening systems at a number of UK airports. The 'Guernsey Airport Passenger and Baggage Strategy 2019 – 2029' was commissioned in the summer of 2019 and modelled baggage numbers typically processed through the airport terminal. This data has been vital in informing the alternative option now being proposed.

2.13 By summer 2019, the initial deadline imposed by the UK DfT for compliance had passed and negotiations for an extension to the date of compliance with that authority were commenced, through the Office of the Director of Civil Aviation (DCA) in its capacity as the Licensing Authority for Guernsey Airport's operations. In seeking an extension to that deadline, Guernsey Airport was aware that a number of other UK airports had been granted alleviations to their dates of compliance. These negotiations with the local regulator continue in consultation with the UK DfT.

2.14 In a wider review of options, the Project Board accepted that any investment had to achieve improved processing performance specifically, as well as greater system resilience and allowances for additional future capacity, given that the investment was significant and would hold an asset life of at least 10 years.

2.15 Given the last approved date of compliance has passed and as any revised date remains unconfirmed, this project has to be considered urgent. Work continues on this project apace, so that a system which meets regulatory compliance, as well as the other project investment objectives, can be installed and implemented as soon as possible.

2.16 The new hold baggage scanner purchased in 2018 may provide a temporary compliant solution for Hold Baggage Screening should the regulator impose an immediate remediation deadline for 'Standard 3' compliance. The machine will have a resale value, and accordingly that investment is not yet written off by the Board.

2.17 Due to the sensitivities surrounding airport security, some detail of how the new technology differs from the current technology is omitted from this Policy Letter. A more detailed breakdown of the total capital sum has been withheld for commercial reasons, as the works are still to be tendered. A breakdown will however be provided in a separate briefing to States Members ahead of the debate.

3 Strategic & Legislative Context

3.1 The STSB is mandated to ensure the efficient management, operation and maintenance of any States' unincorporated trading concerns, including Guernsey Airport.

3.2 The UK DfT regulates security standards at all UK and CI airports. Locally it acts through the Office of the Director of Civil Aviation (DCA) to apply those regulations under local law. It has the ability both in the UK and locally (through the DCA) to issue Deficiency or Remediation Notices to enforce changes in security provision. Rectification of such Notices would require changes to existing processes or equipment provision.

3.3 The DfT issued warnings to all airports in the summer of 2014, advising that UK airports needed to prepare for a change in standards to the way hold baggage on aircraft is screened. The change was to introduce enhancements to Hold Baggage Screening Explosive Detection Systems (HBS EDS) by 1st September 2018, through the installation of a new type of screening machine referred to as 'Standard 3'[4]. This instruction applied to all UK airports (including the three Crown Dependencies). Failure to achieve this change would represent a breach in UK DfT standards, with the possibility of a deficiency or remediation notice being issued. This could result in measures being implemented which would negatively impact the customer experience and/or significantly increase the cost of security provision, as alternative baggage checks may then be demanded.

3.4 Additionally, a reliable, compliant, working Hold Baggage Screening system is fundamental to a number of policy priorities of the Future Guernsey Plan:

- The installation of a reliable and efficient Hold Baggage Screening system is key in enabling the island's "robust, sustainable, reliable and affordable" air links in order to deliver a dynamic and growing economy, in accordance with the Air & Sea Links policy.

- This project ensures that the Department for Transport Aviation Security regulations are met, in line with the International Standards Policy.

- Guernsey Airport is a critical economic enabler, relevant to many strategies and policies under the Economic Development Policy. A compliant and reliable Hold Baggage Screening system is vital to the operation of the airport.

[4] EU Regulation No. 1087/2001 requires all EU airports, member states and other countries to be compliant to Standard 3 level of Hold Baggage Screening (HBS). Standard 3 is a framework defined by the European Civil Aviation Conference (ECAC) and sets the minimum required levels of detection, applicable to HBS, explosive detection systems (EDS), liquid explosive detection systems (LEDS) and security scanners.

3.5 The Guernsey Airport Business Plan cites that "The Airport shall be operated in a commercial manner to maximise its financial performance, with emphasis being placed on providing services that are suitable and fit for a wide popular market through the provision of well-regulated facilities for the transportation of passengers and freight". The key aspects of providing services that are suitable and fit as well as well-regulated are significant strategic considerations for this project.

4 Summary of Project Business Case

4.1 In accordance with recognised practice, the Project has compiled a Strategic Outline Case which has been reviewed and approved by the Ports Board and the States Trading Supervisory Board. That Business Case has also been subject to an independent Project Assurance Review (PAR). A summary of that review is included at paragraph 8.4 of this Policy Letter. This section outlines the content of the Strategic Outline Case.

4.2 In reviewing the desired outcomes for this project the following Investment Objectives listed in Table 1 have been identified and then applied against a number of options which are listed in Table 3 of this Policy Letter.

Table 1: Investment Objectives

Investment objective 1:	For Guernsey Airport to have a regulatory compliant Explosive Detection (EDS) system for Hold Baggage Screening (HBS).
Investment objective 2:	For Guernsey Airport to have an HBS system that can meet demand in peak periods.
Investment objective 3:	For Guernsey Airport's HBS system to be reliable and resilient.
Investment objective 4:	For Guernsey Airport's HBS system to cease negatively affecting customer experience.
Investment objective 5:	For Guernsey Airport's HBS system to be future proofed.

4.3 The scope of the project is to deliver a Hold Baggage Screening system which utilises the passenger throughput information ascertained by a specialist consultant, which provides a clear understanding of peak demand.

4.4 The project scope and cost estimates include the provision of a single storey extension to the terminal building which will house the new hold baggage system, with foundations of sufficient load bearing capacity to bear the potential heavier weight of future HBS machines (the current trend is that each new generation of scanning machine is heavier than its predecessor). The design of the building will allow for a straight 'swap in' of future models of hold baggage scanning machinery, which would be expected to have a larger footprint again than the 'Standard 3' machines to be installed.

4.5 The foundations should also take into account the opportunity to gain wider benefits by further development of the area that may be identified through an ongoing Master Planning exercise, which will take into account the strategic airside location of the existing baggage hall. Further options on the type and size of the building are being reviewed and will form part of the overall Full Business Case, subject to approval in due course.

4.6 The scope of this project has also taken into account both current, medium and potentially longer term implications of increases in passenger baggage volumes through the application of future targets which could take into account changes in the size or number of aircraft operating from Guernsey Airport.

4.7 The specialist technical report (Guernsey Airport Passenger and Baggage Strategy 2019 – 2029) as well as direction from the Ports Board, informed the Critical Success Factors for the project, outlined in Table 2.

4.8 The baggage numbers referred to throughout this Policy Letter relate to the number of bags processed per hour during peak travel times, in order to meet total annual passenger throughput numbers. At present the airport processes approximately 900,000 passengers/annum and to sustain this the HBS system must be capable of screening 580 bags/hour at peak times. In order for the airport to accommodate annual passenger numbers of 1.2million (being the current design capacity of the terminal and operating with the same profile of peak departure times), the HBS system must be able to process 636 bags/hour. Allowing for some future growth, passenger numbers amounting to 1.5million passengers/annum would require the processing of 850 bags/hour by the HBS system.

Table 2: Critical Success Factors

Critical Success Factors		Related Investment Objectives / Categories
A	An option will be excluded from consideration if it cannot provide a functioning ‘Standard 3’ HBS solution by the date agreed with the Regulator (or as set by the Airport).	Meets Investment Objective 1
B	An option will be excluded from consideration if the HBS solution cannot process 580 bags/hour by the date agreed with the Regulator (or as set by the Airport).	Meets Investment Objective 2
C	An option will be excluded from consideration if the HBS solution does not utilise equipment that is proven to operate to industry standards, and be appropriately maintained in Guernsey.	Meets Investment Objective 3
D	An option will be excluded from consideration if the HBS solution does not include at least two ‘Standard 3’ EDS machines that can be operated independently of associated equipment.	
E	An option will be excluded from consideration if the potential market of suppliers cannot evidence that they have the capacity to implement the HBS solutions by the date agreed with the Regulator (or as set by the Airport).	Supplier Capability
F	An option will be excluded from consideration if the potential market of suppliers cannot evidence that they have the skills and experience to implement the HBS solution in a regional airport, which is physically remote from the mainland UK.	Supplier Capability
G	An option will be excluded from consideration if the proposed HBS solution requires a permanent structure that cannot be built to a timescale that allows the solution to be implemented by the date agreed with the Regulator (or as set by the Airport).	Achievability
H	An option will be excluded from consideration if its operational cost requires an increase to airport charges of a scale that negatively impacts passenger numbers, and thus the Airport’s business model.	Affordability
I	An option will be excluded from consideration if its impact will negatively impact on the Airport’s role as an enabler of the Bailiwick’s economy.	Value for Money

4.9 The Investment Objectives, Critical Success Factors and project scope were developed and ratified at two stakeholder workshops held on 21st October, 2019 and 4th November, 2019 and were subsequently endorsed by the Ports Board and the STSB in the Strategic Outline Case.

The Long List of Options

4.10 The Long List of options has been developed utilising the specialist technical advice received, including the detail derived from the 'Guernsey Airport Passenger and Baggage Strategy 2019 – 2029'.

Evaluating the Long List of Options

4.11 The Long List of options has been evaluated against the Investment Objectives and Critical Success Factors. Table 3 provides an explanation of each of the options, and outlines the findings of the assessment of each of the Long List options.

Table 3: Long List Evaluation

Long List Options for Scoping	Finding
Option 1 – Do nothing Continue to operate the current in-gauge HBS machine with only standard servicing of the existing equipment and no additional maintenance, until the machine fails. Accept failure of the in-gauge and out-of-gauge machines in due course, and the fact that eventually there will be severe restrictions on the ability of passengers to travel with hold baggage, possibly not at all. No regulatory compliance.	The option to do nothing meets the fewest of the CSFs for the project. This option does not enable Guernsey Airport to provide a functioning 'Standard 3' HBS solution, and in time will not be able to process the minimum required bags per hour. This option does not provide resilience in the event of a breakdown of machinery as it does not meet the CSF of including at least two 'Standard 3' machines. This option will have a catastrophic effect on the Airport's role as an enabler of the Bailiwick's economy due to the severe restrictions on the ability of passengers to travel with hold baggage. **This option was discounted.**
Option 2 – Status quo Maintain existing equipment. Accept regime of hand searching of bags. Unlikely to achieve regulatory compliance over a longer term.	The option to maintain the existing equipment does not meet the CSFs regarding the provision of a functioning 'Standard 3' system, with at least two 'Standard 3' EDS machines which can be operated independently of the associated equipment. A regime of hand searching some hold bags is likely to reduce baggage throughput from the minimum requirement of 580 bags/hour, to 100 bags/hour and such a drastic reduction in passenger throughput would negatively impact the airport's role as an enabler of the Bailiwick's economy. **This option was discounted.**
Option 3 – Do minimum Just meet DfT requirements. Install the already purchased 'Standard 3' machine as in-gauge. Utilise existing conveyors, carousel and building.	Installation of the already purchased 'Standard 3' machine as a direct replacement for the existing screening machine does not enable the minimum bag throughput of 580 bags/hour to be met, and two 'Standard 3' EDS machines with the functionality to operate independently of the associated equipment are not provided. The low bag throughput would negatively impact the airport's role as an enabler of the Bailiwick's economy, however this option would achieve compliance relatively quickly and at comparatively low cost. **Option Shortlisted.**
Option 4 – One machine solution, current footprint Install 1 new 'Standard 3' machine	Installation of one 'Standard 3' machine as in-gauge does not provide a solution that can meet the minimum baggage throughput requirement, nor does

as in-gauge with greater throughput capacity than the already purchased 'Standard 3' machine. Potentially modify conveyors and carousel. No building extension.	it provide two 'Standard 3' EDS machines which are capable of being able to operate independently of each other. The low bag throughput would negatively impact the airport's role as an enabler of the Bailiwick's economy. **This option was discounted.**
Option 5 – Two machine solution, current footprint Install two new 'Standard 3' machines (supporting both in-gauge and out-of-gauge) and potentially modify some conveyors and carousel within the existing building footprint. Utilise already purchased 'Standard 3' machine for interim solution, if required by DfT timeline.	Although more favourable than Options 1 – 4, this option is excluded because it does not enable the minimum required bag throughput of 580 bags/hour because the shorter conveyor lengths would not optimise bags for processing through the machinery. This would result in the machines not achieving their maximum throughput, and inefficiencies in the layout of the conveyor system will result in a higher 'reject rate' of bags which require manual intervention. This in turn would have a negative impact on the airport's role as an enabler of the Bailiwick's economy. **This option was discounted.**
Option 6 – Two machine solution, extended footprint. Install two new 'Standard 3' machines (supporting both in-gauge and out-of-gauge) and modify conveyors and carousel. Extend building. Utilise already purchased 'Standard 3' machine for interim solution, if required by DfT timeline.	Option 6 is the only one of the options presented which does not fail to meet any of the CSFs, and is therefore the preferred option for inclusion in the Short List. Option 6, to install two new 'Standard 3' machines with the modification of the conveyors and carousel, is the only option which allows for the minimum baggage throughput of 580 bags/hour which will ensure that peak passenger flows are not negatively affected. **Option Shortlisted.**

The Short List of Options

4.12 Two options from the long list were carried forward for more detailed consideration and evaluation in the short list. The details of the shortlisted options are provided here in Table 4 for clarity.

4.13 Short List Option 1 is not the preferred option. This option does not meet the Critical Success Factors to meet minimum bag throughput numbers or provide a resilient solution. Additionally, due to the location of the existing control system, power supplies and control rooms, maintaining a suitable HBS during the installation of new equipment as described in this option would be extremely challenging.

4.14 The preferred option, Short List Option 2, is the only one of the Long List options which does not fail to meet any of the project's Critical Success Factors, and therefore the only viable option in terms of meeting the project's Investment Objectives, as well as the strategic priorities of the airport as outlined in the Guernsey Airport Business Plan, and the policy priorities of the States as described in the Future Guernsey Plan.

Table 4: A Description of the Short List Options

Short List Option 1 (Long List Option 3) – 'Do minimum'. This option entails installing the already purchased hold baggage scanning machine as a direct replacement of the current in-gauge machine. This option would largely use the existing area available in the 'baggage out' area of the terminal building, utilising the existing conveyors and carousels, although some significant reconfiguration would be required. This option does not involve the wholesale replacement of the existing system but rather the replacement of just the hold baggage scanning machine and some of the feeding belts. This option would make Guernsey Airport compliant with the new regulations, however implementing this option would be highly problematic for a number of reasons as outlined in Table 3 and paragraph 4.13. This option has therefore been included in the short list as a benchmark to assess value for money, as it utilises the already purchased scanning machine, and is not the preferred option.
Short List Option 2 (Long List Option 6) – the preferred option. This option involves installing two new compliant hold baggage scanning machines, supporting both 'in-gauge' and 'out-of-gauge'. The conveyors and carousel would be modified with an extension to the building required in order for the system to work efficiently and meet the maximum peak bag throughput. The preferred option entails carrying out the works in a manner which would not preclude the cost-effective construction of a permanent building, in such that foundations installed should be suitable for a permanent multi-storey building and services (electrical power, water, drainage, communications etc.) are installed that are specified sufficiently to accommodate a larger building in the future. This is the only option which meets peak passenger throughput numbers, provides resilience in the event of a breakdown, and is able to cater for some future growth in passenger numbers, or changes in peak demand.

4.15 The capital costs for the shortlisted options are shown in Table 5. For Option 1, these costs relate to the cost of the already purchased hold baggage scanning device, the installation and implementation of the new machine. It is of note that ongoing revenue costs will be disproportionately higher than for Option 2, and there would be negative implications on the service provided should Option 1 have been implemented.

4.16 The capital costs of Option 2 include architectural, mechanical and electrical design services, project management and other fees; surveys, two hold baggage scanners, conveyors and associated control systems, training, building extension and alterations and site facilitation. In relation to the building extension, a number of assumptions have been made in order to provide an estimated cost. These assumptions are based on a similar construction and form as the main terminal building. Other lower cost options will be explored at the next stage of the project.

4.17 The costs outlined in Table 5 do not include operational expenditure costs, including maintenance over the 10 year lifespan of the machines, critical spares, utility costs and support costs.

Table 5: Capital Costs for each of the Shortlisted Options

Option 1 – 'Do minimum'	
Total	**£1.5million - £1.8million**
Option 2 – Two machine solution with building extension	
Total	**£10.5million - £12.0million**

Benefits of the Preferred Option

4.18 The main benefits of the preferred option can be summarised in that Guernsey Airport will have a regulatory compliant Hold Baggage Scanning Explosive Detection System (HBS EDS) which is reliable, resilient and can meet demand in peak periods. The system will be future proofed to account for increased passenger numbers, and will improve efficiencies providing better working practices for staff and stakeholders.

4.19 The key outcome of the benefits of the preferred option as detailed in the Strategic Outline Case, is the continued operation of Guernsey Airport, with continued or improved reputation and improved customer satisfaction. The beneficiaries identified are Guernsey Airport's passengers, Guernsey Airport, the States of Guernsey, the Ports security contractor, baggage handling agents and airlines.

5 Next Steps – Procurement Strategy and Outline Business Case

5.1 Phase 1 of the procurement process has commenced, with initial designs being sought from a limited number of DfT approved suppliers of aviation security scanners and hold baggage integrators.

5.2 The resulting responses from this phase of the procurement process will be used to further develop the Short List at Outline Business Case (OBC) stage. Further detailed options for analysis will be presented in the OBC. These options will be evaluated and the preferred option confirmed.

5.3 As this project is directly related to aviation security requirements, exemptions under local Planning legislation determine this be exempt from formal planning permission. The Board will however liaise with the Development and Planning Authority over its proposals.

5.4 To bring the project through these key stages will require specialist skills, supported by Client Project Management resources, with Airport Management staff oversight. Fees allow for project management resources to be contracted in to maintain the delivery timescales.

6 Funding of the Upgrade to the Hold Baggage Screening system

Approximate Project Costs

6.1 The estimated costs to carry out design, approvals and procurement prior to contracting for construction and implementation is estimated to be £665,000. Table 6 below, provides a summary of these costs. The States are asked to approve a sum of £665,000 for the Hold Baggage Screening system upgrade funded from the Capital Reserve, to fund all necessary steps for the development of the design stage and proposals for the procurement of Option 2.

6.2 Approximately £150,000 has already been spent in developing the project to the current stage, which is included in Table 6. These fees to date have been funded by the Ports as project initiation cost.

Table 6: Approximate Capital Costs to reach Contract Award stage

Project activity	Cost
Professional Fees for project initiation (funded through PHA)	£150,000
Architectural services	£195,000
Mechanical & Electrical Services Designer	£130,000
Site & Mechanical & Electrical Surveys	£60,000
Quantity Surveyor	£20,000
Client Project Manager	£30,000
Specialist Technical Consultant	£30,000
Regulatory Authority Approval fees	£10,000
Contingency	£40,000
Total	**£665,000**

Funding Options and Affordability

6.3 The STSB is sensitive to the issues which this request for urgent funding from the Capital Reserve could create. It has considered options for self-funding either by way of a loan or cash flow. These options include:

- Revenue raising measures through increased charges at the airport;
- Re-profiling of the current planned Ports Capital Portfolio;
- A combination of revenue raising and re-profiling of the Ports Capital Portfolio;
- Part-funding by the above measures in conjunction with a grant from the Capital Reserve.

The STSB is placing considerable effort into understanding the asset management requirements at all the ports, and by doing so is only now beginning to fully understand the scale of the considerable asset management challenge and associated Capital investment required to maintain essential services. Modelling of the Ports Capital Portfolio has identified a requirement for 60 other capital projects across the Ports, with predicted funding demands amounting to an estimated £20milion between the period 2020 – 2023. Included in this sum is an estimated spend of £11million directly relating to major infrastructure projects. A further allowance of up to £2million per annum in capital spend is estimated for 2024 onwards and reflects a typical pattern of historic capital investment. The estimated spend up to 2023 has been prioritised and the STSB does not agree that it would be sensible to re-profile the capital portfolio further at this juncture.

6.4 There were three options considered to fund the Hold Baggage System upgrade solution and associated building works ("Project"). Funding the Project through utilising cash reserves held in the PHA has been immediately discounted based on projected cash outflows. The predicted balance of the PHA as at 31 December 2019 is estimated to be £6.4million.

6.5 The next option considered obtaining a loan facility and an increase to the security charge levy in order to fund the principle and interest repayments. Over the course of the useful economic life of the assets the Ports would incur capital cash outflows of up to £12.0million and revenue cash outflows amounting to £2.1million over 10 years. Paragraph 6.6 demonstrates that the impact of passing on these capital costs would be unsustainable.

6.6 In order to fund the capital costs of this investment, an additional security levy to cover loan repayments, interest and increased operational costs would amount to a significant increase of £1.84 to the current levy of £2.35 per passenger movement. This represents an increase of 78% over 10 years, assumes passenger movements remain at the levels experienced in 2019 and a loan interest rate charge of 3.625%

per annum. Security charges at other airports are significantly lower than this as outlined in paragraph 2.6 of this Policy Letter. There will be implications of such an increased charge; including impacts on airfares as these charges are passed on by airlines to passengers and potentially on the viability of existing routes. A significant increase to the security charge is not in the best economic interest of the airport or passengers, nor is it in line with Guernsey Airports Business Plan which aims to increase passenger numbers and states "that fiscal demands must be met in such a way so as to ensure that airport charges are sustainable and that the level of charging does not make regular travelling too expensive."

6.7 More detailed funding models were reviewed for this project. This demonstrated that the impacts of loan funding, financed through an enhanced security levy as detailed in paragraph 6.6, versus the effect of Capital Reserve funding to be approximately equal. Both options clearly indicate that the Ports will need to continue to prioritize capital spend over the next 10 years and reduce it by at least £3.5million.

6.8 For the reasons outlined, the only feasible option available to fund the Project is to seek Capital funding up to £11.8million from the Capital Reserve, with the balance of £150,000 funded from the PHA.

6.9 The capital costs of the project (Option 2), estimated to be in the range £10.5million to £12.0million (including contingency), are proposed to be met by a capital vote from the Capital Reserve. The cost based on the proposed solution, represents the most advantageous option, which provides a reliable, compliant service capable of meeting peak passenger demand.

6.10 The States are asked, subject to the Policy & Resources Committee's approval of the Full Business Case, to direct that Committee to approve a capital vote of a maximum of £12.0million for the Hold Baggage Screening system upgrade project, funded from the Capital Reserve, in accordance with Option 2, including, professional fees and contingencies.

7 Timescale and Implementation Plan for the Preferred Option

7.1 It is aimed that the project will be completed by the end of September 2021, following the necessary procurement processes, regulatory and political approval timescales. In the short term (to 2021) it will be necessary to continue regular maintenance of the present Hold Baggage Scanning system.

7.2 It should be noted that should an extension to a September 2021 deadline not be granted by the Regulator, it may be necessary to implement a temporary hold baggage screening system. This temporary solution is being reviewed and would involve some use of the 'Standard 3' device already purchased. Costs associated with such a temporary solution will be mostly labour related, due to the necessity to manually feed hold luggage through the 'Standard 3' machine. For clarity, the costs of such a temporary system have not been included in the cost appraisal for this project, but will be met by the airport, and if necessary recovered from a small increase in the existing security charge.

7.3 The Hold Baggage Screening Project has the following key milestones and outline target dates for delivery of the preferred option, listed in Table 7:

Table 7: Key Milestones

Milestone activity	**Target date**
Meeting of the States of Deliberation	22nd April 2020
OBC approval	May 2020
PAR 2 Gateway Review	June 2020
FBC approval	August 2020
PAR 3 Gateway Review	September 2020
Enter into contract	October 2020
Project completion	September 2021
PIR (Project Implementation Review)	Mid 2022

7.4 There are a number of key milestones where there are risks that the project will need to manage and mitigate. In order for the project to move from one stage to the next, the requisite approvals will be required from the relevant Boards.

8 Consultation

8.1 Both internal and external stakeholders were identified at an early stage of the project. To date, there have been a number of stakeholder briefings with key stakeholders. Workshops have been held with key stakeholders to determine the Investment Objectives and Critical Success Factors. Each of the Long List Options was appraised against the Investment Objectives and Critical Success Factors in order to determine the preferred option.

8.2 The Programme Board has included within its membership a Business Advisor to the Ports Board, as well as senior civil servants.

8.3 A Project Assurance Review has been undertaken, to review the SOC (including the development of the short list and the preferred option) and to provide assurance at this key stage of the project.

8.4 The review has confirmed an overall Amber/Red status. This status reflects a number of uncertainties identified at the time of the review, including the ultimate source of funding, how the design of the HBS will influence the building layout, Regulatory issues, further clarification on the Strategic Outline Case (SOC) and the costs and provision of additional project resources. The outcomes of this review are being actioned by the Project Team as a priority.

8.5 The SOC was considered and approved by the Ports Board on 13th January, 2020 and by the STSB on the 23rd January, 2020.

8.6 The Law Officers of the Crown are being consulted on the possible contracts with suppliers and contractors.

8.7 The Law Officers of the Crown have been consulted on this Policy Letter.

8.8 Security provision at Guernsey Airport is licensed by the States of Guernsey's Director of Civil Aviation (DCA). The DCA utilises the UK Civil Aviation Authority to undertake regular audits of security provision at Guernsey Airport against UK standards. The DCA has provided a letter of comment which is included at Appendix 1.

8.9 Following completion of the SOC, two further workshops have been carried out with key internal and external stakeholders in order to inform the Outline Business Case. The first of these workshops ratified, analysed and ranked the main project benefits and the second workshop ratified, analysed and ranked the main project risks.

8.10 Further consultation, workshops and stakeholder briefings will be arranged during the course of the project in accordance with the Project's Communication Strategy.

9 Conclusions

9.1 In view of the current situation, and in line with regulatory requirements, work on the preferred option is continuing without delay, including the first stage of procurement for the hold baggage scanners and hold baggage integrators.

9.2 The preferred option, Option 2, will provide Guernsey Airport with a Hold Baggage Screening solution which is compliant with relevant regulation, meets peak passenger demand, is reliable and resilient.

9.3 The capital expenditure required for this project is not affordable if funded from the Ports Holding Account or through obtaining a loan. The States are therefore asked to approve a capital vote of a maximum of £12.0million funded from the Capital Reserve with a PHA contribution of £150,000.

10 Compliance with Rule 4

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

10.2 In accordance with Rule 4(2), the STSB is requesting that the States schedules debate of this Policy Letter at their meeting commencing on the 22nd April, 2020.

10.3 In accordance with Rule 4(3), the Propositions are clear about the financial implications to the States of the STSB's proposals and these are explained in much greater detail in this Policy Letter.

10.4 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 received majority support of the STSB, noting that Deputy Roffey was elected to the Board on 26th February, 2020 and had not yet been briefed on the detail of this Policy Letter when it was published.

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

10.6 The preparation and agreement of the Propositions and content of the Policy Letter has involved consultation with the Policy & Resources Committee.

Yours faithfully

States' Trading Supervisory Board

P T R Ferbrache
President, STSB

J C S F Smithies
Vice President, STSB

S J Falla MBE
J C Hollis
Non-States Members, STSB

APPENDIX 1

Bailiwick of Jersey ◇ Bailiwick of Guernsey

DCA Office of the Director of Civil Aviation

Terminal Building
Guernsey Airport
La Villiaze
Forest
GY8 0DS

Telephone +44(0)1481 236629
Mobile +44(0)7839 264080

dominic.lazarus@cidca.aero

14th February 2020

Head of Aviation Services
Guernsey Airport
Control Tower Building
La Villiaze
Forest
Guernsey
GY8 0DS

14th February 2020

GUERNSEY AIRPORT HOLD BAGGAGE SCREENING UPGRADE

As the Director of Civil Aviation and as such, responsible for aviation security and safety matters in the Channel Islands, I write in respect of Guernsey Airport's requirement to upgrade its Hold Baggage Screening (HBS) Explosive Detection System in order to meet current regulatory compliance.

You will of course be aware that the United Kingdom Department for Transport (DfT) wrote to all UK airports in mid-2014 to advise of a requirement to upgrade to standard 3 HBS screening equipment by 1st September 2018. Guernsey Airport is classed as a UK 'Domestic' airport for the purposes of aviation security regulation and to that end the standards that apply are common throughout the UK and includes the Crown Dependencies.

I understand from updates received from you and with engagement with the Head of International Aviation Security, Policy and Regulation at the UK Department for Transport (DfT), that Guernsey Airport has sought an alleviation and is proactively engaged with the DfT and the Civil Aviation Authority to agree a further extension date for the implementation of a compliant solution to this requirement.

I am therefore writing to confirm the necessity for an upgrade to Guernsey Airport's Hold Baggage Screening Explosive Detection System (HBS EDS) to Standard 3, in order to meet regulatory compliance.

Please continue to keep this office appraised of progress as you continue with this essential project.

Yours Faithfully,

Dominic Lazarus
Director Civil Aviation

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

STATES TRADING SUPERVISORY BOARD

GUERNSEY AIRPORT HOLD BAGGAGE SYSTEM UPGRADE

Deputy Gavin St Pier
The President, Policy & Resources Committee
Sir Charles Frossard House
La Charroterie
St Peter Port

2 March 2020

Dear Sir,

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, the STSB requests that the Propositions be considered at the States' meeting to be held on 22 April 2020.

It is important that the Policy Letter for the upgrade of the existing Guernsey Airport Hold Baggage System is considered as soon as possible, as we cannot rule out sanctions placed against the Airport in terms of its regulatory compliance, whilst the existing hold baggage system remains in use. Seeking endorsement of this project from the States within the current term would enable the next stages of the project to proceed without further delay and would demonstrate a clear commitment to the Aviation Security Regulator.

Yours faithfully,

P Ferbrache

P T R Ferbrache
President
States Trading Supervisory Board

P.2020/42

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* HEALTH & SOCIAL CARE

MODERNISATION OF THE ABORTION (GUERNSEY) LAW, 1997

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled 'Modernisation of the Abortion (Guernsey) Law, 1997', dated 2nd March, 2020 they are of the opinion:-

1. To agree to repeal section 1(a) of the Abortion (Guernsey) Law, 1997 ("the Law"), and any other statutory criminal offence relating to a woman ending or attempting to end her own pregnancy that is in similar terms.

2. To agree to remove the requirement in the Law for a second medical practitioner to be of the opinion required by section 3(1) of the Law.

3. To agree to amend the Law to remove the gestational threshold for abortion procedures falling within section 3(1)(c) of the Law, as described in paragraph 5.29 of this Policy Letter.

4. To agree to amend the Law to increase the gestational threshold to twenty four weeks for abortion procedures falling within section 3(1)(d) of the Law, as described in paragraph 5.29 of this Policy Letter.

5. To agree that professional practice guidance should be issued in respect of the method of calculation of gestational age for the purposes of the Law.

6. To agree to amend the Law to provide for registered nurses and registered midwives to be permitted to perform medical abortion procedures.

7. To agree to remove the requirement in the Law for medical abortions to take place only at the Princess Elizabeth Hospital.

8. To agree to amend the Law to provide that health practitioners who choose to conscientiously object to providing care in relation to abortions shall be required to make a referral without delay to another health practitioner without such objection.

9. To agree to amend the Law to make clear that health practitioners may not refuse to participate in care required to save the life or prevent serious injury to the physical or mental health of a woman.

10. To agree to create a power in the Law for the Committee *for* Health & Social Care to make regulations making further provision in relation to the circumstances in which the right of health practitioners to conscientiously object to the provision of care in relation to abortions may be exercised.

11. To agree to amend the requirement in the Law to notify the Medical Officer of Health of abortions to a requirement to so notify the Director of Public Health.

12. To direct the preparation of such legislation as may be necessary to give effect to the above decisions, including any necessary consequential, incidental or supplementary 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

COMMITTEE *FOR* HEALTH & SOCIAL CARE

MODERNISATION OF THE ABORTION (GUERNSEY) LAW, 1997

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

2nd March, 2020

Dear Sir

1 Executive Summary

1.1 The Committee *for* Health & Social Care's ambition to provide good quality health and care services to all islanders is set out in the 'Partnership of Purpose' Policy Letter (Billet d'État XXIV of 2017[1]), which was approved by the States of Deliberation in December 2017. This Policy Letter acknowledged, among other things, the importance of effective regulation to maintain the safety of services and of delivering fair access to care which values, respects and centres on the needs and wishes of the service user.

1.2 It is with these principles in mind that the Committee has taken seriously the concerns raised by some local practitioners regarding the impact of the Abortion (Guernsey) Law, 1997 (the 'Law') on their clinical practice. A subsequent review of the Law and a comparison of abortion legislation in comparable jurisdictions has highlighted various problems ranging from:

- i) abortion provision being more restrictive than other medical procedures and compared with other jurisdictions;
- ii) a lack of legal clarity in some areas; and
- iii) the criminalisation of women who procure, or attempt to procure, an abortion of their own pregnancy outside of the legal framework.

1.3 In addition, a number of minor modifications are required to reflect modern practice and to 'future proof' the Law.

---

[1] Committee *for* Health & Social Care - 'A Partnership of Purpose: Transforming Bailiwick Health and Care'- Billet d'État XXIV of 2017

1.4 Abortion is a regulated health procedure, with the circumstances in which it can occur prescribed in the Law. However, many of the legal conditions that must be met in order for a procedure to take place are now considered to be outdated and disparate with other areas of care within the health service.

1.5 The Committee has had robust but respectful debates on each of the areas for change set out in this Policy Letter and has taken into consideration the views of local health professionals and members of the public. Having further considered the available evidence and general feedback received, the Committee recommends that a number of amendments are made to the existing Law to address the issues that have been identified. Further information is provided in Section 5 of this Policy Letter.

1.6 It is recommended that the Law should be updated to remove the legal requirement for a woman to consult with two medical practitioners prior to being able to access the health care service that she needs. It is considered that the requirement to consult with a second medical practitioner before being referred to the Medical Specialist Group is an unnecessary step that may prevent a woman receiving the care she requires and may not be affordable for all.

1.7 It is also recommended that, based on the advice and evidence from the medical profession, the current gestational thresholds set out in section 3(1)(c) and (d) in which abortion procedures can take place are increased. Section 3(1)(c) refers to abortion procedures that can be undertaken when there is a diagnosis of fetal anomaly, whereas procedures that are certified under section 3(1)(d) are those that are performed to protect the health of the woman or her existing children.

1.8 The Law is currently insufficiently clear in some areas about actions that are permitted and those which are not, which, in some circumstances, creates significant uncertainty for clinicians and pregnant women. Therefore, it is recommended that the updated Law should provide suitable clarity to guide operational practice.

1.9 The Committee also recommends that any criminal offence relating to a woman who procures an abortion outside of the remit of the Law is removed from the legislation. For the avoidance of doubt, providing unregulated abortion services would remain illegal, but the women who use those services would not themselves be subject to criminal penalties. Nor would women who attempt to induce their own abortion be punished for it.

1.10 In order to reflect modern practice that enables early abortions to take place at home, it is proposed that the legal requirement for abortions to occur only at the Princess Elizabeth Hospital, should be removed from the Law and other health professionals who actively take part in abortion care should be recognised formally in the legislation. This reflects the fact that some medical (that is, nonsurgical) abortion procedures can be initiated by medication, administered by a qualified clinician, and then completed safely in the privacy of a woman's own home.

1.11 Conscientious objection refers to the right of health professionals to choose to opt out of providing abortion care because of personal beliefs. There is currently only one situation, where a pregnant woman's life is at risk, where no professional can refuse to provide care. The Committee wishes to make it clear, as it is in other jurisdictions, that the right to conscientious objection shall not extend to supportive care, which is needed to prevent serious injury to a woman's health, and which is not part of the abortion procedure itself. Where the right to conscientious objection does apply, the Committee considers that the Law must also include a duty to refer on to an equivalent practitioner without such an objection. The Committee recommends the creation of a suitable regulation-making power in the Law to enable further provision to be made in respect of conscientious objection, to ensure that there is clarity in this area.

1.12 In anticipation that the statutory office of Medical Officer of Health is to be discontinued in the future, as previously agreed by the States[2], the Committee recommends that routine notification of abortion is instead made to the Director of Public Health and that this be captured in the amended Law.

1.13 The Committee has consulted on the issues raised during the review of the Law with a wide range of qualified health professionals locally, who overwhelmingly support the recommendations set out in this Policy Letter.

1.14 The Committee has also engaged with members of the public, via small group consultation. Those who participated were generally surprised at the differences between the laws in Guernsey and England and the tiered system that they create in terms of access to care. It was felt that implementing the recommendations to modernise the Law is both important and worthwhile.

1.15 The existing abortion law applies only to Guernsey. It would be the Committee's intention, upon agreement to the recommended legislative changes set out in this Policy Letter, to consult with the States of Alderney and Chief Pleas in Sark as to whether the Law should have force in those jurisdictions.

2 Strategic context

2.1 The 'Partnership of Purpose' Policy Letter (Billet d'État XXIV of 2017) acknowledges, among other things, the importance of effective regulation to maintain the safety of services and of delivering fair access to care which values,

[2] Committee *for* Health & Social Care – 'A Partnership of Purpose: Transforming Health and Care' - Billet d'État XXIV of 2017

respects and centres the needs and wishes of the service user.

2.2 The review of the Law, which was highlighted in the Committee's 'Health & Wellbeing' Policy Priority Area update to the States in June 2019[3], considers the legislation in this context and aims to ensure that women who require access to abortion services are able to do so without undue restrictions.

2.3 The Partnership of Purpose sets out an ambitious programme to transform health and care services in the Bailiwick, based on the following aims:

- **Prevention**: supporting islanders to live healthier lives;
- **User-centred care**: joined-up services, where people are valued, listened to, informed, respected and involved throughout their health and care journey;
- **Fair access to care**: ensuring that low income is not a barrier to health, through proportionate funding processes based on identified needs;
- **Proportionate governance**: ensuring clear boundaries exist between commissioning, provision and regulation;
- **Direct access to services**: enabling people to self-refer to services where appropriate;
- **Effective community care**: improving out-of-hospital services through the development of Community Hubs for health and wellbeing, supported by a Health and Care campus at the PEH site delivering integrated secondary care and a Satellite Campus in Alderney;
- **Focus on quality**: measuring and monitoring the impact of interventions on health outcomes, patient safety and patient experience;
- **A universal offering**: giving islanders clarity about the range of services they can expect to receive, and the criteria for accessing them;
- **Partnership approach**: recognising the value of public, private and third sector organisations, and ensuring people can access the right provider; and
- **Empowered providers and integrated teams**: supporting staff to work collaboratively across organisational boundaries, with a focus on outcomes.

2.4 With reference to the above, the proposals set out in this Policy Letter aim to ensure fair access to care which meets the needs of the service user. Some of the provisions of the existing Law are considered to be in conflict with the above, as set out in this Policy Letter.

3 Reproductive health in Guernsey

3.1 The World Health Organization (WHO) states '*reproductive health addresses the*

[3] 'Policy & Resource Plan - 2018 Review and 2019 Update' – Billet d'État IX of 2019

reproductive processes, functions and systems at all stages of life. Reproductive health, therefore, implies that people are able to have a responsible, satisfying and safe sex life and the capability to reproduce and the freedom to decide if, when and how often to do so.'[4]

3.2 Reproductive services in the Bailiwick help to achieve this for many through local services that are available through collaborative working delivered by Public Health Services, Primary and Secondary Care, and third sector agencies. Abortions form an important part of reproductive health services alongside the provision of information and education, contraceptive services and screening for sexually transmitted infections or disease and their treatment. In their entirety, these services work towards enabling women to exercise body autonomy and choose freely whether and when they wish to have a family.

3.3 In its efforts to focus on prevention services, the Committee is especially proud to have worked with the Committee *for* Employment & Social Security to introduce free contraception for under-21s in Guernsey and Alderney in 2018. This bespoke service for young people is complemented by Sexual Health and Relationship Education (SHARE) delivered by Specialist Nurses in schools. There are a small number of conceptions in girls aged under 16 and under 18 years annually, approximately half of which currently end in an abortion procedure. Although the service will need to be in place for some time before any sustained changes can be observed, it is hoped that the introduction of free contraception will support young people to choose a method of contraception that is suitable for them and will help to reduce the likelihood of an unwanted pregnancy.

3.4 Despite the importance of contraceptive services, there remains a need for safe, accessible abortion services. Contraception does not provide 100% efficacy in preventing conception; male and female sterilisations may fail; a fetus can develop a condition that is not compatible with life, and women can be victims of reproductive coercion and domestic violence where the continuation of pregnancy would unite them indefinitely with their abuser.

3.5 The abortion rate in Guernsey and Alderney for the most recent reporting period (2017-2018) shows an average of 10.7 procedures per 1,000 women and girls aged 15 to 44 years.[5] The three-year rolling average rate has been largely stable since the 2008-2010[6] reporting period and is consistently lower than both

---

[4] http://origin.who.int/topics/reproductive_health/en/

[5] Public Health Intelligence Unit, States of Guernsey. Guernsey Abortion Statistics Summary 2017-18. Guernsey

[6] Public Health Services, States of Guernsey. Health Profile for Guernsey and Alderney 2013–2015. Guernsey

England and Wales (17.4 per 1,000 women and girls ages 15-44 years in 2018).[7]

3.6 However, evidence shows that abortions occur as frequently in the most legally-restricted countries as those with the least prohibitive measures. Legal restrictions therefore do not lower the number of abortion procedures performed, but rather increase the proportion of those that are performed unsafely[8]. It may be the case that due to the current restrictions on abortion provision in Guernsey, some women feel driven to access unsafe services such as buying abortifacients (abortion pills) online, although this cannot be quantified.

3.7 It is therefore considered important to ensure that the legal framework governing this procedure ensures that services are accessible, well-regulated and safe.

4 The Abortion (Guernsey) Law, 1997 (the 'Law')

4.1 As above, abortion is a carefully regulated and circumscribed, but wholly necessary, part of the range of reproductive health services provided in Guernsey. The variety of reasons why a woman may feel unable to continue with a pregnancy are broad and the decision as to whether to have an abortion or not is often a deeply personal judgment, far better made by the pregnant woman herself than by the State or others.

4.2 Section 3(1) of the Law provides that abortion is legal only if, in the circumstances set out in paragraph 4.3 -

a) *the termination is immediately necessary to save the life of the pregnant woman;* or
b) *the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman;* or
c) *the pregnancy has not exceeded its twenty-fourth week and that, at the time of the diagnosis, there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped;* or
d) *the pregnancy has not exceeded its twelfth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant*

---

7 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/808556/Abortion_Statistics__England_and_Wales_2018__1_.pdf

8 Ganatra, B; Gerdts, C; Rossier, C et al (2017). Global, regional, and subregional classification of abortions by safety, 2010-2014: estimates from a Bayesian hierarchical model. *The Lancet.* 390 (10110), p2372-2381.

woman or any existing children of her family.

4.3 Two recognised medical practitioners[9] must confirm that the circumstances of the woman seeking an abortion satisfy one of these four categories. The procedure must be carried out by a recognised medical practitioner and it must take place at the Princess Elizabeth Hospital or another approved location. The Law gives all practitioners the right of conscientious objection, where they can refuse to provide care based on personal reasons.

4.4 In all other instances, carrying out an abortion is illegal and is punishable upon conviction by up to life imprisonment, including if a woman should attempt to perform an abortion on herself. The supply of substances or instruments for use in an abortion outside of the four categories described above is punishable by up to three years in prison.

5 Current issues with the Law

5.1 The Committee has been made aware of various problems relating to the existing Law ranging from: i) abortion provision being more restrictive than other medical procedures and compared with other jurisdictions, ii) a lack of legal clarity in some areas, and iii) the criminalisation of women who procure, or attempt to procure, an abortion outside of the legal framework. A number of minor modifications are also required to reflect modern practice and to 'future-proof' the Law.

5.2 These issues will be discussed in this Section of the Policy Letter, along with the Committee's recommendations for change.

i) Restrictions on abortion provision

a) The requirement for two medical practitioners to certify abortions

5.3 In all of the prescribed circumstances set out in (a) to (d) above, a woman who wishes to end her pregnancy must first consult with two medical practitioners who will assess her circumstances and approve her request under one of the four categories in section 3(1) of the Law, prior to referring her to a third medical practitioner – a gynaecologist employed by the Medical Specialist Group.

5.4 When the Abortion Act 1967 (the 'Abortion Act') was enacted in England, Scotland and Wales, it was believed that the requirement for two medical practitioners to certify abortions was to provide a safeguard to both women and

---

[9] "recognised medical practitioner" means a recognised medical practitioner within the meaning of The Doctors, Dentists and Pharmacists Ordinance, 1987.

healthcare professionals, ensuring procedures were performed safely and within the scope of the law.

5.5 There are calls from health bodies, such as the British Medical Association (BMA), to remove this requirement from abortion laws because it is operationally unnecessary and out of step with all other medical and surgical procedures. No other procedure, regardless of the complexity or extent of the treatment, requires consultation with two separate medical practitioners before a referral can even take place. Furthermore, the legal necessity to do this incurs an additional cost, over and above that required for referral to other secondary care services. This may not be achievable for some women in our community and therefore presents a direct financial barrier to accessing care.

5.6 The WHO highlights that '*whether abortion is legally restricted or not, the likelihood that a woman will have an abortion for an unintended pregnancy is about the same*.'[10] It identifies that practices such as requiring third party authorisation from one of more medical professional or hospital committee serves no purpose other than compelling a woman to seek an unsafe abortion, defined as '*a procedure for terminating an unintended pregnancy carried out either by persons lacking the necessary skills or in an environment that does not confirm to minimal medical standards, or both.*'

5.7 Furthermore, the UK House of Commons Science and Technology Committee has deduced that certification from two doctors does not provide any meaningful safeguard or other useful purpose but actually causes unnecessary delays in access to care and therefore recommends removing this requirement[11].

5.8 Abortion falls within the medical speciality of Obstetrics and Gynaecology. The Royal College of Obstetricians and Gynaecologists (RCOG) believes that '*the current need for two doctors' signatures to certify that a woman is approved to undergo an abortion is anachronistic. There are no other situations where either competent men or women require permission from two third parties to make a personal healthcare decision. Individual doctors are able to provide the assessment in the same way as when they treat their patients without the need to consult another doctor*.'[12]

5.9 Doctors assess the suitability of a patient to a procedure or treatment on a daily basis and take into consideration relevant family and medical history, current

[10] World Health Organization (2015). Safe abortion: Technical & policy guidance for health systems. WHO: Geneva.

[11] https://publications.parliament.uk/pa/cm200607/cmselect/cmsctech/1045/1045i.pdf

[12] https://www.theguardian.com/world/2017/oct/05/make-access-to-abortion-easier-uks-top-obstetrician-demands

circumstances and symptoms, appropriateness or eligibility to treatment and possible outcomes. This continual assessment is required to complete a variety of tasks, such as the prescribing of a medication, to complex major surgeries such as a heart bypass or organ transplantation. As is the case with any treatment or procedure, doctors provide patients with all of the necessary information to enable them to make an informed decision to ensure the promotion of their health and wellbeing. It is therefore considered illogical and unjust to apply different access and assessment criteria for a woman to access an abortion procedure compared with all other medical or surgical treatments.

5.10 The National Institute for Health and Care Excellence (NICE) published comprehensive guidance on abortion care in September 2019, making recommendations for commissioners and providers of abortion services. One of the key recommendations contained within the guidance is to allow women to self-refer to abortion services[13]. The Isle of Man has enacted progressive abortion legislation (Abortion Reform Act 2019, the 'Isle of Man Act') that enables a woman to end her pregnancy without the need to consult with any medical practitioner up until 14 weeks of gestation, instead accessing medication directly from her pharmacist. Beyond this time, consultation is only required with one doctor, as is the case with any other secondary care service.

5.11 Whilst the Committee is not presently suggesting to reproduce the Isle of Man approach at this time, it considers that there is no evidence to support the continuation of the practice that requires consultation and permission from two medical practitioners before a referral can be made to secondary care. This strongly conflicts with the principles of user-centred and fair access to care.

5.12 Abortions under the provision of section 3(1)(a) of the Law, are those where a procedure is required immediately to save the life of a woman. The Committee considers it especially inappropriate that a medical practitioner should be legally required to seek a second opinion before referring a woman for emergency treatment.

5.13 The Committee recommends that the Law is amended so that women are only required to consult with one medical practitioner should they wish to have an abortion (Proposition 2).

b) Gestational thresholds

5.14 As described above, abortions can take place legally in Guernsey when the circumstances of the woman who wishes to end her pregnancy satisfy one of the categories set out in section 3(1) of the Law. Under sections 3(1)(c) and (d), pregnancy must not have exceeded a prescribed gestation period, as described

[13] https://www.nice.org.uk/guidance/ng140/chapter/Recommendations

below.

Section 3(1)(c)

5.15 Procedures that are prescribed under section 3(1)(c) refer to those where a fetal anomaly has been diagnosed. This includes syndromes that are not compatible with life, where, in the absence of access to abortion, a woman would be forced to bring a pregnancy to term and give birth, knowing that the child would not survive. This is an extremely cruel and traumatic alternative. It also includes syndromes that are life-limiting, where a child may be in need of constant medical intervention; which may lead the woman or family to consider whether they are practically, financially or emotionally able to raise a child in those circumstances, or how it would affect their ability to care for existing children.

5.16 Section 3(1)(c) abortions are only legal in Guernsey when the gestation of the pregnancy has not exceeded 24 weeks, a threshold which does not exist in England, Wales, Scotland or the Isle of Man. This poses a number of practical issues locally.

5.17 The recognition of fetal anomalies relies on antenatal screening programmes, using both maternal serum screening (i.e. blood tests) and ultrasound scanning. Structural abnormalities are usually detected during a routine ultrasound scan that takes place between 18-20 weeks gestation, where the detection rate of significant abnormalities is only around 50%. Confirmation of suspected malformations will be made during further especially arranged scans at 22 weeks gestation and the complex testing needed to assist with a diagnosis and prognosis inevitably requires laboratory analysis, the results of which may take days or weeks to become available. This scenario creates time restraints and unnecessary additional difficulty in decision making that is unfairly led by legal requirements rather than health and wellbeing considerations for the woman. There are also some situations whereby the prognosis of certain abnormalities does not become clear until after 24 weeks of pregnancy[14].

5.18 For example, ventriculomegaly is characterised by dilation of the fetal cerebral ventricles and while in its mildest form can be benign, it can also be associated with genetic, structural and neurocognitive disorders leading to severe impairment.[15] The prognosis for mild ventriculomegaly poses uncertain significance at 24 weeks, with a true prognosis becoming clearer at a later

[14] https://www.rcog.org.uk/globalassets/documents/news/position-statements/rcog-new-legal-framework-for-abortion-services-northern-ireland.pdf

[15] Fox, N; Monteagudo, A; Kuller, J; Craigo, S and Norton, M (2018). Mild fetal ventriculomegaly: diagnosis, evaluation, and management. *American Journal of Obstetrics and Gynecology*. 219 (1), pB2-B9

gestational age[16].

5.19 While local doctors estimate that a situation such as this occurs approximately once every eight years, in practice it means that clinicians and women are currently placed under undue pressure and anguish to advise and make decisions to ensure compliance with the Law, without all of the necessary information to make an informed decision in what is already a significant and very sad situation.

Section 3(1)(d)

5.20 Procedures that are certified under section 3(1)(d) of the Law are performed when there is a risk to a pregnant woman's health, or that of any of her existing children, as long as the pregnancy has not exceeded 12 weeks of gestation. This upper gestational limit is inconsistent with the Abortion Act and the recently enacted legislation in the Isle of Man, which allow abortion in these circumstances up to 24 weeks of gestation.

5.21 In England, Scotland and Wales, where the threshold for procedures certified under this category has been 24 weeks of gestation since 1991, the proportion of procedures performed at 12 weeks of gestation or earlier has remained broadly similar since 2008. Over 90% of abortions are performed before the twelfth week of pregnancy is reached. While it is expected that an increase in the gestational threshold locally would produce similar data, it is considered that the current restrictions that are in place are likely to have a detrimental impact on the most vulnerable and disadvantaged women in Guernsey.

5.22 There is often a presumption that the timing of an abortion is always within the control of a woman and that later abortions could be avoided, but there are many reasons, in addition to the current legal barriers, that can prevent women from accessing abortion services early on. A sudden change in circumstances, such as the death of a family member or relationship breakdown, may influence a woman's decision as to whether she can continue with a pregnancy, even if the pregnancy had been planned.

5.23 Poor health, whether through sudden onset, gradual deterioration or an exacerbation of symptoms due to pregnancy may also influence a woman's decision as to whether she can continue with her pregnancy or not. These changes in health condition will not always be immediately apparent.

5.24 Experience in England and Wales suggests that one in every four women experience domestic abuse during their lifetime[17] and are more likely to have an

---

[16] NHS Mid Cheshire Hospitals (2018). *Guide to fetal ventriculomegaly. Important information for patients.*

[17] https://www.nhs.uk/conditions/pregnancy-and-baby/domestic-abuse-pregnant/

unwanted pregnancy due to sexual violence, disapproval of contraceptive use by their partner or inability to negotiate condom use for fear of violence[18]. Locally, Law Enforcement has seen an increase in the number of victims willing to come forward in recent years resulting in rising numbers of complex domestic abuse cases.[19] Violent relationships are marked by coercion and the controlling behaviour of partners, making attendance at appointments without detection difficult, even without urgent time restrictions.

5.25 Presently, if a woman has decided that she wants to end her pregnancy and her circumstances meet the clinical criteria for an abortion (i.e. there are concerns for her health) but she has needed more time to access the care that she needs or to reach her decision and her pregnancy has subsequently passed 12 weeks, she can have an abortion in the UK if she is able to make such arrangements for herself and pay for this treatment privately. It is likely that this option would not be financially possible for many and so a two tier system based on ability to pay is currently in operation.

5.26 The British Pregnancy Advisory Service (BPAS) is a charity that provides abortion care as part of a woman-centred service that advocates for reproductive choice and autonomy. BPAS operates from more than 70 healthcare clinics across England, Scotland and Wales and is commissioned by the National Health Service (NHS) to provide specialist abortion advice and treatment. Nearly all of their service users have their care paid for by the NHS, but they also offer a private service.

5.27 Figure 1 below shows the cost of abortion procedures that are available in England on a private basis to Guernsey residents. A small discount is provided by BPAS in recognition that local women will also be required to pay for travel and accommodation expenses in addition to the procedure cost.

Figure 1: Cost of abortion procedures provided by the British Pregnancy Advisory Service

	Cost		
	UK residents*	**UK residents who choose private care**	**Guernsey residents**
Medical abortion procedures			
up to 10 weeks	£0	£480	£450
11-24 weeks	£0	£1510	£1410
Surgical abortion procedures			
up to 14 weeks	£0	£680	£450

[18] www.who.int/reproductivehealth/publications/violence/9789241564625
[19] www.guernsey.police.uk/annualreports

14-18 weeks	£0	£900	£670
19-24 weeks	£0	£1510	£1410

*cost met by the NHS

5.28 The current gestational threshold in the Law not only increases the vulnerability of already disadvantaged women in the community and complicates decision making but again presents disparity in service provision for service users in Guernsey compared with those in England, Scotland, Wales and the Isle of Man. The current situation is not aligned with the principles of the Partnership of Purpose for transforming health and care; in particular, ensuring, among other things, that low income is not a barrier to health and that access to services is fair.

5.29 The Committee therefore recommends that, consistent with the position in England with whom Health & Social Care shares clinical pathways, there is: (i) no upper limit on the gestation at which a pregnancy can be ended when a significant fetal abnormality is detected under section 3(1)(c) of the Law (Proposition 3); and (ii) that the current threshold for abortions under section 3(1)(d) of the Law is increased to 24 weeks gestation (Proposition 4).

Calculation of gestational age

5.30 Gestational age refers to a measurement, in weeks and days, to describe the stage that a pregnancy has reached. It is calculated via detailed anatomical measurements taken during an ultrasound scan (sonography) examination.

5.31 The Law does not currently prescribe how gestational age is calculated. However, on the basis that two of the abortion categories in section 3(1) of the Law refer to gestational thresholds within which a procedure can take place, the Committee considers that there should be greater clarity in this respect. As the method of calculating gestational age is a technical matter, it would be the Committee's intention to address this by the issue of appropriate professional practice guidance, which can be updated from time to time as appropriate (Proposition 5). It may be appropriate to amend the Law to provide expressly for the issue of such guidance.

ii) The criminalisation of women who procure, or attempt to procure, an abortion in relation to their own pregnancy

5.32 This Policy Letter and the changes it recommends will ensure that women are able to access regulated, safe abortion services. The changes also endeavour to improve equality of access. The Committee does however recognise that, in rare cases, a woman may not able to access these services for a range of logistical, economic and social reasons and may seek to perform an abortion on herself, for example, by purchasing medication online. This is currently an offence in the existing Law and a woman is liable to up to life imprisonment upon conviction.

5.33 The Committee is acutely aware that the criminal sanctions that surround the procedure may indeed prevent some women from accessing services in the first place and believes that any decision to self-induce an abortion outside of the safety of Health & Social Care services will be made by a woman who may already find herself in a desperate situation, for whom criminalisation would only further adversely affect wellbeing. While the criminal sanction remains in the Law there is also a risk that a woman who experiences complications from the use of abortifacients, now widely available online, may not seek timely emergency medical care.

5.34 The decriminalisation of women in respect of abortion is strongly supported by the BMA,[20] the RCOG,[21] the Royal College of Midwives (RCM)[22] and the Royal College of Nursing (RCN),[23] amongst others, and their recommendations have been recognised in the Republic of Ireland whereby offences for procuring an abortion outside the provisions contained within the Health (Regulation of Termination of Pregnancy) Act 2018 (the 'Irish Act') do not extend to a pregnant woman in respect of her own pregnancy.

5.35 The Committee hopes that the changes recommended within this Policy Letter will make it even less likely that a woman living locally would feel that her only available option is to attempt to end her own pregnancy in such a manner. However, following the advice of the above professional bodies and the example of the Irish Act, the Committee considers it appropriate to repeal section 1(a) of the Law so that in the few instances where they do, they are not criminalised. It is possible that there are extant, archaic provisions on the statute book which are of a similar effect to section 1(a), and if any such are identified in the course of preparing the amendments they too should be repealed (Proposition 1).

iii) Modifications to reflect modern practice and 'future-proof' the Law

a) Location of abortion services

5.36 Section 3(2) of the Law provides that –

Any treatment for the termination of pregnancy must be carried out in the

---

[20] British Medical Association (2019). *The removal of criminal sanction for abortion: BMA Position Paper*. London: BMA.

[21] https://www.rcog.org.uk/en/news/rcog-backs-decriminalisation-of-abortion/

[22] https://www.rcm.org.uk/media/2296/abortion-statement.pdf

[23] The Royal College of Nursing. *Decriminalisation of Termination of Pregnancy. Position Statement.*2018.

Princess Elizabeth Hospital (or such other place as the States may by Ordinance specify) or in a place approved for the purposes of this section by the Committee.

5.37 The Law is more than 20 years old and when enacted, reflected practice at the time which was for abortion procedures to be performed surgically under a general anaesthetic. While the Princess Elizabeth Hospital remains the only appropriate location for a surgical procedure, most abortions are now performed medically due to the decreased risks to the woman involved with this method. The medical procedure to end a pregnancy involves the administration of two medicines 36-48 hours apart and it has been common and best practice for some time for service users to remain at their place of residence between these doses of medication. The Committee believes that upon strict reading, it could be interpreted that Health & Social Care is in breach of the Law and that given changing practice, it is appropriate for the Law to be updated.

5.38 In some areas in the United Kingdom, the expulsion of the products of conception can take place at home if the woman so wishes and the standardisation of this practice is now recommended by NICE[24] for early medical abortion procedures performed prior to ten weeks of gestation. While there may be some operational practicalities to consider prior to this happening in Guernsey, such as making arrangements to provide support by telephone if required, this area of modern practice reinforces the need to amend the Law regarding the location of where abortion procedures may occur. Provision to have an abortion in hospital, as is the case currently, will continue to be available should this option be preferred.

5.39 As it is not operationally practicable to provide a modern service to Bailiwick residents that currently functions within the scope of the Law, the Committee recommends that the primary legislation is amended to remove the requirement for medical abortions to take place only at the Princess Elizabeth Hospital. This will allow women to return to their place of residence for all or part of their procedure if they choose (Proposition 7). Procedures that are performed surgically will continue to be conducted at the Princess Elizabeth Hospital.

b) Professionals who can perform abortion procedures

5.40 The Law cites '*recognised medical practitioners*' only as the personnel who are able to perform abortion services in Guernsey. The Committee appreciates the invaluable role that nursing, midwifery and other care staff also provide in abortion services locally, including being involved in the procedure itself.

5.41 Nursing and theatre staff at the Princess Elizabeth Hospital assist doctors during

[24] https://www.nice.org.uk/guidance/ng140/chapter/Recommendations#service-organisation

surgical abortion procedures and both registered nurses and midwives administer medication for medical abortions. This is considered best practice and has been in operation locally and in other jurisdictions for many years.

5.42 The Committee is therefore in agreement that the Law should be updated to reflect modern practice, i.e. that it is nurses and midwives who administer medication and who are indeed largely the primary carers for women accessing this service. It recommends that the Law should be amended to include registered nurses and registered midwives as professionals who can perform abortions (Proposition 6).

c) Conscientious objection

5.43 Conscientious objection refers to the right of an individual to refuse participation in abortion services because they hold a personal objection to the procedure. It is a right that is protected in section 5(1) of the Law, which provides that –

Subject to the provisions of subsection (3), no person shall be under any duty, whether arising by contract or by statutory or other legal requirement, to participate in any treatment authorised by this Law to which he has a conscientious objection.

5.44 The Law states that individuals cannot refuse to participate in treatment which is necessary to save the life of a pregnant woman. This exemption is consistent with equivalent abortion legislation in Jersey, England, Wales, Scotland, the Isle of Man and the Republic of Ireland. However, the Guernsey Law currently falls short of all of the equivalent legislation in these jurisdictions, which also include a further exemption specifying that the right to refuse care does not affect any duty to participate in any aspect of care or treatment which is necessary to prevent serious injury to the physical or mental health of a pregnant woman.

5.45 The absence of the second exemption locally has contributed to an accepted practice whereby some practitioners choose to refuse to participate in the basic nursing care of women who attend the Princess Elizabeth Hospital for an abortion procedure, such as not answering patient call bells or providing pain relief. This situation accentuates the stigma that surrounds abortion, places unnecessary strain on other member of staff on duty and is problematic in the planning and organisation of admissions.

5.46 With regard to professional union bodies, the right to refuse participation in care is respected by the BMA, the RCM and the RCN but all three organisations make clear to their members that this only extends to direct participation in the abortion procedure itself.

5.47 In its position Statement, the RCM advises that abortion services are within the scope of midwifery practice and that the right to opt out of participation in care '*should only apply to direct involvement in the procedure of terminating pregnancy*.'[25] The RCN advises that care cannot be refused to a woman who is about to or has already undergone a procedure to end their pregnancy.

5.48 In response to a proposed Private Member's Bill[26] introduced in the UK House of Lords, which would have widened the duties for which a practitioner could refuse, the BMA advised in its Parliamentary brief, '*The BMA is seriously concerned by the scope of activities to which this right would apply, as it goes far beyond the direct participation in treatment (which is the normal and natural meaning of 'participate', as interpreted by the courts)*' and *'the potential ramifications of this on patient care are extremely worrying, as such a scenario could have a serious adverse health consequence for women wishing to access these services*.' [27] The 2017-2019 session of Parliament prorogued and the Bill made no further progress.

5.49 The Committee considers that it is fair and proportionate to align the Law locally with Jersey, England, Wales and Scotland, the Isle of Man and the Republic of Ireland by the inclusion of the second exemption to conscientious objection. Specifically, the Isle of Man Act provides the following -

Conscientious objection does not affect any duty to participate in a treatment which is necessary — (a) to save the life of a woman; or (b) to prevent grave permanent injury to the health of a woman.

5.50 The subtle difference is the reference to a woman, rather than a 'pregnant' woman, and ensures that should complications occur following the expulsion of the products of conception, clinicians would not be exempted from providing life-saving treatment when the woman is no longer pregnant.

5.51 The Committee therefore recommends that a second exemption to the right to conscientiously object should be included in the Law as set out above, and that both exemptions to conscientious objection should refer to a woman, rather than a 'pregnant' woman (Proposition 9).

Scope of conscientious objection

5.52 Limits to the scope of conscientious objection were clarified by the UK's Supreme Court in 2014 where it upheld an appeal against a court ruling in Scotland which

---

[25] https://www.rcm.org.uk/media/2296/abortion-statement.pdf
[26] https://services.parliament.uk/Bills/2017-19/conscientiousobjectionmedicalactivities.html
[27] British Medical Association (2018). Parliamentary Brief: Conscientious Objection (Medical Activities) Bill. BMA.

would have enabled healthcare staff to refuse to carry out care duties which were far removed from abortion procedures. The Supreme Court ruled that '*it is unlikely that, in enacting the conscience clause, Parliament had in mind the host of ancillary, administrative and managerial tasks that might be associated with those acts. Parliament will not have had in mind the hospital managers who decided to offer an abortion service, the administrators who decided how best that service can be organised within the hospital, the caterers who provide the patients with food, and the cleaners who provide them with a safe and hygienic environment*.' [28]

5.53 It is clear that a balance needs to be found that both respects the personal beliefs of those who wish to consciously object, without adversely or unreasonably affecting service provision and the experience of service users who attend the hospital for a medical procedure, for which they should not feel stigmatised.

5.54 The Committee recommends the creation of a suitable regulation-making power in the Law to enable further provision to be made in respect of conscientious objection, to ensure that there is clarity in this regard (Proposition 10). Having considered the ruling of the Supreme Court referred to above, and the recommendations made to their members by the RCM, RCN and the BMA, the Committee is of the view that the right to conscientious objection should only apply to direct participation in the abortion procedure itself; the precise scope of that obligation would be made clear in the regulations.

d) Obligation for onward referral

5.55 In order not to deny service users access to appropriate care and treatment and to maintain good practice standards, in the case of conscientious objection, prompt onward referral should occur to another practitioner who does not hold the same objection.

5.56 The General Medical Council (GMC) protects patients and improves practice as the regulatory body for Medical Practitioners. It advises Medical Practitioners that in the event of conscientious objection, onward referral to another clinician must occur. It states to its registrants "*If it's not practical for a patient to arrange to see another doctor, you must make sure that arrangements are made – without delay – for another suitably qualified colleague to advise, treat or refer the patient. You must bear in mind the patient's vulnerability and act promptly to make sure they are not denied appropriate treatment or services*."[29]

5.57 The Nursing and Midwifery Council (NMC) is the professional regulator of nurses

[28] https://www.supremecourt.uk/cases/docs/uksc-2013-0124-judgment.pdf
[29] https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/personal-beliefs-and-medical-practice/personal-beliefs-and-medical-practice

and midwives and works to ensure that these professionals have the knowledge and skills to deliver consistent, quality care that ensures the safety of service users. The NMC cites the Supreme Court judgement, referenced in paragraph 5.52 above, to guide its registrants on the matter of conscientious objection. The NMC Code, to which members must adhere to maintain their registration, states that those who choose to exercise their right to opt out of providing care must '*arrange for a suitably qualified colleague to take over responsibility for that person's care.'*[30]

5.58 To strengthen this position, the Republic of Ireland and Isle of Man Acts oblige those clinicians who hold a personal objection to providing abortion care to refer patients to another clinician to administer their care.

5.59 The Committee therefore recommends that in order to provide seamless access to care and to mitigate against any delays in it being provided, the Law should oblige those who refuse care to refer their patient to another clinician without such an objection (Proposition 8).

e) Future-proofing the Law

5.60 Currently, notification of abortions must be made solely to the Medical Officer of Health (MOH) within 21 days of a procedure. The States agreed to disband the statutory office of MOH in December 2017[31] as it is agreed that the functions that are attached to it are now best served between relevant subject experts, namely the Office of Environmental Health & Pollution Regulation, the Director of Public Health and the Medical Director.

5.61 While competing priorities have meant that a full review of legislation that currently administers the functions of the MOH has not yet been completed, in order to avoid duplication of effort at a later time, the Committee wishes to amend the abortion notification process now so that notification of such procedures is made to the Director of Public Health (Proposition 11).

6 Outcomes

6.1 The abortion rate for Guernsey and Alderney is lower than in England and Wales. Should it be the case that the lower rate is, in part, due to the current legal restrictions, it is acknowledged that the recommended changes to the Law may result in an increase in the number of abortions that take place.

---

[30] https://www.nmc.org.uk/globalassets/sitedocuments/nmc-publications/nmc-code.pdf

[31] Committee *for* Health & Social Care – 'A Partnership of Purpose: Transforming Health and Care' - Billet d'État XXIV of 2017

6.2 Doctors agree that procedures should ideally occur as early as possible and the very large majority do. 91% of abortions in England and Wales in 2018 were carried out before 12 weeks gestation.

6.3 In England and Wales, across all abortion categories in 2018:

- 80% of procedures were performed before the tenth week of pregnancy;
- 11% took place between 10-12 weeks of gestation;
- 7% occurred between 13-19 weeks; and
- fewer than 2% occurred beyond the twentieth week of pregnancy.

6.4 Similarly, in Guernsey, most procedures are performed under 10 weeks of gestation as set out in Figure 2 below.

Figure 2: Guernsey abortions by gestation period, 2009-18[32]

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Under 10 weeks	83%	79%	80%	85%	83%	87%	88%	75%	77%	78%
10 to 12 weeks	15%	20%	15%	12%	13%	11%	10%	16%	19%	19%
13 weeks +	2%	1%	5%	4%	4%	2%	2%	10%	4%	4%

6.5 It is difficult to predict at what stage any additional procedures may occur, because it is dependent on which barrier or circumstance prevented access to abortion care in the first place. It is reasonable to assume that an increase in the gestational threshold in which abortions can be performed under section (3)(1)(d) of the Law may result in a small number of abortions being performed at a later gestation, as is the case in England and Wales where 6.3% of procedures are undertaken in this category between 13-19 weeks and 1.2% beyond the twentieth week of pregnancy.

6.6 However, the removal of financial barriers or the requirement to attend the Princess Elizabeth Hospital, which for some women poses a risk to anonymity, may show an increase in the total number of early abortions or a proportion of procedures that are currently performed between 10-12 weeks being performed at an earlier stage.

6.7 It also cannot be known how many women might decide to continue with a pregnancy if they had longer to consider their choice.

[32] Public Health Intelligence Unit, States of Guernsey. Guernsey Abortion Statistics Summary 2017-18. 2020.

7 Resource Implications

7.1 It is very difficult to forecast, with any degree of accuracy, the financial impact of the proposed legislative changes recommended in this Policy Letter. This is because the cost of any increase in the total number of procedures may be offset by removing the requirement for all abortions to occur at the Princess Elizabeth Hospital. The medication for early medical abortions is suitable for home administration prior to 10 weeks gestation, a stage at which the majority of abortions in Guernsey currently occur. Data from England and Wales suggests that this will not change as a result of the legislative changes recommended in this Policy Letter. Allowing women, if they wish, to return home following the administration of their medication is likely to have the effect of reducing the clinical workload of nursing staff and the number of hospital admissions.

7.2 This may, however, be counter-balanced by the requirement to fund any additional procedures at a later gestational age for abortions performed under section (3)(1)(d) that would take place off Island.

7.3 Further savings will also be realised by the Committee *for* Employment & Social Security, in terms of a reduced number of Health Benefit grants provided to subsidise GP appointments in Primary Care, if the requirement to consult with two Medical Practitioners is removed.

7.4 The Committee anticipates that it will not require additional resources or an increase in revenue funding as a result of the recommended changes to the Law.

8 Consultation and Engagement

8.1 The Committee has consulted with local clinicians across a wide range of professions, employed by Health & Social Care, Primary Care and the Medical Specialist Group, who engage with current and potential service users as part of their professional scope of practice.

8.2 Further consultation has taken place with those clinicians directly involved in abortion procedures to inform the development of the Policy Letter. All of the recommendations for change made by the Committee have the support, by a large majority, of local clinicians.

8.3 The Committee has also conducted engagement with members of the public, via small group consultation. Those who participated were generally surprised at the differences between the laws in Guernsey and England and the tiered system that they create in terms of access to care. It was felt that implementing the recommendations to modernise the Law is both important and worthwhile.

8.4 A public engagement event is planned during March 2020 with Professor Dame Lesley Regan, the immediate past President of the Royal College of Obstetricians and Gynaecologists, attending as an expert guest speaker.

9 Alderney and Sark

9.1 The Law currently extends to Guernsey, Herm and Jethou only. It is the Committee's intention to correspond with the States of Alderney and the Chief Pleas in Sark, in due course, during the drafting of any legislative change, to seek their views regarding the implementation of a Bailiwick-wide abortion law.

10 Conclusion

10.1 The recommendations within this Policy Letter underline the Committee's commitment to providing health and care services that are easily accessed and focused on those who need them.

10.2 One of the important principles of the Partnership of Purpose, among others, is to ensure that there is fair access to care across the community and that financial barriers that prohibit Islanders from receiving care are removed.

10.3 The Committee acknowledges that effective regulation is required to maintain the safety of services but cannot support legal requirements that are not supported by a scientific evidence base and that force some local clinicians, in certain circumstances, to adapt their practice according to law rather than by their medical expertise.

11 Compliance with Rule 4

11.1 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.

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

11.3 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the Committee is unanimously supportive of the value of a debate regarding the proposals being submitted to the States for consideration, but also agrees that it is for Members themselves to vote on each Proposition according to their conscience.

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

11.5 Also in accordance with Rule 4(5), the Committee *for* Health & Social Care has consulted with a wide range of stakeholder groups, including clinicians from the medical practice groups in the Island and the Medical Specialist Group.

Yours faithfully

H J R Soulsby
President

R H Tooley
Vice-President

E A McSwiggan
R G Prow
D A Tindall

R H Allsopp, OBE
Non-States Member

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* HEALTH & SOCIAL CARE

MODERNISATION OF THE ABORTION (GUERNSEY) LAW, 1997

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

2nd March, 2020

Dear Sir,

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee *for* Health & Social Care (C*f*HSC) requests that the propositions contained in its policy letter entitled 'Modernisation of the Abortion (Guernsey) Law, 1997,' dated 2nd March, 2020 be considered at the States' meeting to be held on 22nd April, 2020.

This request is made on the basis that the C*f*HSC has arranged for a subject expert, Professor Dame Lesley Regan, immediate past president of The Royal College of Obstetricians & Gynaecologists, to attend the island to discuss the Committee's proposals with Deputies and to support an engagement event for members of the public on 11th March, 2020.

It is the Committee's view that it would be beneficial for consideration of this matter in the States to be as freshly informed as possible by Professor Regan's visit.

Yours faithfully,

H J R Soulsby
President

R H Tooley
Vice President

E A McSwiggan
R G Prow
D A Tindall

R H Allsopp
Non-States Member(s)

P.2020/30

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR THE* ENVIRONMENT & INFRASTRUCTURE

PROPOSED INTRODUCTION OF A GENERAL HOUSING LAW

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled 'Proposed Introduction of a General Housing Law', dated 28th February 2020, they are of the opinion:-

1. To agree the introduction of primary, enabling legislation to allow for regulation of the Island's housing, other than control of occupation, including provision for the matters set out in Appendix 1 to the policy letter.

2. To approve the introduction of a statutory Housing Health and Safety Rating System (HHSRS) in Guernsey to assess the quality of housing and the introduction of basic housing standards for rented dwellings as set out in sections 4.1 – 4.10 of the policy letter.

3. To approve the introduction of a statutory licensing system for houses in multiple occupation as set out in sections 4.11 – 4.24 of the policy letter.

4. To approve the introduction of a statutory registration system for all private rented dwellings, as set out in sections 4.25 – 4.36 of the policy letter.

5. To approve the introduction of a statutory deposit protection scheme for private rented dwellings, as set out in sections 4.37 – 4.52 of the policy letter.

6. To approve the enforcement measures in relation to housing standards outlined in section 5 of the policy letter.

7. To approve the amendment of other legislation relevant to housing standards to do the following, where consistent with the purposes and scheme of that other legislation –

   a) harmonise terms used to describe different types of housing with those proposed under the new housing standards legislation;
   b) provide for consistency with the new housing standards legislation, and
   c) avoid duplication of inspections and other enforcement procedures included in the new housing standards legislation.

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

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

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR THE* ENVIRONMENT & INFRASTRUCTURE

PROPOSED INTRODUCTION OF A GENERAL HOUSING LAW

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

28th February, 2020

Dear Sir

1. Executive Summary

1.1 On 19th July 2018 the States resolved[1] to endorse a Programme of Works which included an analysis of the legislative framework and processes governing housing quality standards and how legislation can support the provision of good quality housing.

1.2 This review concluded that there are currently insufficient and unsuitable provisions within legislation to regulate standards across the Island's housing stock. It is proposed that new legislation is made (a Projet de Loi), creating primary legislation, under which measures to regulate certain parts of Guernsey's housing stock and specific functions will be made by Ordinance and Statutory Instruments (SIs) of the Committee. This Policy Letter also seeks approval for specific provisions, as detailed, which could be implemented at the same time as the Law with powers to make other Ordinances later subject to prior approval of the policy by the States.

1.3 The introduction of an Enabling Law will provide a single legislative framework which will supplement, or replace, existing legal provisions relevant to Housing by providing proportionate provisions to regulate conditions across all housing on-Island and provide greater protection to tenants without significant detriment to responsible landlords and property owners.

[1] Article VIII of Billet d'État No. XIX of 2018.

1.4 New primary legislation is necessary as some of the existing legislation relevant to housing standards is outdated, most of it is not directed at the specific purpose of regulating housing standards and responsibility for it is spread across multiple States' Committees. New primary legislation will allow flexibility to introduce new provisions progressively and/or consolidate or harmonise existing provisions in those areas although the policy for any additional regulation not outlined in this policy letter would be subject to approval by the States in the normal way.

1.5 The initial focus will be on improving the standard of the Island's housing stock, with an emphasis on rented properties, through a number of initiatives designed to provide a robust approach for assessing housing conditions and enforcing improvements. It is intended that the increase in standards will contribute towards providing a sustainable supply of good quality properties to the Island.

1.6 The introduction of this Law is, however, also intended to enable there to be an opportunity to ensure that provisions that may be created later under this legislation can be sufficiently broad to enable the regulation of other matters relating to the regulation of housing, introduced in a proportionate and risk-based order. It is proposed that the Law would be drafted to allow for Ordinances and SIs to be made in relation to regulation of housing generally including provision for standard lease agreements, measures to tackle vacant dwellings and to deal with dangerous structures etc.

1.7 The priority areas for which policy approval is sought now to make Ordinances under the Enabling Law are to:

- Introduce a system by which authorised officers can assess the standard of accommodation in the Island across all tenures, and have in place robust measures to enforce an improvement in standards where necessary;
- Introduce a basic standard for human habitation of rented properties;
- Implement a licensing system for Houses in Multiple Occupation (HMO), making it a legal obligation for landlords/owners of a property/properties meeting the definition of a HMO to be licensed;
- Make it a requirement for all private rented properties to be registered; and
- Introduce a requirement for a deposit protection scheme.

1.8 The approval of the policy for these priority areas has been split into different propositions so that the merits of each area can be considered separately.

2. Background

2.1 The association between housing quality standards and health and wellbeing are acknowledged globally[2,3] and locally[4] with negative outcomes being associated with living in poor quality rented accommodation and/or poor housing condition. Local data illustrate that major health inequalities associated with housing status exist locally, e.g. a much higher proportion of people on lower incomes or in rented housing smoke and report poor mental health and wellbeing[5,6].

2.2 The costs of poor housing to society have been widely researched[7,8] with evidence identifying costs to health services as well as costs to employers and society as a whole. No local data exist to quantify the cost to the States but the costs of the NHS treating ill-health as a result of sub-standard housing have been estimated as £2.4 billion a year.

2.3 Data demonstrate that there can be significant savings made by addressing poor housing standards. The Building Research Establishment have developed the Housing Health Cost Calculator to quantify cost savings to society and the National Health Service (NHS)[9]. For example, it has been calculated that one property with a hazard of falls associated with baths costs the NHS £201 per year with an average repair cost per dwelling of £521[10]. These costs are likely to be higher locally due to the increased relative cost of health care and building works in Guernsey.

2.4 In June 2013, a Policy Council report entitled 'Managing the size and make up on the Island's population' included a reference to the proposal to introduce new legislation on housing standards as a piece of work that would be progressed alongside the development of the new population management framework.

2.5 Furthermore, in July 2018 the States endorsed a Programme of Works which

---

[2] Marmot, M., Atkinson, T., Bell, J., Black, C., Broadfoot, P., Cumberlege, J., Diamond, I., Gilmore, I., Ham, C., Meacher, M., & Mulgan, G. (2010). *The Marmot Review: Fair Society, Healthy Lives. Strategic review of health inequalities in England post-2010*. London.

[3] World Health Organization (WHO) (2011). *Environmental burden of disease associated with inadequate housing. A method guide to the quantification of health effects of selected housing risks in the WHO European Region*. Copenhagen: WHO Regional Office for Europe.

[4] Bridgman, S. (2015). 115th *Annual Bailiwick of Guernsey MOH Report for Year 2013/14. Special themes "Public Health Surveillance, and Priority-Setting in Health and Social Care"*. Guernsey: States of Guernsey.

[5] Hughes, K., Gee, I., Ford, K., McHale, P., Prickett, L., Le Page, Y. & Bridgman, S. (2014). *The Sixth Guernsey Healthy Lifestyle Survey 2013*. Guernsey: States of Guernsey.

[6] Johnson, S., Cataroche, J., Hinshaw, T. & Bridgman, S. (2010). *Guernsey emotional wellbeing survey 2010: A cross-sectional survey of mental wellbeing and common mental health disorders in Guernsey and Alderney*. Public Health and Strategy Directorate, HSSD, Guernsey.

[7] Roys, M., Nicol, S., Garrett, H. and Margoles S. (2016). *The full cost of poor housing.* Bracknell: IHS BRE Press.

[8] Davidson, M., Roys, M., Nicol, S., Ormandy, David and Ambrose, P. (2010) *The real cost of poor housing*. Bracknell: IHS BRE Press.

[9] https://www.housinghealthcosts.org/res/hhcc.pdf

[10] https://www.bre.co.uk/filelibrary/pdf/87741-Cost-of-Poor-Housing-Briefing-Paper-v3.pdf

included an analysis of the legislative framework and processes governing housing quality standards and how legislation can support the provision of good quality housing[11], in order to assist the development of a holistic Housing Strategy.

2.6 The review highlights where deficiencies and inefficiencies exist and the proposed legislation is intended to assist with the delivery of the provision of safe and secure places to live and a healthy community which underpin the core themes of 'quality of life' within the States of Guernsey's Future Guernsey Plan.

2.7 The proposed legislation contributes towards two of the policies that have been prioritised under the Future Guernsey Plan:

1

- Housing Strategy; and
- The Future Model of Care (which includes Health and wellbeing)

2.8 The 'Housing Strategy' priority requires that the provision of housing is of an "appropriate availability, quality and affordability" and further references are made to properties being of "a good standard and an appropriate size". The proposed legislation would provide a measure of housing quality and a mechanism to ensure that this is delivered across the housing stock in all tenures. This priority also focuses on the supply of an appropriate amount of housing of the required mix to meet the Island's housing needs in an "affordable and sustainable way".

2.9 The proposed legislation will also facilitate the delivery of two key tenets of the Committee *for* Health & Social Care's 'Partnership of Purpose' transformation model:

- Prevention: supporting islanders to live healthier lives; and
- Empowered providers and integrated teams: supporting staff to work collaboratively across organisational boundaries, with a focus on outcomes.

3. Current Legislation relevant to Housing Standards

3.1 There is no current legislation directed specifically at housing standards and so there is no system for assessing the quality, wholesomeness and fitness for habitation of housing units across all tenures on Island. As such poor housing standards can be allowed to persist.

3.2 Table 1 provides an overview of the legislation which is currently available to address housing standards. In addition, it is acknowledged that there are other

[11] Article VIII of Billet d'État No XIX of 2018.

legislative controls that encompass wider housing related matters but these are not relevant to housing standards. For example, the planning legislation designates use classes for land planning purposes as set out in the Land Planning and Development (Use Classes) Ordinance, 2017 and Boarding permits are issued by the States' Committee *for* Economic Development under the Tourist Law, 1948 in relation to provision of visitor accommodation. In addition, the Population Management (Guernsey) Law, 2016 contains provisions in relation to regulating the occupation of Local and Open Market accommodation.

Table 1 – Existing Legislation Relevant to Housing Standards

Legislation (as amended)	**Enforcing body / Officers carrying out enforcement**	**Main provisions**
Loi Relative á la Santé Publique, 1934 Ordonnance Relative á la Santé Publique, 1936, as amended	Office of Environmental Health and Pollution Regulation[12]	Abatement notices for: • "Any premises or part of premises … in such a state as to be either a nuisance or prejudicial to health"; • "Any pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain or ashpit so foul or in such a state as to be either a nuisance or prejudicial to health"; • "Any house or part of a house so overcrowded as to be either dangerous, or prejudicial to the health of the inmates, whether or not members of the same family"; • "Any occupied dwelling house for which a supply of water for domestic purposes is not readily available or which is not adequately provided with domestic cooking facilities, or with sanitary installations or appliances"; • "Any cistern used for the

[12] The statutory responsibility rests with the Committee *for* Health and Social Care but enforcement is carried out by officers appointed from the Office for Environmental Health & Pollution Regulation with operational oversight by the Committee *for the* Environment & Infrastructure.

		supply of water for domestic purposes so placed, constructed or kept as to render the water therein liable to contamination, being prejudicial to health”; • “Any gutter, drain, shoot, stack-pipe, or down-spout of a building which by reason of its insufficiency or its defective condition shall cause damp in such building or in an adjoining building, so as to be either dangerous, or prejudicial to health” The Medical Officer of Health (MOH) may serve a Closing Order on a premises meaning that it cannot be occupied. Current arrangements are that EHOs must request the MOH to undertake this action. Prescriptive overcrowding standards requiring floor area of room calculations.
The Fire Services (Guernsey) Law, 1989	Fire and Rescue Service (of the Committee *for* Home Affairs)	Part III – Fire Precautions. Applies to certain premises including where there is the provision of sleeping accommodation for at least 10 persons or any building where there is sleeping accommodation below ground floor or above first floor level except a house occupied as a single private dwelling.
Health and Safety (Gas) (Guernsey) Ordinance, 2006	Health and Safety Executive[13]	Safety of gas installations in domestic or residential premises. In particular, requiring installation of gas fittings by a person on the Gas Safe Register and relevant duties on landlords to ensure gas fittings are maintained in a safe

[13] The HSE forms part of the Committee *for* Home Affairs and functions are conferred on the Committee or health and safety inspectors appointed by it.

		condition (Part VI).
The Health and Safety at Work (General) (Guernsey) Ordinance, 1987	Health and Safety Executive	General health and safety duties of employers of more than 5 people to their employees and to other persons and in relation to their premises. These duties are applicable to landlords running businesses.
The Land Planning and Development (Guernsey) Law, 2005 Land Planning and Development (Enforcement) Ordinance, 2007	Development & Planning Authority	Conditions attached to planning permissions require compliance with building regulation requirements and can impose other conditions relevant to housing standards. Enforcement provisions in relation to failure to obtain planning permission or breach of a condition.
The Building (Guernsey) Regulations, 2012	Development & Planning Authority	Provides for approval of plans for building work and sets out requirements to be met for certain work. Provides for additional requirements of Building Regulations (e.g. in relation to fire safety and means of escape etc.) to be met where the use of buildings or rooms is changed to residential, or additional rooms or dwellings are added. Provides for the issuing of standards providing practical guidance on the meeting of the requirements.
The Clearance of Ruins (Guernsey) Law, 1957	Development & Planning Authority	Can require the demolition of a building in a ruinous condition and clearance of the land.
Loi ayant rapport à la Réparation ou la Démolition de Murs, Fossés, Maisons et Bâtiments qui sont dans un état dangereux of 1919	Constables and Douzaines of parishes	Gives powers to the parish in relation to buildings which are a danger to persons.

3.3 Planning and Building Control provisions allow for the regulation of new build housing and certain alterations or changes to the use of existing housing which amount to development or building work. The existing controls are effective in ensuring that new and renovated housing meet modern standards. If development or building work is carried out which does not meet requirements under the planning permission or Building Regulations or which has been carried out without the necessary approvals then enforcement action can be taken.

3.4 Building regulations only apply to 'building work' and do not apply to other factors affecting housing standards such as overcrowding, excess cold/heat, (elements of) internal arrangement, risks of falling (such as a result of poor maintenance e.g. loose carpet on stairs). Equally, where works do not amount to development or building work or are exempt or where properties have not been maintained, these issues cannot be addressed through Development & Planning Authority controls.

3.5 The main work addressing housing standards in the community (across all types of housing tenure) is carried out from the Office of Environmental Health and Pollution Regulation (OEHPR)[14]. The OEHPR predominantly uses public health legislation that was enacted in 1934 (Loi Relative á la Santé Publique, 1934 and the related 1936 Ordinance) to address housing standards. This public health legislation is very outdated and was not designed to address the spectrum of housing and health issues that are prevalent on-Island. The wording in the existing legislation is also not aimed specifically at housing defects (e.g. general housing condition is only covered by the phrase 'any premises in such a condition as to be prejudicial to health or a nuisance'). Whilst an amendment in 2010 to define the level of overcrowding which is prejudicial to health has been effective in addressing this particular issue, the complexity of the calculations necessary has been criticised and the legislation is generally not fit for the specific purpose of addressing housing issues.

3.6 The public health legislation provides limited enforcement options requiring the abatement (i.e. reduction or removal) of a nuisance, except in cases of imminent danger, or the closure of a premises. Where a property is owner-occupied the legal responsibility lies with them and if a statutory nuisance exists (possibly even reported by them) then a legal notice places a requirement on them to remedy the matter.

3.7 The public health legislation is not specific, or exhaustive, about what may render a 'premises' to be prejudicial to health or a nuisance as it is older legislation and was designed to cover a wide range of circumstances. There is

[14] References to the OEHPR refer to Environmental Health officers at that office.

also no legal mechanism in the legislation to quantify the risk posed by the problem nor a range of enforcement provisions to allow a proportionate response. Due to the acknowledged shortcomings of the public health legislation, in February 2013, the Health and Social Services and Housing Department Boards agreed the introduction, on a non-statutory basis, of the Housing Health and Safety Rating System used in the UK (HHSRS) locally. HHSRS is evidence-based and it is supported by extensive reviews of the literature and by detailed analyses of statistical data on the impact of housing conditions on health[15]. This system has subsequently been used by the OEHPR as a means for assessing and managing risks within residential accommodation.

3.8 It is acknowledged that a wider review of local public health legislation is being led by the Director of Public Health / Medical Officer of Health and the Director of Environmental Health and Pollution Regulation is a consultee in this process. The proposed changes would provide modern alternatives to the existing provisions and would not conflict with this review. Adopting legislative means to define, assess and enforce good housing conditions would not prohibit or limit this review and the wider public health legislation review is welcomed and supported.

3.9 The OEHPR has noted a relatively consistent number of housing complaints from 2012 to date. In 2012, 47 complaints were received, 64 were received in 2017, 55 in 2018 and in 2019 63 complaints were received by the OEHPR regarding housing conditions. The complaints resulted in a variety of interventions from informal advice through to the service of 4 Closing Orders in 2017. In 2018 42% of enquiries related to the private rented sector, 17% related to houses in multiple occupation, 32% related to owner occupied properties and 9% related to social housing.

3.10 The OEHPR believe that this still does not reflect the poor conditions that exist in the Island's housing stock and the OEHPR is actively engaging with groups that interact with tenants and home owners (including Citizen's Advice Bureau, Tenancy Management Officers, Guernsey Housing Association, Guernsey Private Residential Landlords Association, Health Visitors, Social Workers etc.) regarding the services the Office offers.

3.11 Table 2 shows the main legislative controls on housing quality standards within England, as a comparator and to demonstrate where differences and gaps exist between Guernsey's legislation and controls within English legislation.

Table 2 – English Housing Standards Legislation

Legislation	**Main relevant provisions**

[15] Office of the Deputy Prime Minister (2006). *Housing Health and Safety Rating System: Operating Guidance*. London: ODPM Publications.

Housing Act 2004	Housing health and safety rating system (HHSRS) for assessing housing conditions (all tenures) and mechanisms for enforcing housing standards Licensing of houses in multiple occupation Legal framework for tenancy deposit schemes Demolition orders and slum clearance declarations
The Management of Houses in Multiple Occupation (England) Regulations 2006 The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018	Places duties on both those managing HMOs and tenants of HMOs Imposes duties or managers of HMOs to supply and maintain electrical and gas supplies, to supply water and drainage, to maintain the physical condition of properties and to take fire safety measures Places responsibility on tenant to allow reasonable access to the HMO to carry out maintenance etc., to take reasonable care to avoid damaging the property, store and dispose of litter properly and comply with reasonable fire safety instructions Provides for similar provisions to the Management of Houses in Multiple Occupation (England) Regulations 2006 but in relation to self-contained flats Specifies various matters including the standards to be applied when determining the suitability of a HMO for licensing Provides for a description of a house in multiple occupation to which the licensing requirements of the Housing Act 2004 apply
Landlord and Tenant Act 1985	Sets out the landlord's obligations including in relation to repair and service charges and fitness of accommodation for human habitation
Homes (Fitness for Human	Amends the Landlord and Tenant Act 1985 to

Habitation) Act 2018	require that residential rented accommodation is provided and maintained in a state of fitness for human habitation

3.12 Whilst Planning and Building Control legislation is effective in ensuring that housing quality standards in new builds and renovated properties are met, there is currently no Guernsey legislation in place the specific purpose of which is to require certain housing standards to be met by existing accommodation, as illustrated by the differences between tables 1 and 2. Existing legislation relevant to housing standards is currently enforced in an uncoordinated manner in Guernsey across a variety of Committees and services reflecting the different purposes of that legislation (e.g. teams within the Committees *for* Health & Social Care, Employment & Social Security, Home Affairs and *the* Environment & Infrastructure etc.) with multiple pieces of legislation being used and a variety of standards/requirements being applied.

3.13 It can be concluded that, the current Public Health legislation and that applying to properties in a dangerous/ruinous condition are outdated and unsuitable in relation to housing standards. Also, the application of the other legislation relevant to housing standards, can lead to a fractured and at times inconsistent approach to the same problems. There is an unnecessary and avoidable burden on landlords and property owners from visits and interventions from multiple States' services. The proposed legislation presents an opportunity to introduce legislation to streamline and simplify the controls for property owners, landlords, tenants and States' services.

3.14 The main areas where Guernsey's housing standards legislation are not comparable with modern legislation in other jurisdictions are:

- A legally defined mechanism to assess housing standards (across all tenures);
- A variety of enforcement options to remedy unsafe housing conditions (across all tenures);
- A set, baseline standard of fitness for human habitation of rented properties;
- Licensing of houses in multiple occupation;
- A legal framework for tenancy deposit/deposit protection schemes; and
- Minimum standards in tenants' rights against their landlords and obligations of landlords.

3.15 The existing legislation is too disparate, focussed on other purposes and, in some cases, outdated to be able to be amended to incorporate the areas highlighted in section 3.14 and the drafting of new primary legislation allows an unencumbered opportunity to provide for a Law with a wide enough scope to deal with all areas of concern and to introduce new housing provisions progressively and/or to amend or consolidate existing legislation relevant to housing standards in particular to ensure terms used to refer to different types of housing are consistent and that enforcement action addressing the same problems is not inconsistent. This also provides the option for the States of Deliberation to prioritise and phase in implementation of the proposed housing regulation dealing with the most serious issues first.

4. Legislation to Support the Provision of Good Quality Housing

A Mechanism to Assess Housing Standards

4.1 The functions within the legislation would be conferred on the Committee *for the* Environment & Infrastructure, as the principal Committee with policy remit in this area, as previously detailed. The Committee would, however, have the ability to authorise officers to exercise its functions under the Law. Due to the qualifications, competencies and current remit of the officers in the Office of Environmental Health and Pollution Regulation, it is proposed that enforcement officers for housing standards would be appointed from this team. This would use existing expertise developed under the public health legislation and landlords and tenants would have continuity of contact with existing officers.

4.2 The Committee wishes to ensure that safe and healthy environments are provided at all local dwellings but also that a pragmatic, proportionate and consistent approach is taken to securing compliance. In order to determine the fitness of a property for human habitation, a legally recognised mechanism is needed to address the nature and impact of the standard of housing. It is proposed that the Housing Health and Safety Rating System (HHSRS) used in England is adopted in local legislation to provide a risk-based tool against which to assess the quality of housing across all tenures with any necessary adjustments based on experience in England and local circumstances.

4.3 HHSRS is a risk-based assessment tool which is used by environmental health officers in the United Kingdom (UK) to assess the risk (the likelihood and severity) of a hazard in residential housing to the health and safety of occupants or visitors[16]. HHSRS applies to all tenures and will be able to be applied to consider standards in owner-occupied dwellings as well as ensuring that the basic standards are met in rented properties.

16 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/9425/150940.pdf

4.4 Guidance will be provided to inform landlords, owners and tenants how to comply with the provisions of HHSRS but it will allow greater flexibility than a prescriptive standard which may not take into account the diversity of properties that would fall within the proposed regime and the scope of different types of occupants.

4.5 The use of the HHSRS will ensure that the highest risks to health and wellbeing are managed without landlords being forced to comply with rigid standards, as the aim is to remove/reduce the risk rather than providing a singular compliance option. It helps to ensure that investments made by landlords into their properties have the most beneficial effect for tenants and it provides continuity of risk management across the private rented sector.

4.6 Whilst HHSRS is an established and evidence-based assessment tool, it was subject to a UK Government review in 2018. HHSRS is currently being revised in relation to the outcome of the review to provide a simpler assessment that is more-readily understood by the public. It is intended that if this assessment tool is adopted in Guernsey, that flexibility is incorporated within the legislation to make amendments to it if needed, including to simplify it whilst retaining an equally robust, approach to assessing standards within properties.

A Defined Fitness for Human Habitation in Rented Accommodation

4.7 In addition, it is proposed that basic housing standards are introduced for rented dwellings to ensure that all rented properties meet a basic requirement (fitness for human habitation). In determining whether rented accommodation is unfit for human habitation, regard shall be had to its condition in respect of the following matters with guidance issued on assessment to ensure uniform application of standards:

- Repair;
- Stability;
- Freedom from damp;
- Internal arrangement;
- Natural lighting;
- Ventilation;
- Water supply;
- Drainage and sanitary conveniences;
- Facilities for preparation and cooking of food and for the disposal of waste water;
- The presence of any other hazard prescribed by SI under the Law;
-

and the property shall be regarded as unfit for human habitation if, and only if, it is so far defective in one or more of those matters that it is not reasonably suitable for occupation in that condition.

4.8 The minimum standards are proposed for rented properties as this acknowledges that people that are unwilling or unable to purchase a property are afforded basic housing standards that do not put their physical and mental health at risk. Minimum standards would be clearly defined and would only be intended to provide a basic level, below which a property's condition would be considered to be detrimental to the health and wellbeing of an occupant.

4.9 Following the recommendations of a report commissioned from the University of Warwick[17], the States of Jersey have implemented the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018 and the Public Health and Safety (Rented Dwellings – Minimum Standards and Prescribed Hazards) (Jersey) Order 2018. These pieces of legislation specify basic housing standards for rented accommodation, define hazards (using the HHSRS framework) and provide enforcement provisions.

4.10 Discussions have commenced with colleagues at the States of Jersey and there are clear opportunities for adopting similar standards, capitalising on sharing the progress made by Jersey, and having comparable standards across both islands although the proposed scope of the Guernsey legislation is wider.

<u>Licensing of Houses in Multiple Occupation (HMOs)</u>

4.11 Across States' services and in various pieces of legislation there is a variety of terms that refer to properties in multiple occupation including, but not limited to, lodging houses, Part D Open Market properties, HMOs, staff accommodation, etc. The diversity of terminology can be confusing for property owners and new legislation can harmonise terminology for certain categories of property linked to clear guidance regarding the housing standards required within that sector of accommodation.

4.12 The term "house in multiple occupation" or HMO is generally used to describe a property which is occupied by multiple tenants who form separate 'households' but share communal facilities (e.g. toilets, bathrooms, kitchens etc.). A property which is divided into a number of self-contained units (i.e. with a bedroom, kitchen facilities, bathroom and toilet) does not generally fulfil the criteria of a HMO. The term HMO would need to be legally defined and this is an established definition within UK legislation. The Guernsey legislation would reflect the UK definition within any necessary adjustment for local circumstances.

4.13 The HMO sector of the private rental sector houses some of Guernsey's most vulnerable groups of people. HMO tenants can be more vulnerable than the general population because they are likely to have one or more of the following characteristics which make it more likely that their accommodation will be of

[17] https://www.gov.je/Government/Pages/StatesReports.aspx?ReportID=964

poor quality and that they will be unable to improve their situation[18,19,20,21]:

- Have a low socio-economic status;
- Be in employer-tied accommodation;
- Be temporarily based in Guernsey;
- Not speak English as a first language;
- Have chronic physical and/or mental health problems;
- Have substance misuse problems;
- Be problem tenants that some landlords will not want to house;
- Be unaware of who to complain to about accommodation issues; and
- Be concerned that complaining about their poor accommodation could lose them their home and/or job.

4.14 It is proposed to make it a legal requirement for landlords in the private rental sector who operate properties that meet the definition of a HMO to be licensed by the Committee. A licensing system would provide additional safeguards for the highest risk properties housing the most vulnerable tenants.

4.15 In order to license a HMO, applicants would be required to complete and submit an application form along with the relevant fee and requisite documents including a current gas and electrical safety certificate, a plan of the fire safety precautions as agreed by a Fire Officer and copies of current insurance documents.

4.16 Licences will specify conditions which the landlord must ensure are complied with. These conditions will be specific to the property in question and will provide protection to the health and wellbeing of tenants. A licensing system allows specific conditions to be applied to premises (e.g. the number of occupants that the building may house) and allows mechanisms to regulate (e.g. to suspend or revoke a licence) if conditions are not met. Whilst premises-specific conditions could be imposed, these are likely to be limited as the basic requirements would be set out in legislation.

4.17 A licence application will trigger an inspection by an authorised officer where a risk assessment against the prescribed requirements would be carried out and action taken by the landlord, if necessary, to address any deficiencies. Landlords would be required to pay a licence fee covering a three-year period,

---

[18] Barratt, C., Green, G. &, Speed, E. (2015) Mental health and houses in multiple occupation. *Journal of Public Mental Health*, 14 (2), 107 – 117

[19] Communities and Local Government (2010). *Evaluation of the Impact of HMO Licensing and Selective Licensing*. London: Communities and Local Government Publications.

[20] Office of the Deputy Prime Minister (2004). *The Impact of Overcrowding on Health and Education: A Review of the Evidence and Literature*. London: ODPM Publications.

[21] Shaw, M., Dorling, D. and Brimblecombe, N. (1998). Health problems in houses in multiple occupation. *Environmental Health Journal*, 106 (10), 280-281.

with properties being inspected on a risk-based frequency.

4.18 The three-year licence period is proposed as it is unlikely that substantive structural deterioration would occur over this period and it would reduce the burden on landlords. This would also align with the three-year registration period proposed for private rented properties. It is proposed that if a licence fee is payable for a HMO that this would be deemed to cover the registration of that property. This would prevent landlords paying twice for very similar purposes.

4.19 It is intended that the fee would be charged to cover the administration (including the registration and inspection of premises and enforcement action) of the scheme but that this fee would be set so as not to be detrimental to landlords or to make it unviable to let a room or unit of accommodation, thus not impacting on the level of rent charged or the availability of properties.

4.20 Fees would be set by the Committee and would be subject to review. It is proposed that fees could be introduced through SIs so that they can be reviewed and amended by the Committee. An indicative fee for a HMO has been calculated using the States' fee calculator and the anticipated amount of officer time to administer and regulate the system and it equated to circa £280 per property for a three year period. This equates to around £93 per year or £8 per month. HMOs are, by definition, let to multiple parties, therefore this is likely to equate to less than one pound per tenant per month, even if this fee was directly applied to rents. It is, therefore, not considered that this should be detrimental to landlords or tenants or unsettle the rental market.

4.21 Comparison has been made to fees in other jurisdictions and these have been relatively consistent e.g. Aberdeen City Council charge a registration fee of £865 (for a HMO with 6 – 10 tenants) and a renewal fee of £200 per year (charged as £600 for a three year period) and Cornwall Council charging £230 per year (charged as £1150 for a 5 year period). The proposed fees are therefore notably cheaper than other jurisdictions and without a separate registration fee, therefore making administration less burdensome for the landlord and the regulator.

4.22 Concern was raised during the consultation process (as detailed further in section 7 and Appendix 2) that requiring improvements to properties could lead to increases in rents and/or destabilisation of the lower cost rental market. The proposed standards for human habitation are clearly basic and not providing these would be detrimental to the health and wellbeing of tenants with associated wider costs to support systems (as detailed in section 2). Any responsible landlord should already be achieving these standards and should not be concerned that this system will detrimentally affect them financially or disrupt the rental market.

4.23 If HMO licensing is not introduced it is likely that poor standards will continue to exist. It is also highly likely that continuing only with inspections under the current legislation would miss properties which are not on the Fire and Rescue Service's register of controlled premises and/or which are unknown to inspecting services but that are likely to present the greatest risk to tenants and users of the properties.

4.24 It has not been deemed feasible to introduce a voluntary, informal licensing scheme as it carries too great a risk that only the most responsible landlords would voluntarily participate, that the highest risk properties would not be included and there would be no means of enforcing a voluntary scheme in the event of a breach. As it is not clear how many, and which, properties would be classified as HMOs it is imperative that there is a legal duty to declare and be licensed accordingly. This will ensure consistency across the HMO rental market and will prevent inequalities in property standards.

Registration of the Private Rented Sector

4.25 The 2018 Guernsey Annual Housing Stock Bulletin details that there are 27,232 domestic property units in Guernsey. 28.4% (i.e. 7,734) of these are offered as rental accommodation. A further 2.8% (i.e. 762 units) include other tenure types which includes staff accommodation.

4.26 Private rented properties are often found in the Island's older housing stock and there are many examples of properties falling out of the HMO sector (albeit sometimes temporarily) because they need to be fully redeveloped or refurbished. Furthermore, many properties being used as HMOs were not designed for this propose and, in some cases, their historic conversion may fail to reach standards required under current Building Control regulations and/or standards required under HHSRS.

4.27 It is proposed that all private rented properties are required to be registered with the Committee but that licensed HMOs would automatically be included on the register. The application process would require that details are provided to substantiate that the dwelling meets the basic requirements that have previously been detailed. A simple online form is proposed that would allow multiple properties to be registered to a single landlord, with an online payment option. This could be supplemented by paper copies with other payment options for anyone unable, or unwilling, to use the online option.

4.28 The aim of registering private rented dwellings is to ensure that there is a record of which properties are being offered for habitation and that they can be evidenced to reach basic standards for human habitation. This benefits tenants and facilitates the sustainability of the property market as properties would be less likely to deteriorate to such a condition that they could not be inhabited.

4.29 The registration process is intended to 'tease out' landlords operating rented properties which may not already be known to the States, to ensure that basic standards are achieved for all tenants across all rental sectors.

4.30 Registration would cover a three-year period as it is unlikely that substantive structural deterioration would occur over this period and it would reduce the burden on landlords. It is intended that a fee would be charged to cover the administration (including the registration and, as necessary, inspection and regulation of premises) of the scheme but that this fee would be set so inspection as not to be detrimental to landlords or to make it unviable to let a room or unit of accommodation, thus not impacting on the level of rent charged or the availability of properties.

4.31 It is proposed that fees would be introduced through SI so that they can be reviewed and amended by the Committee. The SI powers would also allow the Committee to provide for exemptions from and waiver of fees (e.g. for social housing and licensed HMOs). The cost of a three-year registration will be set by the Committee but, as an example, if a fee of £36 per property was charged (i.e. £1 per property per month over the three-year period/£12 per year) then this should provide sufficient money to administer and regulate the system and sector. The financial impact on landlords and tenants and the rental sector as a whole should be negligible but this small investment would make rogue landlords more visible (as they would not be on the public register as required and/or if they wrongly advertise the fitness of their letting properties) and it would provide an opportunity to address the shortcomings of the properties through enforcement action. Whilst this may require non-compliant landlords to invest in substandard accommodation it would prevent them placing tenants at risk and stop them undermining responsible landlords.

4.32 A public register would be kept of all private rental premises which are registered under the scheme to allow property owners, landlords, agents and tenants to confirm that properties are being legally let. Being listed on the public register would also convey that the property has been reported (or inspected and found) to meet the basic requirement of fitness for human habitation.

4.33 It is not proposed that all registered properties would be inspected during each registration period. The information provided to support the application would be self-certification from the landlord that their property meets the basic standard for human habitation. Their answers would allow a risk assessment to be carried out and properties would be visited according to the potential risks that may exist.

4.34 Investigations would also be carried out based on complaints received from tenants and the public, as simple guidance would be issued to detail the basic living conditions that should be achieved in order for a property to be rented and all parties should understand the basic requirements that are expected in all rental properties. The enforcement provisions of the new legislation could then be used to ensure that the necessary standards are achieved.

4.35 The States of Jersey currently run a voluntary licensing scheme for landlords, (Rent Safe[22]) and they are in the process of introducing mandatory licensing of rented dwellings. Similar to the position regarding housing standards legislation, this provides an opportunity to benefit from the progress and experiences of the States of Jersey and officer-level discussions have shown willingness to share information to assist the States of Guernsey in progressing these proposals.

4.36 In November 2019 the Chartered Institute of Environmental Health (CIEH) published a 'Manifesto for Environmental Health – General Election 2019' laying out key areas that it felt were most pertinent to improving public health, reducing health inequalities and protecting the environment. Seven key areas were highlighted, three of which related to housing, with a statement that "The next Government should commit to introducing a mandatory national registration scheme for all landlords and agents in England to enable better regulation and oversight of the private rented sector by regulating authorities". This further highlights that this is an emerging area of importance which is being progressed by other neighbouring jurisdictions, in recognition of the public health improvements that it could stimulate.

Deposit Protection Scheme

4.37 At the end of September 2017, 13,608 people lived in private rented accommodation (22% of the total population). In 2017 there were 7,734 private residential rental properties on the Island[23].

4.38 In Guernsey, the private rented sector operates relatively free of a legal framework. Tenants and landlords negotiate terms between themselves on a contractual basis, and courts generally rely on these contracts, rather than on legislation, to adjudicate tenancy disputes.

4.39 It is common practice for landlords to require a deposit before a tenancy commences. This is generally equivalent to one month's rent, however landlords of more valuable properties often ask for up to three months' rent. Some or all of this deposit may be used by the landlord to return the property

[22] https://www.gov.je/home/rentingbuying/otherrentaloptions/pages/rentsafe.aspx
[23] This figure excludes residential and nursing homes and "Affordable" rented housing

to a reasonable state at the end of a tenancy, with any excess being returned to the tenant. Most landlords behave responsibly and hold deposits fairly, and most tenants discharge their obligations under the lease. Data provided by the Policy & Resources Statistics Unit show the annual average monthly rent for different type and size of property in the table below.

Table 3 – 2017 Annual average monthly rental price by type and number of bedrooms

1 Bed Flat	2 Bed Flat	2 Bed Bungalow	3 Bed Bungalow	2 Bed House	3 Bed House	4 Bed Bungalow /House
£929	£1,183	£1,392	£1,800	£1,453	£1,813	£2,242

4.40 Using these data and the distribution of properties in these bands, it is estimated that the total amount of deposits held by private landlords at any time is around £12m. Due to the magnitude of deposits and the number of people it affects it is not surprising that there is scope for disputes to arise between landlords and tenants regarding deposits.

4.41 Disputes relating to deposits in the private sector are occasionally brought to the attention of Housing staff through casework by Deputies or through the media. In the absence of an appropriate legislative framework[24] officers signpost tenants to the Citizens Advice Bureau. In 2015, 750 private tenancy issues were reported to the Guernsey Citizens Advice Bureau with 92 relating to deposits and 52 directly relating to the lack of a tenancy deposit scheme[25].

4.42 A contract-based system has advantages for both landlord and tenant – without the constraints of legal obligations in legislation the two contracting parties can theoretically devise a lease which meets both their needs as fully as possible. Notice periods can be flexible and the standards of accommodation are set by free market principles, so in theory, tenants can access the kind of accommodation they wish to pay for. The States provides social housing for the most vulnerable or financially disadvantaged, and therefore tenants on the private market ought to be only those individuals who can afford to make choices about where they rent.

4.43 In reality, however, there are limits to the benefits brought about by a largely unregulated private rented sector. The current model can cause harms, and these are felt by both landlords and tenants. Landlords can be adversely affected by tenants who breach their agreement, cause damage, and move on.

[24] The only legislative tool available for private rented properties is Rent Control which does not apply to most rental properties which are not in HMOs and so has a very limited practical application. Also, it only applies to fair rents and not to deposits.
[25] Figures from the 2015 CAB query report with further statistical breakdown provided during the consultation process.

If the landlord is forced to use a deposit to cover a final period of tenancy where rent was unpaid, the cost of repairing damage to the property must be met from the landlord's own pocket. On the other side of the relationship, Citizens Advice Bureau report that they deal with a significant number of queries from tenants who feel that their deposit has been unfairly held by a landlord at the end of a tenancy. With no formal guidelines or dispute resolution process, neither party's rights are clear; unscrupulous landlords and tenants can freely exploit the system to the disadvantage of the other party.

4.44 The social rented sector provides housing for most of the Island's most disadvantaged households, but while a waiting list exists there will always be some households who cannot be housed even if they meet the eligibility criteria and some people do not meet those criteria. Those households have no choice but the private rented sector, even though they belong to the group that the States has acknowledged as needing subsidised housing. The concept of freedom of choice, an advantage of an unregulated market, simply does not exist for those tenants. Their choice of accommodation is limited by their income. Stigmatisation and discrimination against low-income households means some landlords refuse to let properties to households in receipt of benefit, and thus their pool of potential rental properties shrinks even further. With limited disposable income these households tend not to be in a position to afford to have savings, and so finding a deposit in the first place may be a struggle. They simply cannot afford to have their financial deposits unjustly withheld, especially if they have to pay another deposit on their next property.

4.45 The Committee notes that other jurisdictions have experienced similar problems in the regulation of the private rented sector, and third-party deposit protection schemes are commonplace. Throughout the United Kingdom and in Jersey, external agencies are engaged by local governments to administer deposit protection schemes.

4.46 The introduction of a deposit protection scheme would:

- Contribute towards the ongoing programme of work aimed at modernising and improving the statutory oversight of, and support for, the residential rental sector in Guernsey. At the same time it supports the delivery of area of focus 18 of the Future Guernsey Plan – "housing strategy" which focuses on improving affordable housing provision;
- Provide protection for both landlords and a large proportion of the public as around 20% of the population rent privately[26]; and
- Enhance Guernsey's reputation by complying with international best practice and addressing the existing gap in the protection of the rights of landlords and tenants in the private rental property market.

[26] https://gov.gg/CHttpHandler.ashx?id=93781&p=0

4.47 Deposit protection schemes introduced elsewhere tend to fall into one of two categories; insurance schemes and custodial schemes and these are outlined below.

4.48 With an insurance scheme, the landlord keeps the deposit but pays an insurance fee to an independent agency. If a tenancy ends in dispute, the agency recalls the full amount of the deposit and pays it to the tenant if it finds in the tenant's favour. Insurance schemes do not provide the same incentive for landlords to adhere to best practice, as they hold the money (and keep any interest earned) themselves. In the event of a dispute, the third party has to wait for the landlord to transfer the deposit to them while a resolution is sought and adds unnecessary delay to proceedings.

4.49 Under a custodial scheme, the third party would hold the deposit for the lifetime of the tenancy. Landlords can be compelled by legislation to pay the deposit to the agency or face a fine (e.g. in Jersey, landlords who fail to pay into the scheme within 21 days are fined £2,000). Tenants are also liable to pay a one-off holding fee to the agency. The cost of this depends on the agency, but as a guide "mydeposits" (used in Jersey) charge £21 per tenancy, TDS in England charge fees starting from £13.20, and in Northern Ireland the charge for administering the scheme is paid for through interest earned on the deposit held.

4.50 If the tenancy is ended without dispute, the deposit is returned to the tenant. The scheme also ensures tenants are protected if a landlord goes bankrupt or loses their assets for any other reason. In the event of a dispute, the agency can work with both parties to find a resolution. Some agencies include this service as part of the fee, others ask for an additional charge. Dispute resolution requires both parties to provide evidence, and if one agency is contracted for the Island, it will ensure consistency of approach across all private tenancies without recourse to the Courts.

4.51 The size of the Island means that running both kinds of schemes would not be viable. The Committee notes that Jersey has a larger market and has only introduced a custodial scheme. The Committee believes that there are considerable benefits in working in working in partnership with Jersey:

- Ease of implementation;
- Reduced cost; and
- Experience to date in Jersey.

4.52 The Committee considers a custodial scheme to be a preferable option, as monies will be held by an independent third party and dispute resolution is more straightforward.

5. Proportionate Regulation and Enforcement

5.1 The proposals are intended to provide a transparent system that will ensure stability and certainty for tenants, landlords, businesses etc regarding their respective responsibilities. The intention is to protect the health and wellbeing of Islanders through the meeting of duties in relation to basic housing standards and not to place unnecessary burden on providers or users of the housing sector.

5.2 Officers at the OEHPR apply good practice in Enforcement Policy with the core constructs being consistency and proportionality. Existing and proposed legislation enforced by OEHPR officers have mechanisms for appealing key decisions made or actions taken by the relevant Committee or officers appointed under the legislation and it is proposed that standard rights of appeal through the Court would be provided for in the legislation to ensure that the those regulating remain accountable and questionable for their actions.

5.3 The current enforcement options under public health legislation relevant to housing standards are generally limited to the service of an abatement notice or a closing order. Abatement notices can only address matters which amount to or are deemed to be 'a nuisance or prejudicial to health'. If the Court agrees with the officer's interpretation that only a Category 1 hazard (as defined by HHSRS) amounts to or is deemed to be a nuisance or prejudicial to health, then abatement notices cannot address less critical (Category 2) hazards.

5.4 The enforcement options within the UK's Housing Act 2004 include:

- Improvement notices (for category 1 and 2 hazards);
- Prohibition orders (for category 1 and 2 hazards);
- Hazard awareness notices (for category 1 and 2 hazards);
- Emergency remedial action or emergency prohibition orders (for category 1 hazards only);
- Demolition orders (for category 1 hazards only); and
- Slum Clearance area declarations (for category 1 hazards only).

5.5 The UK Housing Act also has provisions to enable authorities to take the action required by an improvement notice itself, with or without the agreement of the person on whom the notice was served. The need to act without agreement may arise where a category 1 hazard exists and remedial action is required without undue delay, but the owner is not in a position to carry out the works or arrange for the work to be done, perhaps for financial reasons. Authorities may have to carry out works without agreement where a notice has not been complied with. Where the authority takes action with the agreement of the person served with the improvement notice the works are to be taken at his or her expense. Where the authority takes action without agreement, it may recover expenses reasonably incurred. Such expenses may be made a charge on the property. An appeals process also exists in relation to the recovery of expenses. It is proposed that similar provisions are implemented locally.

5.6 Demolition and clearance provisions relating to structures are considered to beyond the necessary scope of addressing housing standards locally which is beyond the priority purpose of this policy letter. This has a wider application than housing and would also have other impacts which would require further consideration before being proposed. A power to introduce legislation covering these provisions has been proposed to be included within the Enabling Law (Appendix 1), however this is intended to provide future options and detailed policy proposals (following consultation with other Committees) would have to be brought to the States before this is would be implemented. Similar enforcement provisions to the other notices/orders are, however, proposed as they provide proportionate enforcement options.

5.7 The other enforcement options would allow a much greater ability to address a wider range of factors, with the enforcement action being proportionate to the risk which the defect presents. The ability to carry out works in default, where a person has failed to comply with a notice, has benefits for occupants, owners and the wider public (including neighbours) and it is an established and proven enforcement option in the UK and other jurisdictions, albeit used equitably and likely infrequently. As set out above, there would be a right of appeal against an enforcement notice.

5.8 Additional enforcement options would provide greater scope to be able to ensure appropriate changes are made to provide basic conditions within properties but the Committee is not looking to vary the general approach or standards from what is currently required. The new legislation would, however, provide a sound, legal foundation for these to be applied and will provide proportionate options on how improvements could be secured whilst providing robust rights of appeal.

5.9 In addition to the main civil notices and orders outlined above, it is also proposed that the legislation has similar offence provisions and other sanctions to those in the equivalent legislation in the UK but adapted for the Guernsey context so that there will, for example, be offences in relation to breach of a civil notice or order, for failing to be licensed or registered as required or for not complying with a term or condition of a licence.

5.10 It would be possible to introduce legislation simply covering these issues but this would not deal with the wider need to address inconsistencies and differences of terminology used in other legislation affecting housing standards across the States. If these issues are not tackled the opportunity would be lost to consider streamlining inspection requirements and harmonise terminology across legislation. The proposed approach has been agreed, through the consultation process, with other States' Committees services that regulate issues relating to the housing stock as it would allow for more consistency in inspection requirements and terminology used in the future, where consistent with the purposes of the other legislation.

5.11 It is proposed that a comprehensive approach is taken to include legislation relevant to housing standards within the new legislation rather than remain across several pieces of legislation insofar as this is consistent with the purposes of the current legislation. This is intended to ensure that there is a consistent approach across all States' services and to improve service delivery.

5.12 To allow a wide enough scope to address all issues relevant to Housing Standards under one piece of legislation, it is proposed that primary legislation is drafted. The Law would provide for action to be taken and enforced as necessary against measured risks to improve the health and wellbeing of all residents, in all sectors of housing in the Island.

5.13 Having comprehensive primary legislation, including powers to provide for Ordinances and SIs, will provide flexibility for future housing policy proposals to be adopted under this 'umbrella' legislation. This would provide one Law under which any measures relevant to housing standards could be addressed including but not limited to, measures to tackle vacant dwellings, standard lease agreements, etc. subject to further debate and approval by the States.

5.14 It is, therefore, proposed that new legislation is enacted to redress the current shortcomings in locally applicable housing standards and enforcement provisions, allow the registration of rented properties and licensing of HMOs, introduce a deposit protection system and to provide a framework within which subsequent housing-related issues can be implemented. Appendix 1 sets out the provisions that the Committee believes should be included in the Enabling Law and details the provisions that could be provided for by SIs and not by Ordinance.

6. Resources and Implementation

6.1 As mentioned in this report, the States of Jersey already have an established rent deposit scheme and have commenced legislation relating to housing standards for rental properties, an equivalent to HHSRS and licensing of rented dwellings. It is likely that significant resources could be saved through collaborative working and sharing of drafted legislative material on areas where equivalent legislation is already in place in Jersey. The States of Jersey have been consulted on these proposals and have raised no objections to the principles of collaborative working.

6.2 HHSRS is already being used as the measure to determine the suitability of the Island's housing stock for human habitation therefore the formal introduction of this system would not impact on the routine operations of the OEHPR.

OEHPR staff already receive training regarding the use of this tool therefore there would also no additional training cost implications.

6.3 Administration of the registration and licensing schemes would be covered by the proposed fees although these would not be a means to generate revenue. The schemes would be reviewed after 12 months to assess the impact on the housing stock and the implications on the OEHPR's resources. It is probable that the fees would be utilised to employ additional human resource to carry out duties associated with the administration and enforcement of the legislative provisions.

7. Consultation, Joint Working and Policy Content

7.1 A targeted consultation was issued in March 2019 to ascertain the views on the existing legislation and of an early draft of the Committee's proposals. The consultation was aimed at key stakeholders including States' Committees, enforcement officers, housing providers, landlords and estate agents, representatives of the construction industry, charities and services who may be affected by the proposals. Initially 28 consultees (some of which were bodies with wider membership) were contacted but this attracted wider interest following being raised in the local media. A total of 37 responses were received and a summary of the consultation findings is provided in Appendix 2.

7.2 The content of this Policy Letter has been amended to reflect the comments that were received, both positive and negative, and additional details and reassurances have been provided to address queries regarding the extent and application of the proposals.

7.3 It has previously been highlighted that the States of Jersey have in place existing legislation on housing standards for rented dwellings and are in the process of adopting additional legislation in that area which delivers similar provisions to certain of those proposed within this Policy Letter. There are obvious advantages for the States of Guernsey to benefit from the work that has been carried out in Jersey and it has been indicated that there is a willingness to engage in collaborative working.

7.4 The Law Officers of the Crown have been consulted regarding the legal implications and legislative drafting requirements resulting from the propositions and this policy letter.

8. Compliance with Rule 4 of the Rules of Procedure

8.1 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 except Deputy M Dorey who recused himself due to a declared interest.

8.2 In accordance with Rule 4(5), it is confirmed that the propositions relate to the purpose and policy responsibilities of Committee *for the* Environment & Infrastructure, as the Committee with the policy mandate for general housing policy.

Yours faithfully

B L Brehaut
President, Committee *for the* Environment & Infrastructure

S L Langlois
H L de Sausmarez
S T Hansmann Rouxel
Members, Committee *for the* Environment & Infrastructure

APPENDIX 1

PROVISIONS TO BE INCLUDED IN THE ENABLING LAW AND PROVISIONS TO BE PROVIDED BY ORDINANCE AND STATUTORY INSTRUMENT

The Enabling Law would allow for broad provisions in relation to regulation of the Island's housing stock on areas relevant to housing standards including:

1. General powers to make Ordinances to regulate the Island's housing, other than control of occupation.

2. Specific powers to make Ordinances in relation to:

   a) A system to assess the quality of housing
   b) A basic housing standard for rented dwellings
   c) A licensing regime for houses in multiple occupation
   d) A registration system for private rented dwellings
   e) A deposit protection scheme for private rented dwellings
   f) Minimum obligations of landlords and rights of tenants
   g) Demolition and clearance provisions
   h) Standard enforcement provisions:
      i. Powers of entry, warrant to enter dwellings, statutory powers to make requirements, take samples etc., obtain information by written notice, issue civil notices and orders (including improvement notices, prohibition orders and hazard awareness notices) and powers to take emergency remedial action;
      ii. Provision for the Committee to carry out works in default where notice/order provisions are not met and related powers to impose a charge and to recover costs associated with the administration and enforcement of the Ordinance; and
      iii. Provision for offences and other appropriate sanctions
   i) Provision for appeals against specified decisions of the Committee or authorised officers.

3. Ordinance powers to amend other legislation relevant to housing as proposed in Proposition 7.

4. Ordinance powers would also provide powers for other standard provisions including, provision for fees and charges, the issuing of guidance or codes of practice, appointment of authorised officers and delegation of Committee functions and exclusion of liability where acting in good faith.

Proposed provisions to be provided by statutory instruments would include:

I. Powers to introduce and amend fees for licensing and registration systems.

APPENDIX 2

The General Housing Law

Summary of Consultation Findings

Committee *for the* Environment & Infrastructure

Executive Summary

On 19 July 2018, the States directed the Committee *for the* Environment & Infrastructure to undertake a Programme of Works to investigate the efficacy of the existing legislative framework and processes governing housing quality standards, and to determine how legislation could support the provision of good quality housing, following concerns that the current provisions within legislation to regulate standards across the Island's housing stock were inadequate.

A number of useful points for consideration were raised in the consultation, such as suggestions regarding how measures aimed at enforcing the law and incentivising good practice could be improved by collaborative working amongst key stakeholders and support from Government.

It was recognised that a consolidation of the current legislation would be beneficial as it would help to unify language and create a better shared understanding of processes and specifications amongst service providers and users. It was anticipated that streamlining the existing structure and giving greater powers to the Office of Environmental Health and Pollution Regulation (OEHPR) to assess all standards and enforce improvements would remove duplication of services.

A number of respondents felt that introducing minimum standards would have a positive impact by improving the quality of the Island's housing stock and would reduce the health and safety risks associated with dwellings left in poor condition.

The Committee intends to address some of these points whilst considering the unintended consequences that might occur if the proposals were introduced, such as the effect on the affordability and availability of private renting housing.

It was noted that more technical detail, including a detail of the proposed fees, would need to be developed.

The Committee will consider the consultation responses as part of the development of a set of draft proposals for the General Housing Law, which it aims to bring to the States of Deliberation in spring 2020.

The Consultation

The Committee *for the* Environment & Infrastructure is developing proposals for housing legislation that will provide a singular legislative framework to strengthen existing legal powers by providing proportionate provisions to regulate conditions across all housing on-Island and provide greater protection to tenants, landlords and property owners.

A targeted consultation was issued in March 2019 to ascertain views on the existing legislation and an early draft of the Committee's proposals.

The consultation was aimed at key stakeholders, such as housing providers, landlords, and estate agents, representatives of the construction industry, charities, relevant States Committees and services who might have new rights, obligations and / or duties under the new general housing law. A total of 37 responses were received.

Summary of the Key Findings

The key findings are summarised into six themes which were identified during the review of the consultation responses: introducing a singular legislative framework; minimum housing standards; registration of the private rented sector; licensing of houses in Multi-Occupation (HMOs); deposit protection scheme; and other comments received.

1 Introducing a singular legislative framework

It was questioned whether the proposals would have the effect of supplementing or consolidating the existing legislation. Most respondents were broadly in favour of standardising practices and creating a shared understanding in order to streamline the current system, but were opposed to the idea of supplementing existing legislation as they were concerned that this would over-complicate the law and add unnecessary bureaucracy.

"Ensuring that a Law exists that clearly sets out definitive roles, responsibilities and expectations, with no contradictions, is essential to address issues raised in [the] report".

"Regulatory burden will be increased, not reduced".

People's level of satisfaction with the current law was high. A large percentage of people felt that the legislation did not require amendment as there was a perceived lack of evidence to suggest that a change in legislation would improve housing standards and eradicate bad practice, but that a better application of the current law via policy changes could create a positive impact. This application should be clear and consistent.

2 Minimum housing standards

More detail regarding the standards criteria and information on how the system (assessments and enforcement of improvements) would operate in practice was requested.

A number of respondents supported the idea of introducing minimum housing standards as a measure to ensure the Island's housing stock was of good quality. However, it was noted that the Housing Health and Safety Rating System (HHSRS) is now outdated and a more contemporary model bespoke to Guernsey should be adopted that is both clear and transparent.

Agencies concerned primarily with the health and safety of inhabitants, such as the Police and the Fire and Rescue Service in particular, were firmly supportive of introducing minimum standards to ensure people are protected against potential hazards caused by dangerous structural elements of the dwellings as well as installations inside the dwellings.

"Agree that the current controls are outdated, unsuitable, fractured and at times conflicted."

However, others were of the view that powers to enforce an acceptable standard compliant with health and safety requirements already existed and that no further measures were needed.

Some comments mentioned concerns regarding the unintended consequences that might emerge if minimum standards were introduced. For example, if landlords were obliged to make costly upgrades to their properties, it might be expected that the costs of rent would increase to off-set the additional expense. Landlords and property owners suggested that the States of

Guernsey should offer some kind of financial relief to incentivise landlords to make the necessary improvements.

"There is a dilemma in wanting to put up living standard to a minimum acceptable level but not increase the rents for low income people".

3 Registration of the private rented sector

Views on the mandatory registration of the private rented sector were divided.

Some respondents were of the opinion that the registration of the private rented sector would be advantageous to landlords because certification would show prospective tenants that the property was well maintained and in good condition, which would encourage good practice.

"...a kite mark type certification so that landlords can show prospective tenants as a positive endorsement of their accommodation."

Others did not see any benefits associated with the registration of the private rented sector. They were concerned that the enforcement of registration would not prevent miscreant landlords from providing poor quality housing, as they would simply avoid the system and remain undetected.

"Bad landlords will remain below the radar and can only be identified by complaints about the state of their property as would be the case now if current laws were enforced."

Some comments expressed a concern that if a registration fee was charged, landlords would be inclined to raise the costs of their rent in order to compensate for the additional expense and that this would have an undesirable effect on the market and would have an especially negative impact on tenants that are on a low income. It was noted that the registration would need to be compliant with GDPR.

Some respondents suggested that, if the proposal to introduce registration were approved, the renewal of registration fees and licence fees should be aligned so that they fall on the same date to help ease the process and avoid duplication for landlords.

4 Licensing of houses in multi-occupation (HMOs)

Further detail regarding the timeline of implementation was requested.

Landlords thought that HMOs should be subject to the same level of regulation as standard rental properties, which does not include licensing. Respondents requested a workable definition of an HMO and the use of a single framework. It was suggested that Guernsey import the UK definition of an HMO – "a property rented out by at least three people who are not from one "household" (for example a family) but share facilities like the bathroom and kitchen".

The Fire and Rescue Service were strongly in favour of the licensing of HMOs, but thought that further consideration would need to be given to implementation procedures in order to manage the allocation of time and resources required to respond to a surge in HMO inspection requests when initially introduced.

5 Deposit protection scheme

Views on the deposit protection scheme were mixed. A diverse group of respondents, including some landlords, fully endorsed the scheme for the reassurance it would give them that their assets were secure.

If a deposit protection scheme were to be introduced, a custodial system, similar to the model used in Jersey, was preferred by the majority.

"A custodial scheme has the greatest chance of succeeding, avoiding disputes and offering protection to the tenant and landlord. It is also up and running in Jersey."

However, a significant number of landlords were opposed to the deposit protection scheme because it was felt that the proposals were unbalanced and did not afford landlords and property owners as much protection as tenants. Furthermore, the point was made that the proposals were unfairly discriminatory against landlords, as mandatory deposit protection schemes do not exist in other market places. They were of the opinion that if a mandatory deposit protection scheme were introduced, it should be extended to include all forms of deposits.

"We suggest that to provide balance, landlords should be given more protection in various ways such as strengthening the debt recovery process, rather than being charged fees to register their rental property and licence fees if it's a HMO."

"If a scheme is to be set up, any deposit of any nature should be covered by the scheme and, by law, businesses should be forced to use it. It should not form part of a housing standards law".

Some respondents considered there to be enough protection available through non-judicial or judicial redress mechanisms in the existing system. It was noted that the Guernsey Private Residential Landlords Association (GPRLA) already offer a free and open mediation service to both landlords and tenants, or arbitration could be used to settle disputes. Petty Debt claims could also be made in the Magistrate's Court.

More technical detail concerning the deposit scheme, in particular, the policy regarding the investigation of disputes and oversight of the appeals system, was requested.

Some members of the Royal Institute of Chartered Surveyors (RICS) commented that they already have to demonstrate a separation of funds and accounts and that, where this was already being done, a deposit scheme would be unnecessary. It was suggested that a legal requirement for self-managing landlords to open a separate tenant bank account in escrow could be introduced, but that this did not need to be through a new government scheme.

6 Other comments

More detail regarding the cost/ resource implications was requested.

Landlords and property owners were concerned that the proposals were antithetical to the free market.

"Landlords and owners will be restricted in how they operate their businesses to maximise their profit margins."

Some people took issue with the title of the proposed new legislation, 'Regulation of Housing (Enabling Provisions) (Guernsey) Law', and suggested it should be changed to 'Regulation of Housing Standards (Enabling Provisions) (Guernsey) Law' to better reflect what the law is about.

Landlords felt that it was unfair that the proposals implied they were responsible for the poor health of the tenant, as whilst poor quality accommodation can be a contributor, it is not usually the main reason.

Committee *for the* Environment & Infrastructure

Raymond Falla House
Longue Rue
St Martin
+44 (0) 1481 234567
environmentandinfrastructure@gov.gg
www.gov.gg

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

28 February 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 proposed introduction of a general housing law be considered at the States' meeting to be held on 22nd April 2020.

This date is requested as the States of Deliberation directed a Programme of Works to be undertaken, including an 'analysis of the legislative framework and processes governing housing quality legislation and how legislation can support the provision of good quality housing'. The estimated timescale was for a Policy Letter to be presented in quarter 4 2018. Due to the scale of this undertaking and the necessity to consult with a variety of stakeholders, it has not been possible to achieve this target. This work stream, however, remains very important to inform the Housing Strategy, which is a priority policy area within the Future Guernsey Plan and this is fundamental to the Committee's policy mandate for general housing policy.

Yours sincerely

Deputy B L Brehaut
President
Committee *for the* Environment & Infrastructure

P.2020/33

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

STATES TRADING SUPERVISORY BOARD

THE FUTURE GUERNSEY DAIRY PROJECT

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled 'The Future Guernsey Dairy Project' of the States' Trading Supervisory Board, they are of the opinion: -

1. To reaffirm the States' policy on the dairy industry as set out in the resolutions of the 25th September, 2014 on Article IX of Billet d'État No. XX of 2014, to maintain a States owned Dairy and to confirm that the States remains of the opinion that the unique Guernsey breed of cow must be preserved and protected and that the local dairy farming industry is inextricably linked to sustaining Guernsey's rural environment and agricultural economy.

2. To agree that the Future Guernsey Dairy Project is formally included within the capital portfolio (2017 – 2021), to be funded from the Capital Reserve.

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

STATES TRADING SUPERVISORY BOARD

FUTURE GUERNSEY DAIRY PROJECT

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

2nd March 2020

Dear Sir

1 Executive Summary

1.1 The States owned Guernsey Dairy is a well-known and respected Guernsey brand[1] and provides islanders with year-round supplies of fresh liquid milk and other dairy produce, supplied by Guernsey dairy farmers from the iconic Guernsey Cattle Breed. The current Guernsey Dairy building and facilities were initially completed in 1951 and were last subject to a major rebuild and refurbishment 30 years ago, in 1989. Much of the building fabric and equipment is now reaching the end of its operational life and the ongoing challenges involved in maintaining this ageing infrastructure present a number of significant risks to continuity of supply of fresh milk and other dairy products.

1.2 In 2014, the States endorsed a policy framework for the future dairy industry, following an in-depth review (see Billet XX, 2014)[2]. That included an undertaking to conduct a further review of the States' Guernsey Dairy. This was with a view to its modernisation to ensure that it could continue to support the wider dairy farming industry delivering the environmental, social and cultural benefits in the long term in an effective and efficient manner.

1.3 This Policy Letter sets out the investment proposal for the future of the Guernsey Dairy, following approval of an initial stage business case, the Strategic Outline Case (SOC) by the States' Trading Supervisory Board. The SOC and this Policy Letter set out how the investment proposal will facilitate the Guernsey Dairy to continue to operate in the future as a fit for purpose, ongoing concern which complies with applicable legislation and standards whilst also improving operational efficiency and reducing revenue costs.

---

[1] Island Global Research, IGR Reputation Index Guernsey Report, November 2019
[2] A Review and Policy Letter: "A Review of the Dairy Industry"; Article IX of Billet d'État XX, Volume 1, September 2014

1.4 The urgency of this investment proposal has become increasingly evident, following recent building condition surveys conducted by Property Services and Technical expert reports on the condition of the specialist equipment and associated services. Work ought to be progressed without delay on either a major refurbishment of the existing facility or a purpose built new Dairy. The Guernsey Dairy cannot continue in the medium to long-term as a sustainable or viable concern without investment.

1.5 This Policy Letter sets out recommendations for:-

(a) Affirming the States' policy on the dairy industry, to maintain a States owned Dairy within the wider context of the protection of the Guernsey Cattle breed and sustaining Guernsey's rural environment and agricultural economy.

(b) Agreeing that the Future Guernsey Dairy Project is formally included within the current capital portfolio (2017 -2021) to be funded from the States Capital Reserve.

1.6 Should the States agree to the Future Guernsey Dairy Project being formally included within the current capital portfolio (2017 – 2021) to be funded from the States Capital Reserve then this will:

(c) Enable work to progress on the 'preferred way forward' as set out in paragraphs 10.1 to 10.5 of the policy letter for a Future Guernsey Dairy from a Short List of possible options, as set out in section 9 of the policy letter.

(d) Mean that the Policy & Resources Committee has authority to approve funding from the Capital Reserve to support the development of the project during 2020 and 2021. This development stage includes all necessary steps to the completion of an Outline Business Case (OBC) stage policy letter, referred to as the 'Design and Analysis' phase. The funding requirement is as set out in paragraphs 11.7 to 11.8 of the policy letter, and is not expected to exceed £2.3m.

(e) Enable the project to progress towards the completion of an Outline Business Case, setting out the developed proposal for the capital investment required for the construction of a replacement or refurbishment of the existing Guernsey Dairy, which would then be ready to go out to tender for a preferred solution. This would demonstrate that the preferred way forward optimises value for money, demonstrates its affordability and details the supporting procurement strategy and management arrangements for the successful delivery of the project.

(f) A policy letter would then be submitted by the STSB asking the States to approve the developed project and to agree that the STSB tender for the preferred solution, following which the Full Business Case will be finalised.

(g) Subject to those approvals, the States will also be asked to give the Policy & Resources Committee delegated authority to open the substantive capital vote, to cover the principal capital costs for the preferred solution, provided the value is within agreed ranges and the specification and outcomes remain unchanged.

1.7 The STSB has taken the unusual step to propose that the Future Guernsey Dairy Project is formally included within the current capital portfolio, in the knowledge that this will mean that consideration will need to be given to reprioritising the portfolio to enable this project to progress. This is borne out of necessity, for the reasons that are described in this policy letter.

1.8 The current Guernsey Dairy building and equipment are in need of refurbishment or replacement in order to continue to comply with relevant regulatory requirements in the future. Officers at the Office of Environmental Health & Pollution Regulation (OEHPR) are appointed by the Committee for Health & Social Care under food legislation to enforce compliance with that legislation. The Director of Environmental Health and Pollution Regulation and officers at OEHPR also enforce requirements under the environmental pollution legislation.

1.9 The Guernsey Dairy are licensed by the OEHPR and can only operate as a food processing manufacturer, providing it complies with legal requirements. Unless ongoing improvements are made to the Guernsey Dairy building and equipment, it will become increasingly difficult to meet the requirements of the legislation, which provides operational challenges for the Trading Asset at present. The improvements are extensive and challenging to execute and there is a need for a complete refurbishment or new build.

1.10 The Guernsey Dairy faces daily challenges in providing its services. The design of the current Dairy and the legacy equipment have led to increasing inefficiency of production, resulting in high production overheads, increased wastage, machine breakdown/maintenance downtime, and additional staff overtime in order to maintain operations.

1.11 Currently, the Dairy has two days' storage capacity for milk prior to processing and limited capacity after processing which means the facility has to operate over seven days. In order to improve operating efficiency, for example over four days, increased storage capacity of raw and finished products is required.

1.12 The Guernsey Dairy has experienced a declining trend in milk sales, particularly in the last few years - with 2018 sales down by -2.8% by volume on the previous year and 2019 sales to date showing a further decline of -2.7%. The recent decline is thought to be driven by a combination of customers ordering less, due to a reduction in doorstep deliveries and the longer shelf life of milk, as well as the trend towards plant based alternatives to milk products.

1.13 Waste milk, water and cleaning materials (pollutants) are not reused and recycled and there is a lack of capacity on site for equipment to deal with this waste. This situation is not sustainable and will also need to be changed before new legislation and environmental good practice is introduced to Guernsey, which may include stricter controls of such discharges into water and the sewage systems. It is likely this will broadly reflect requirements under current UK legislation.

1.14 The Future Guernsey Dairy Project has taken this opportunity to consider the future form of States support for the Guernsey dairy industry, within the current strategic and policy framework. It considers a range of options for continuing to accept all raw milk produced by Guernsey farmers, processing the raw milk and meeting the island's demand for fresh liquid milk throughout the year.

1.15 At this early stage of the project, a short list of options has been proposed together with the 'preferred way forward' for further investigation. The options include the construction of a new Guernsey Dairy on a new site and a refurbishment of the existing Dairy.

1.16 The total capital investment required covers the 'whole life costs' for a 20 year period and includes building costs, plant, equipment, site purchase, fees and optimism bias. However, the main capital outlay for the build/construction costs and the plant and equipment replacement is currently estimated to be within a range of between £22m and £26m. This will be required during approximately 2022/24, given the necessary planning and financial approvals and construction lead in times.

1.17 The Future Guernsey Dairy Project investment proposal is inextricably linked to the wider dairy industry of Guernsey and its importance stretches well beyond that of simply a replacement milk processing facility. The Guernsey Dairy works closely with the Guernsey Farmers' Association in fulfilling its role as a key and pivotal part of the milk production system, linking the environment and farms to consumers. It has an impact on the dairy economy with a direct economic benefit calculated at £2.4m per annum. Its operation is required to balance the potentially competing demands of a modern economic dairy processor and helping to sustain Guernsey's rural environment, farming economy and the protection of the rare Guernsey Cattle Breed.

1.18 The consequences of not investing in either a refurbishment or replacement Dairy building may ultimately result in an inability to supply milk to meet demand, resulting in a requirement to import liquid milk. This may then lead to retailers dictating the market and importing cheaper liquid milk, leading to the decline of the dairy industry, resulting in farms being sold; adverse impact on the biodiversity of the countryside and Guernsey's unique rural environment; and ultimately the decline of the rare Guernsey Cattle Breed in her Island home.

2 Introduction

2.1 The principal reason for the existence of the Guernsey Dairy is to support the maintenance of the Guernsey's unique rural environment and to protect the Island's unique herd of Guernsey cows. The processing of the milk at the States owned Dairy and the sale of it at the Dairy's 'gate' is the financial mechanism that enables the continuation of the dairy farming industry.

2.2 There are currently 14 farms on the Island with approximately 1,400 milking cows. The cows produce in the region of 8 million litres of liquid milk per annum. Under the current legislative framework, the Guernsey Dairy is required to buy all the milk produced, whether it needs it or not. Guernsey Dairy requires approximately 7 million litres to meet existing demand.

2.3 The Guernsey Dairy collects milk from the farms in tankers daily and then processes the raw milk into liquid milk and milk-derived products. Milk production involves the processing of raw milk into full cream, skimmed, semi-skimmed (low fat) and organic milk. Other milk derived products include butter, cream, ice-cream and a range of cheeses. Full cream, skimmed and semi-skimmed milk, together with salted butter provide the most profitable product lines for the Guernsey Dairy currently, and contribute 90% of revenue.

2.4 The 'Producer Price' i.e. the price paid to farmers for the supply of raw milk, is set by the Dairy Management Board as is the 'Gate Price' i.e. the price paid by milk retailers, distributers and wholesale customers direct from the Guernsey Dairy's 'gate'. The retail price paid in stores or on the doorstep is set by retailers.

2.5 The quality of the milk is vital and there are stringent legislative requirements in place to ensure this. The milk is tested at the farm and several times at the Dairy during and after processing to ensure it meets these requirements.

2.6 Tests are carried out to ensure there is no extraneous water or antibiotics in the milk, the fat content is measured, as are the total viable counts of bacteria. The amount of milk in each carton is audited and samples of milk are held following distribution to check the shelf life and to be able to test previous batches if needed. Butter, cream and ice cream follow similar testing regimes.

2.7 Over the past years, the quality of Guernsey milk has improved and as a result, liquid milk has a longer shelf life in households. Coupled with changes to the way milk is now distributed and an increasing prevalence and popularity of milk substitutes (e.g. plant based milk) the Guernsey Dairy has seen a decline in milk sales in recent years. Respondents to the recent survey indicated that 89% of households regularly consume Guernsey Dairy milk, which has decreased from 97% in 2015. In addition, 30% of households regularly consume non-dairy milk[3] which are often similarly or lower priced than liquid milk.

---

[3] Island Global Research, Guernsey Dairy Survey Report, February 2020

2.8 The Guernsey Dairy is currently operated under the governance of the Dairy Management Board (DMB), which is a sub-committee of the States' Trading Supervisory Board (STSB) and the STSB is ultimately accountable to the States of Deliberation. The Guernsey Dairy is managed and operated in a commercial manner with all of its revenue received from selling milk and milk-derived products at the Dairy's 'gate'.

2.9 The STSB has a number of policy, statutory and operational responsibilities for managing the Guernsey Dairy, including ensuring it operates as efficiently as possible in the best long term interests of islanders. In particular, responsibilities include ensuring the continued and safe supply of all liquid milk (Guernsey milk) to the Island, as liquid milk can only be supplied by STSB. The Committee *for the* Environment & Infrastructure (CfE&I) is responsible for policy in relation to agriculture and the dairy industry.

2.10 The Guernsey Dairy became an unincorporated Trading Asset following the review of Government and the recommendations of the States Review Committee in 2016 when the STSB took on the management of the operation of the Dairy from the former Commerce and Employment Department.

2.11 There are 38 Full Time Equivalent staff that are employed at the Guernsey Dairy, which operates on a 10 hour day, 7 days a week, 365 days a year basis. Not all Guernsey milk derived products are produced by the Guernsey Dairy. One artisanal company purchases pasteurised milk from the Dairy to produce their own dairy products (such as cheese). Two of the Dairy Farms are licensed to retain some of their raw milk to produce yoghurt and ice-cream.

2.12 The scope of the Future Guernsey Dairy Project is shaped by the current policy framework and statutory responsibilities relating to the Guernsey Dairy and the dairy industry (see section 3).

2.13 The objective of the Future Guernsey Dairy Project ('the Project) focuses on the need to provide a cost-effective solution, including the modernisation of the States owned Dairy in some form, entailing the provision of improved or replacement infrastructure and plant, to maintain the supply of milk for the future. Any solution will need to comply with regulatory requirements and constraints, including those set out under the food and environmental pollution legislation, World Health Organisation food standards and also land planning policy and legislation.

2.14 The Guernsey Dairy works with the local Guernsey Farmers' Association (GFA) and the dairy industry as a whole to support and protect the world-famous Guernsey Cattle Breed and to sustain Guernsey's unique rural environment. Indirectly the Guernsey Dairy supports the Guernsey countryside and cultural heritage, the traditional (traced back to Celtic) field patterns, the boundaries and hedgerows. Dairy farming is the most important farm enterprise in Guernsey with over 8,000 vergees of the 15,250 vergees of agricultural land on island being used by this industry (the island area as a whole totals 38,801 vergees).

2.15 There are currently 1,474 registered dairy cows in Guernsey (with a further 941 heifers likely to become milk cows). Without a dairy, the total number of cattle maintained would almost certainly reduce very significantly. Such a reduction in the gene pool would have long term consequences for the survival of the breed and have an impact on an important part of the Island's cultural heritage.

2.16 Should cheap liquid milk be imported into Guernsey it would most likely mean that most local dairy farms would cease operation. Without support to the dairy industry, the Guernsey Cattle Breed would likely be in permanent decline.

3 Strategic and Legislative Context

3.1 A Review of the Dairy industry was undertaken in 2014, *Dairy Farming in Guernsey and The Future – A Plan for the Long Term Future of the Dairy Farming Industry in Guernsey* – ("the Review). The Review proposed, and subsequently the States of Deliberation agreed, that the environmental and other benefits the industry provides to the Island required a degree of involvement from the States to deal with the greatest risks in the areas of market protection and the processing and distribution of milk to the (local) market. The latter area of focus is that which encompasses the operation of the Guernsey Dairy.

3.2 The Review set out a coherent vision and ten point plan for the dairy industry, that concluded (and included) the need for:

- Effective statutory control over the importation of milk.
- A continuing commitment to the Guernsey Breed.
- An independent, but still States owned, Dairy.
- A firm commitment from farmers to a year-round supply of milk for the Island.
- A simpler approach to milk pricing in the industry.
- The continuation of Dairy Farm Management Contracts.
- Support for farm business development.
- Protection for agricultural land and flexibility for ancillary uses.
- Modernised arrangements for milk distribution and retailing.
- A new Milk Ordinance.

3.3 The policy also sought to further strengthen controls in the Milk Ordinance so as to create a period of operation of the dairy industry with greater certainty about support and protections. The 2014 Resolutions focused on securing the long-term future of the dairy industry, including continuing the commitment to the Guernsey Cattle Breed. The continuing commitment to the Guernsey Cattle Breed, incorporated the "*commitment to an independent, but still States owned, Dairy*"[4]**.** This concurred with conclusion 9 of The Review that:

> .. "The Guernsey Dairy should stay in overall States' control, but a governance structure should be put in place that allows it greater independence to act in a commercial manner for the good of the Island and the dairy industry, but largely freed from the constraints of Political and States control…"

3.4 The Policy Letter also asserted that the Dairy has a vital role to play in the future of the dairy industry and that, given that important role, it is essential that the Dairy operates as efficiently as possible. It pointed to the need for this to be achieved through modernisation and reducing costs further. It went on to state[5] that:

> .. "A further task for the Dairy Management Board will be to examine the future needs of the Dairy and to consider the costs, benefits and feasibility of the development of a more modern facility. This review will not exclude the possibility of building a new Dairy on another site…" and

> .. "The Department regards such a review as essential in order to determine how the Dairy can derive the greatest benefits from operational efficiencies and hence reduce its costs further."

3.5 The Resolutions also agreed to proposals which effectively control the importation of milk. These included a continuing commitment to the Guernsey Cattle Breed and a new Milk Ordinance, whereby imported milk cannot be bought in Guernsey, effectively preventing other liquid milk from being sold.

3.6 The subsequently adopted and current Milk Ordinance of 2016[6] requires *inter alia*, that:

- only fresh milk obtained from the STSB can be sold or supplied on the Island;
- that no one can buy fresh milk on the Island, other than from the STSB or registered distributor, that has not been produced on the Island, except with the express consent or contracted by the STSB;

[4] See Resolution 1 a) of 25th September, 2014 following Billet d'État No.XX of 2014.

[5] Paragraphs 3.31 and 3.32 of the 2014 Policy Letter
[6] The Milk (Control) (Guernsey) Ordinance, 2016

- that any fresh milk that is produced on the Island has to be supplied to the Dairy, subject to certain exceptions including for farmers' own consumption or for use in feeding calves and pre-agreed amounts for making milk derived products (by approved licence only); and
- that the Dairy must therefore purchase all Guernsey milk produced on Island, subject to it meeting required best practice hygiene tests and not being under investigation under food or other legislation.

3.7 It is conditional that the raw milk purchased from Dairy Farmers must reach required best practice hygiene tests, as required under the Milk Ordinance and as specified in the Farmers' Dairy Supply Agreements. The Agreements also set out the agreed level of supply of raw milk (or farm output target).

3.8 The policy framework, defined and subsequently approved by the States in 2014[7], was effectively confirmed as unchanged in the Policy and Resource Plan Update Policy Letter of June 2019[8]. Further consultation has taken place during the development of this Policy Letter and the associated Strategic Outline Case (SOC) business case. This policy approach was recently re-endorsed by the Committee *for the* Environment & Infrastructure and noted by the States' Trading Supervisory Board on 24th October 2019, who retain the policy and operational mandates for the Guernsey Dairy respectively.

Other Strategies of Relevance to the Project

Biodiversity Strategy

3.9 The dairy industry has shaped the farmed landscape of the Island for centuries. Nearly half of Guernsey land is allocated to agriculture and the 14 dairy farms constitute around a quarter of the land. The means of farming and production scale is small and non-intensive. The result of the use of largely traditional farming methods and the distinctive (or 'iconic') local Guernsey Cattle Breed has made a positive contribution to the management of the countryside and its environmental value. Hundreds of miles of hedgerows and earth banks are maintained providing an interconnected habitat resource and sanctuary for wildlife.

3.10 The dairy industry support Biodiversity Plans, as an important contribution to agro-biodiversity and agro-ecosystems. In the absence of significant areas of woodland, grass lands are among Guernsey's most valuable habitats. Dairy farming, particularly in Guernsey, is a less intensive form of farming production and as a whole supports the Guernsey countryside and cultural heritage, the traditional field patterns, boundaries, hedgerows and earth banks.

[7] As above "Review of the Dairy Industry", Article IX of Billet D'État of 2014.
[8] Policy and Resource Plan 2018 and 2019 Update, Billet d'État IX, Appendix 3 (e), pp8-13, 25 June 2019

3.11 Protecting the local Guernsey Cattle Breed is one of the key reasons and justifications for controls over importation of milk and other cattle breeds to the Island. On-island conservancy of the Guernsey Cattle Breed is in line with policies for the protection of the rarer and distinctive breeds in Europe. Whilst the breed numbers are increasing in the UK, US, Canada, South Africa, Australia and New Zealand, the on-island Guernsey Cattle Breed could be considered as the centre of breed excellence.

3.12 Dairy Farm Management Agreements with the dairy farming community encourage animal welfare and breed improvement, stocking density (numbers of cattle per vergee) and the requirement to have a biodiversity action plan in place for farmed land. The Agreements require Dairy farmers to conform to best practice in farm management, including the Code of Good Agricultural Practice for the prevention of environmental pollution from agricultural activity. Guernsey dairy farms are also committed to achieving RSPCA Farm Assured accreditation by January 2021.

Energy Policy and Climate Change

3.13 Agriculture, land use, land use change and forestry combined contribute a small proportion of Guernsey's total greenhouse gas emissions (3.7% in 2017)[9]. The majority of the emissions are methane released by the digestive processes of cattle. Livestock related emissions have remained at a steady level over a number of years.

3.14 Dairy production in Guernsey minimises environmental impacts and cost of transport reflecting the 'proximity principle'[10] – where much of the raw materials, processing and production 'from farm to fork' are very close by. More of the raw materials, such as silage feed for cattle (some of which is currently imported), could be produced on-island in future, if the land was made available for agriculture.

3.15 Future investment in effluent treatment plant will also contribute to the States of Guernsey's Waste Strategy and enable the Guernsey Dairy to comply with future environmental best practice and regulatory standards, by minimising waste from milk processing by-products, re-using water and safely managing and disposing of chemicals.

The Policy & Resource Plan Update

3.16 The CfE&I Committee Policy Plan Update in the Policy & Resources Plan Update Policy Letter of June 2019[11], stated that:

> "..The policy context for the dairy industry and its future development remains as set out in the policy letter (States' Report) approved in September 2014 (Billet D'État XX of 2014). This gave greater responsibility to the sector

---

[9] Guernsey Annual Greenhouse Gas Bulletin, Aether Limited, 2017 (Issue date March 2019).
[10] A principle under EU Law that environmental damage must be remedied at source.
[11] See Appendix 3 (e).

to develop a self-sustaining and forward looking industry in collaboration with the Guernsey Dairy…"

4 Operational Challenges for the Guernsey Dairy

4.1 The Guernsey Dairy facilities and equipment are nearing the end of their operational life and the building fabric is in poor condition. This is a limiting factor in maintaining food hygiene standards and improving the operational efficacy of the business. The building configuration limits the ability to continue to maintain standards and adapt to the needs of a modern food processing facility.

4.2 There is a continuous maintenance and improvement regime in place to ensure that the Guernsey Dairy can both continue to process raw milk and maintain regulatory standards, including those under Food and Environmental Pollution Law, but this is becoming increasingly costly and problematic to achieve.

4.3 Dairy processing technology has moved on significantly in the last 30 years and there is a lack of space within the current Guernsey facility and site footprint to accommodate modern and efficient dairy processing equipment.

4.4 There is no available space within the current building and property footprint of the Guernsey Dairy, for increased efficiency or environmental improvements, such as increased storage for unprocessed and packed milk, the inclusion of appropriate infrastructure for the recycling and disposal of residual waste chemicals, water and the by-products of milk processing.

4.5 These operational challenges have led to the development of a business case to identify a value for money solution to securing the future of the Guernsey Dairy. The project team commissioned E-Glen Projects Ltd (EPL) as technical subject matter experts to advise on the Future Guernsey Dairy Project and provide a detailed assessment, the **'Guernsey Dairy Technical Report'.** Details from this report are included within the summary of the current problems in the following paragraphs. This has led to the conclusion that what is needed is either a complete factory redevelopment and layout, or a new build dairy.

The current Building is not 'fit for purpose'

4.6 The Guernsey Dairy building is not fit for purpose and major refurbishment or new build is needed. Without this, it is unlikely that the current Guernsey Dairy would be economically viable in the medium to longer term. The current Guernsey Dairy facility would require a substantial continuous maintenance regime, to ensure the building remains fit for purpose, whereas a new (or refurbished) Dairy building would need less maintenance investment. The current condition of the property, facilities and equipment, threatens the ability of the Guernsey Dairy to operate effectively in the 21st century and fulfil its business objectives. There has been an under investment in the services and building fabric over a number of years.

4.7 Property Services regularly carry out stock condition surveys to identify indicative levels of maintenance expenditure. Technical surveys were completed at the Dairy and these included: stock condition, electrical, mechanical and drainage assessments and these informed the production of a medium term plan which was completed by Property Services in November 2017. These reports indicated that significant refurbishment to the building was needed and substantial expenditure would be necessary in the short and medium term.

4.8 In addition to this much of the Dairy plant and equipment is currently beyond its useful economic life and is incurring high repairs and maintenance costs currently, as well as presenting business continuity risks.

Food, Environmental, Health and Safety and other Regulatory Compliance Risks

4.9 There are high risks that the Guernsey Dairy will be unable to meet current and future food and environmental pollution regulatory requirements or meet good standards going forwards. The current building was refurbished more than 30 years ago, when legislation was less prescriptive affecting the building of Dairy factories.

4.10 In June 2016, officers from the OEHPR (acting on behalf of the Committee *for* Health & Social Care) served 15 Improvement Notices on the Guernsey Dairy. Whilst improvements have been put in place since, officers from the OEHPR have recently inspected the Guernsey Dairy (November, 2019) and downgraded the facilities to a 'two star' rating. The Improvement Notices reflect the ongoing position in relation to the poor condition of the facilities, including the deteriorating building fabric and finishes, some of which can be attributed to structural deficiency. A continuous and increasingly challenging maintenance regime will be necessary to try to maintain standards and the building fabric and its services make this difficult to achieve. Any work to improve the building fabric, or when replacing equipment and services will cause major disruption to milk processing and will increase the risks associated with food safety and food quality.

4.11 Work has been carried out on the Dairy to improve the situation, whilst the most difficult and challenging areas remain and are complex and costly to resolve. The disruption and planning to tackle the more difficult areas whilst production is still ongoing, creates significant risks in relation to food safety, food quality and the health, safety and welfare of staff and customers.

The current Guernsey Dairy is inefficient

4.12 Despite refurbishment and continual maintenance of equipment to ensure operations can continue, there are business continuity risks arising from the ageing and/or inadequate equipment. The longer that substantive refurbishment and replacement equipment is delayed, there is a risk that the operation of the Guernsey Dairy will be compromised. If Guernsey milk cannot be processed, this may result in milk importation (controlled or otherwise). This would set a potential precedent for changing the way that Guernsey milk is supplied to the Island and a major risk to the Guernsey Dairy's financial sustainability. Milk production on farms would continue in the short term leading to storage problems. The situation could quickly deteriorate, with significant raw milk wastage, leading to significant environmental and reputational damage.

4.13 Remedial repairs are costly and the increased costs of reactive maintenance are impacting on the Dairy's financial position. It is difficult to find equipment that fits within the footprint available, and it is an ongoing challenge to fit the new equipment into an old building. Often plant /equipment needs to be bespoke in order to 'fit' within the constraints of the building. There are challenges in maintaining operations when installing new, or retrofitting bespoke equipment. There is insufficient space within the current Guernsey Dairy site for improvements to production efficiency, product diversification and 'off the peg' processing equipment.

4.14 The maintenance and replacement of site services are even more problematic than the Guernsey Dairy processing equipment at the current site. These include chilled water distribution, mains water distribution, steam and air distribution systems – which are all severely corroded and do not meet current industry standards. These are in urgent need of replacement and do not meet recommended industry standards, associated with a food processing facility. The replacement of these types of services are problematic from both a time perspective and a hygiene perspective, due to their level of proximity to production processes. There are likely consequences that the Dairy may lose its operating licence in attempting to continue with the Dairy operation whilst replacing these systems in situ, due to high risks of contamination.

4.15 Other services such as IT and electrical/electronic interfaces have been added in the past, without overall site management and without complying with any Dairy related installation methodology. To replace and correctly reroute these would be a significant and expensive task and would pose challenges in meeting food and health and safety regulatory requirements. It must be noted that in more recent years, current standards have been followed where practical[12].

[12] Jon Eglen, Technical Adviser

4.16 There is inefficiency in the system currently, with significant downtime from machinery breakdown and maintenance. This causes direct loss of income and increased expenditure i.e. machine maintenance downtime (planned and unplanned), parts and staff costs. This often results in delays to product release affecting customers and consumers.

4.17 The lack of space and investment in modern equipment and infrastructure, prevents process efficiencies that could enable the reduction in resources to process milk, and thereby providing a direct benefit from the investment. It is estimated that a new Dairy could provide savings in production time and other efficiencies of approximately £550k per annum.

4.18 An example of this would be that if there was more raw and finished milk storage, i.e. chilled tanks for cold storage of milk, it is estimated that the operations of the Dairy could reduce from 7 days to four per week.

Waste materials and pollutants need to be disposed of more sustainably

4.19 Waste milk products, such as those when milk is separated from cream are usually disposed of down the drain; similarly the whey from cheese follows the same route. However, recent research (WRAP[13]) has suggested less wasteful methods to be adopted in the production of milk. The milk waste has the potential to be a by-product and a source of high nutrient value proteins. This could be used for alternative non-milk products or used in animal feed applications.

4.20 Guernsey's excess raw milk i.e. that which is surplus to liquid milk demand, is used to produce other milk derived dairy products. Milk and milk derived product manufacture produces waste, and whilst the Dairy utilises this as effectively as possible by producing milk derived products of cream, butter, cheese and ice-cream, some residual milk (i.e. the milky water waste by-product) is produced. The Guernsey Dairy has to balance raw milk intake from farmers with consumer demand, whilst this is not an exact science due to seasonal variations and calving patterns. The Guernsey Dairy works closely with dairy farmers to manage the balance of supply, ensuring it minimises the purchase of milk it cannot sell as liquid milk.

4.21 Guernsey Dairy disposes of 870,000 litres of milk residue (2018) – or around 11% of the total raw milk production per year. The Guernsey Dairy is working with the farmers to reduce this excess milk production and balance supply and demand. In addition, Guernsey Dairy also currently disposes of a number of pollutants, in the foul water drainage system including approximately 600 litres of caustic bleach per week and 100 litres of peracetic acid; both of which are diluted.

[13] Waste and Resources Action Programme

4.22 There is approved States policy to introduce more stringent controls on water pollution which may affect the disposal of dairy waste products in Guernsey[14]. This may impact on the dairy industry. The Guernsey Dairy waste products will need to be managed in a more sustainable way going forwards including re-use, recycling and disposal with investment in appropriate equipment.

4.23 Improvement to effluent controls aimed at reducing the impact on the environment, will not be without cost. This is likely to have an impact on the financial viability of dairy farming as a whole, if inadequate investment is not made.

5 Potential consequences of failure to invest in the Guernsey Dairy

5.1 Should the Guernsey Dairy be left to continue as it is without investment, it is likely that there could be a number of consequences including business continuity issues and production failure and/or temporary or permanent closure of the existing Dairy operation because of food hygiene, food safety and/or health and safety compliance notices. This may result in the prospect of the States needing to licence a Dairy off-island to process and pack liquid milk. Research undertaken has identified that the cost is likely to be in excess of £4.5m per annum to carry out this function.

5.2 If the Guernsey Dairy could not fund the purchase of raw milk, this would lead to farms going out of business and the de-regulation of the local milk market. This may result in an imbalance in supply and demand with retailers importing liquid milk; a repeal or amendment of the Milk Ordinance and potentially irreversible damage from licensing of liquid milk imports; the decline of the dairy industry, resulting in farms being sold; an impact on the biodiversity of the countryside; and ultimately the decline of the rare Guernsey Cattle Breed from her Island home.

5.3 If the States decided to retain the principle of only fresh, Guernsey milk being sold on island, as in effect provided for under the Milk Ordinance, but not to provide a Dairy then the States would need to enter into a commercial licence with a Dairy off-island to produce liquid milk as an interim measure at significant cost. The exportation of raw milk and importation of packaged liquid milk would also need to meet the current controls on the import of animal products under the import control legislation and meet stringent requirements under food Law applying to food exports. These risks would need additional mitigation at further cost. There would also be additional risks of continuity of supply, due to adverse weather or other issues affecting transportation.

[14] For example, the Committee *for the* Environment & Infrastructure estimate the commencement of a new Water Pollution Ordinance in 2021 (to the Environmental Pollution (Guernsey) Law, 2004).

5.4 An alternative could be to support the farmers by providing subsidy payments for milk production without the subsequent State provision of a facility to process it into liquid milk. This would enable the Guernsey Cattle Breed to survive and the dairy farming industry to maintain the islands green spaces and biodiversity. However, the raw milk may not be utilised effectively and the States of Guernsey would then need to step in with funding for the farmers by provision of further subsidy. The Guernsey Dairy currently pay the dairy farmers circa £5.1m p.a. for the raw milk. In approximate terms, this would cost in the region of £100m over 20 years. The milk could either be tipped away, at an environmental cost or potentially shipped off-island to process the milk.

5.5 Currently, the Guernsey Dairy as a commercial ongoing concern buys almost all the milk from dairy farmers to produce liquid milk and milk derived products, and in doing so creating a revenue stream and acting as an economic enabler for the dairy industry. The most secure conservation strategy for the rare Guernsey Cattle Breed is to promote measures which plan for the long term future of the Dairy farming industry in Guernsey and contribute to self-sustainability of the breed.

6 Strategic Drivers and Business Needs for Investment in the Guernsey Dairy

6.1 This Policy Letter sets out the proposed investment and associated plans to address the risk and issues with the current Guernsey Dairy. The strategic drivers and investment objectives are summarised as follows:

Investment Objective 1	The Dairy will continue to operate as an economic and environmental enabler to the dairy industry by purchasing milk from farmers who in turn are contracted to protect the biodiversity and rural landscape of the countryside, preserve the Guernsey Cattle Breed and continue the farming cultural heritage of the island.
Investment Objective 2	Any design changes to the Dairy to improve its operation should meet the highest food and environmental pollution regulatory standards. For food this should be *equivalent to the Food Hygiene Rating of four stars 'good' or five stars 'very good'*[15].
Investment Objective 3	Improvements should be made to the cost effectiveness of the operation through process engineering efficiency and the reduction of overheads. Such improvements will enable the Dairy to produce the highest possible quality products at the lowest possible gate prices.
Investment Objective 4	Any design changes to the Dairy should meet future water pollution controls affecting the disposal of unused milk[16], other waste products and chemical effluents on site through suitable effluent treatment facilities.

[15] The Director of OEHPR advises that five stars should be a standard expectation and compliance with Regulation (EC) No 853/2004 is also important.

[16] The Committee for the Environment & Infrastructure estimate the commencement of a new Water Pollution Ordinance in 2021 (to the Environmental Pollution (Guernsey) Law, 2004).

Investment Objective 5	The Dairy will provide a continuity of supply of fresh milk and milk by-products to the Guernsey consumer throughout any changes to its physical form. These changes should be brought about without delay - at least by 2024.

Table 1: Investment Objectives

The Business Needs for the Guernsey Dairy

6.2 The business needs for the Guernsey Dairy are set our below according to each of the Strategic Investment Objectives and the problems and difficulties associated with the current situation.

6.3 **Investment Objective 1:** The Guernsey Dairy is currently making a small loss and dairy farming continues to need Government support to prevent more Dairy Farms from becoming unsustainable financially. ***To continue to be an economic enabler for the Dairy Industry, protecting the biodiversity of the countryside and the Guernsey Cattle Breed heritage*** the Guernsey Dairy's key business needs are as follows:

- To process milk more efficiently, so that the Dairy is financially self-sufficient and the product is affordable to the end user.
- Continue to provide sufficient business incentive for the continuation of the Dairy Farming industry and to encourage new entrants.
- Continue to enable a financially sustainable Dairy Farming business model, with sufficient income to allow for future business investment and to improve animal welfare standards, invest in technologies to reduce the environmental impact of farming, maintain biodiversity plans and increase food safety and quality standards in line with regulatory requirements.

6.4 **Investment Objective 2:** Remedial repairs during 2018 and 2019 improved the food hygiene star rating from 2 to 4 Stars, however these were temporary fixes. It is becoming increasingly more difficult to deal with the more challenging aspects of the building fabric and services, whilst not impacting on dairy operations or compromising food safety and quality standards, without whole scale refurbishment. In November 2019, an Environmental Health Officer undertook an inspection which resulted in the Guernsey Dairy being rated as 2 Stars once more (based on the condition of the building fabric). Food safety standards, other regulatory requirements and best practice standards are becoming more complex and expensive to implement and maintain[17]. Remedial repairs are costly and the increased costs of reactive maintenance are impacting on the Dairy's financial position. Future site options will also need to comply with planning legislation and land use policy. The Guernsey Dairy will need to ***improve its operation, meeting the highest food and environmental pollution regulatory requirements and best practice standards*** and therefore has the following business needs:

- Compliance with Food, environment pollution and health and safety regulatory requirements.
- Compliance with Planning Legislation and Land Use Policy.
- Avoidance/mitigation of product contamination, or food safety, or health and safety incidents.
- Maintain a share of the export market, where compliance to higher regulatory standards are often required.
- Maintaining the reputation of the States of Guernsey and the Guernsey Dairy by achieve standards e*quivalent to the Food Hygiene Rating of four stars 'good' or five stars 'very good'.*

6.5 **Investment Objective 3**: The configuration and restrictions of the site, buildings and equipment mean that processing is a 7 day a week operation, is labour intensive and inefficient. Process flow and production reliability is very poor. Production is often complicated by failure of plant and equipment, resulting in extending the working day, resulting in the need for staff overtime. The Guernsey Dairy is currently operating at a slight deficit. The business needs ***to have a more reliable, cost effective operation, through modern process engineering efficiency and the reduction of overheads.*** The key business needs to achieving this goal are:

- Modern building and plant providing opportunities for improved process engineering efficiency and potential to increase affordability to the end user.

[17] In particular, the European Communities (Food and Feed Controls) (Guernsey) Ordinance, 2016 came into force on the 3rd October 2019.

- Increased storage capacity – including raw and finished milk product storage, larger capacity tanks and other equipment that enables more efficiency and fewer processing days e.g. 4/5 days a week processing.
- Lower production costs, leading to reducing overheads.

6.6 **Investment Objective 4**: There are no facilities for adequately treating, reducing and reusing waste. There is insufficient space on the current site to accommodate the required plant and infrastructure. This does not meet UK best practice and is likely to contravene proposed controls under future water pollution legislation in Guernsey. The business needs therefore are:

- To meet future water pollution and other environmental pollution regulatory requirements[18]
- Water treatment plant required to reduce and dispose of polluted waste water, manage strong chemical waste and milk residues.
- Sufficient land or space to accommodate appropriate plant and equipment.
- Flexible Farm Supply Agreements to harmonise raw milk production and liquid milk sales (supply and demand).

6.7 **Investment Objective 5:** There is an urgency for this Project for operational business continuity. However, the Project timelines to secure the relevant funding, approvals, procurement and construction are likely to take up to 2024 to secure. The current Guernsey Dairy building fabric, services and equipment are in a poor state of repair and are not fit for purpose, resulting in business continuity problems and supply risks, equipment break down, disruption to production, inefficiency and increased wastage. These problems and single points of failure pose a significant risk of extended shut down, which could threaten the ability to supply sufficient fresh local milk to meet the island's needs. In order to ***ensure the continuity of supply of fresh milk and milk by-products to the Guernsey consumer, proposals should be approved without delay*****. The key business needs are:**

- Continue to purchase all raw milk supply produced by Guernsey farmers, according to legislation.
- To satisfy the local demand for processed fresh Guernsey liquid milk.
- Modern milk production and processing plant that is efficient and safe.
- Sufficient and safe access space for large vehicles (including tanker lorries).

[18] The Committee for the Environment & Infrastructure estimate the commencement of a new Water Pollution Ordinance in 2021 (to the Environmental Pollution (Guernsey) Law, 2004).

- Sufficient and safe, clean working environment for employees and other site users.
- Sufficient space for modern plant and equipment, with access and sufficient capacity to allow for planned and preventative maintenance.
- Milk and milk product production processes and storage are optimised.
- An adaptable well designed, modern building facility that can meet a reduction or increase in production of milk and (potentially) milk-derived products
- A building which provides sufficient space for optimum layout of plant, equipment, laboratory and engineering support services.

7 Consumer Needs and Feedback

7.1 In the Autumn of 2019, Island Global Research undertook a Brand Reputation Index[19] survey, sampling 1,061 respondents. The Brand Reputation Index is constructed from people's perceptions of a brand, local values and whether they would be likely to recommend it to others. Over the past 12 months, 69% of respondents in Guernsey reported they had used Guernsey Dairy. Of those, 66% would describe themselves as a satisfied customer. The Guernsey Dairy has a good reputation and was ranked 6th out of 74 organisations in Guernsey, and 2nd out of 18 organisations in the Island Services Sector, as a total score, across the following seven dimensions:

	Score	Island Rank	Sector Rank
IGR BRAND REPUTATION INDEX	**121**	**6 / 74**	**2 / 18**
feel **positive** about	120	8 / 74	2 / 18
associate with good **quality**	126	6 / 74	1 / 18
would feel proud to **work** for	112	17 / 74	6 / 18
makes a positive contribution to the local **community**	126	7 / 74	3 / 18
cares about the **environment**	120	8 / 74	4 / 18
would describe as **trustworthy**	121	10 / 74	3 / 18
would be very likely to **recommend** to a friend	123	6 / 74	1 / 18

Table 2: Guernsey Dairy's Brand Reputation Index score

[19] Island Global Research, IGR Reputation Index Guernsey Report, November 2019

7.2 Guernsey Dairy milk, milk derived products and the associated dairy industry on which it is based, are well regarded and loyally supported by residents[20]. Surveys of residents have been conducted with some comparable results in 2013, 2014, 2015 and 2019. Island Global Research conducted a Guernsey Dairy Survey in November/December 2019, completed by 1,615 residents, which showed that:

- 83% of people feel strongly or very strongly that Guernsey milk should continue to be produced on island (this compares with 96% in 2015).
- 81% agree that supporting the Guernsey Dairy industry is essential to the maintenance of the Guernsey Cattle Breed.
- 79% agreed that Guernsey should be self-sufficient in the production of local milk and dairy products.
- 77% agree that supporting the dairy industry is essential to the maintenance of the island's traditional, and familiar, rural landscape.
- 66% agree they are happy with controls on sales of dairy milk, even though there is a price premium to paid for local milk as a result (18% disagree, the remainder neither agree or disagree).

7.3 The Survey Report also indicated that whilst the level of consumption of milk has declined since 2015, the vast majority of households (89%) still regularly consume Guernsey Dairy milk. This includes 64% of households who only consume Guernsey Dairy milk and 25% of households who consume both Guernsey Dairy milk and milk alternatives. The number of households who do not regularly consume Guernsey Dairy milk has increased from 3% in 2015 to 11% in 2019. This reflects in the Guernsey Dairy's declining trend in milk sales, particularly in the last few years - with 2018 sales down by -2.8% by volume on the previous year and 2019 sales to date showing a further decline of -2.7%.

7.4 The recent decline is thought to be driven by a combination of customers ordering less, due to a reduction in doorstep deliveries and the longer shelf life of milk, as well as the trend towards plant based alternatives to milk products (30% of households regularly consume non-dairy alternatives). The most frequently cited reason for consuming non-dairy milk was because they "believe non-dairy milk is healthier than dairy products". Other responses cited were that "non-dairy production is better for the environment", "animal welfare reasons" and "dietary needs (i.e. allergy/intolerance)". In the UK, there is a similar trend to Guernsey, with the consumption of plant-based milk alternatives within 28.9% of households, even though the price of such alternatives is at a premium compared with the price of UK dairy milk.

[20] Island Global Research (IGR), Guernsey Dairy Survey Report, February 2020

7.5 The Guernsey Dairy survey respondents indicated that they are not particularly price sensitive, in respect of their brand loyalty or preferences, whilst changes in the level of consumption are evident. However, it must be noted that only 52% of respondents agreed in 2019 that "Guernsey Dairy milk represents good value for money". This is set within the context of the price of liquid milk rising in the order of 20% to 30% between 2015 and 2019 and prices of other milk products have also increased quite significantly.

7.6 Islanders are currently paying more for milk on Island than their UK counterparts (at the time of writing the average retail price of a litre of Guernsey milk is £1.36). In Jersey, similar legislation exists, whereby only cow's milk produced in Jersey can be sold in the island and the average price is currently £1.22 per litre. In 2018, the average retail price in the UK for a litre of liquid milk was £0.59 per litre. The equivalent premium quality milk sells for more in the UK (Tesco Finest Channel Island Milk retails for £1.15 per litre). Plant based alternatives to milk products (e.g. almond, soya) retail at an average £1.50 in Guernsey.

7.7 The Guernsey Dairy is currently engaging the services of a strategic marketing company, to help develop a future marketing direction for the Guernsey Dairy and its products, aligning with customer needs. This key appointment will assist the Dairy in its operational evolution and help to mitigate further decline in milk sales and improve financial viability whilst supporting ethical and environmental policy. It is envisaged that further work will also be done to promote local dairy products effectively to residents and the links to the Guernsey Cattle Breed.

7.8 The Marketing Strategy will consider how the Dairy can profitably optimise the product range and maximise the use of milk supplied, whilst mitigating the decline in consumption of milk and decline in milk sales. This is due to the fact that the milk derived products such as butter which are largely made from surplus cream from milk production, can only be made profitably when the milk constituent is also used. The challenge for the Guernsey Dairy is to balance all these variables to ensure continuity of supply of milk is maintained, whilst maximising the by-products to make a return for the dairy industry as a whole.

7.9 The marketing strategy will contribute to the commercial strategy for the Dairy in the medium term. The strategy will also inform the 'Design and Analysis' stage of the Future Guernsey Dairy Project in the lead up to the Outline Business Case.

8 The Opportunity

8.1 This policy letter explores the financial, economic, food safety and environmental benefits of a new dairy processing facility or substantial refurbishment. Either substantial, whole scale refurbishment of the existing building or a new building will be necessary together with the provision of replacement equipment and services and associated processing improvements, to ensure that the Guernsey Dairy is 'fit for purpose' and can adapt to future challenges either within or outside of its control.

8.2 This would provide a flexible facility that is suitable to meet the future business needs of the Dairy, increase production efficiencies, meet existing and new regulatory requirements and deal more effectively with the reduction and treatment of waste.

8.3 Infrastructure investment will provide a number of efficiency savings. A new purpose built facility would enable the Dairy to purchase more efficient 'off the shelf' plant and equipment, rather than bespoke equipment that requires 'bespoke' maintenance regimes, saving significant time and revenue costs.

8.4 Additional space would enable changes to the way the Guernsey Dairy processes and stores the milk, with for example, purchase of larger chillers and provision for storage for the milk, enabling processing to be reduced from 7 days a week, to 4 or 5 days a week. Combined with other efficiencies, this represents approximately 35% cost efficiency savings on current production wage costs (a saving of £340k per annum). Other ongoing costs savings in repair costs and utilities are estimated at £210k per annum, so totalling an ongoing saving of £550k per annum. These savings will assist the viability and efficiency of the Guernsey Dairy as an ongoing concern. Whilst a substantial refurbishment of the existing Guernsey Dairy facility would provide some of these benefits, the efficiency savings are likely to be less, whilst this will be tested further during the Outline Business Case stage.

8.5 In the development of the Strategic Outline Case (SOC) Business Case consideration has been given to what the States should provide in terms of 'essential' Dairy milk processing services and what could possibly be provided instead of the Guernsey Dairy through contracts or licences or by a joint venture or partnership arrangement.

8.6 Current policy and legislation assume that the Guernsey Dairy continues to produce liquid milk but there may well be opportunities in relation to milk derived products. In 2007, the States agreed a policy for the treatment of 'micro dairies' on island[21]. The then Commerce & Employment Department supported farmers interested in diversifying their businesses and manufacturing milk products, such as ice-cream. This should be subject to prior approval of the Department, to ensure that adequate supplies of milk for the Island and milk product needs are still received at the Guernsey Dairy. However it did :

> "…**not** intend that whole milk be processed on farms and marketed in competition with Guernsey Dairy…"

8.7 Third parties may be willing to process milk derived products off-island or set up Micro Dairies on-island – to produce Guernsey cheese for example. This will be tested further within the Outline Business Case alongside the development of the marketing and business development strategies for the Dairy.

[21] Review of Support for Island Diary Farming, Billet XIII, July 2007.

8.8 A potential new Dairy facility could also provide for complementary opportunities. Whilst not directly part of the Guernsey Dairy remit, the 'do maximum' scope could extend the Future Dairy project beyond the process of manufacturing liquid milk and milk derived products, to include the potential of a Heritage and Educational Centre, with the possible inclusion of a visitor viewing area, café and shop. This could provide a visitor attraction, an opportunity for education/learning (e.g. Key Stage 1 & 2 curriculum) and in turn encourage brand awareness and customer loyalty and to promote the role of the dairy industry in supporting our cultural heritage. Whilst there is no compelling business need from the STSB perspective, this business opportunity has been considered worthy of retaining on the shortlist, following early consultation with the Committee *for* Economic Development and the Committee *for* Education, Sport & Culture (December 2019).

9 Options Appraisal

9.1 The shortlisted options cover a range of the future possibilities for a Dairy facility – in terms of building and plant to continue to produce and supply Guernsey liquid milk to supply the Island's needs. Within the broad scope outlined in the strategic case for the Future Guernsey Dairy Project, the following short list of options have been considered for further analysis:

Option Number	Description	Current Recommendation
1 – Do Nothing	Cease the provision of a Guernsey Dairy.	Discounted as the States has committed to the provision of a Guernsey Dairy
2B – Status Quo	Continue with the existing Guernsey Dairy, replacing critical equipment and making essential building repairs.	Retain for comparison but not recommended as a sustainable way forwards.
3A – Do Minimum I	Extensive Refurbishment and replacement of plant and equipment, with a reduced product range. Existing footprint (plus potential extra space for effluent treatment plant)	Possible option, but complex to achieve within the risks (including operational and food safety risks) and constraints of the existing Dairy.
3B – Do Minimum II	Extensive Refurbishment and replacement of plant and equipment, with the current product range. Existing footprint (plus potential extra space for effluent treatment plant)	Very complex to achieve within the risks (including operational and food safety risks) and constraints of the existing Dairy and potentially not achievable.
5A – Intermediate Scope I	New Dairy on a new site, with replacement plant and equipment, with a reduced product range.	Possible option /Preferred way forward
5B – Intermediate Scope II	New Dairy on a new site, with replacement plant and equipment, with the current product range	Possible option / Preferred way forward

Option Number	Description	Current Recommendation
6 – Intermediate Scope III	New Dairy on a new Site – plus the option for a 3rd party to develop Micro-Dairies for milk derived products only.	Possible option
11B - Do Maximum	New Dairy (as per 5B) with visitor facilities and with additional features or service offerings to potentially include a Heritage/ Educational Centre, shop and Café.	Possible option including additional wider strategic benefits linked to heritage and education.

Table 3: Strategic Case Short List of Options

9.2 The shortlist was developed from a long list of options, following a number of workshops and briefings with key stakeholders (see section 14), and each of these options have been assessed according to potential business requirements and key service requirements. A description of each of the shortlisted options is provided in the following paragraphs.

Minimum Scope

9.3 The minimum scope is a States of Guernsey Dairy that can produce sufficient fresh liquid milk to supply the Islands' year round needs. The STSB is obliged to purchase nearly all raw milk produced by the Guernsey dairy farmers, who are required to supply it to the STSB. The STSB is are also required to ensure that the milk supplied is processed and distributed in Guernsey. The Milk Ordinance[22] does not specifically prevent processing from being done by a third party, but the current scheme of the legislation and preceding policy assumed that processing would be done by the Guernsey Dairy.

Option 1: Do Nothing

9.4 The option to not provide a States owned Dairy has been discounted, based on the extant policy and legislation. The Policy Letter of the 25th September 2014 and the resolutions following it, make it clear that in order to protect the Guernsey Cattle Breed, there is a commitment to a States owned Dairy.

Option 2B: Status Quo

9.5 The current **'Status Quo'** with the existing Guernsey Dairy is to continue with the existing products and replace critical equipment as it is about to fail and to make essential building repairs on the existing site. A derivation of this option is to provide a reduced range of products i.e. liquid milk plus cream and butter (Option 2A). Neither of these options are sustainable options going forwards (see section 6).

[22] The Milk (Control) (Guernsey) Ordinance 2016.

Option 3A or 3B: Do Minimum

9.6 The 'Do Minimum' is the more extensive whole scale refurbishment of the existing Dairy building and replacement of end of life plant. ***These are the essential and core requirements.***

9.7 This option would ensure the future supply of fresh Guernsey milk to islanders. Anything less than this would be a change to existing States policy in support of the dairy industry. This would entail processing the liquid milk and a reduced range of milk derived products by effectively utilising the by-products of milk i.e. cream to make butter. Two derivations of this option are to produce the full range of products that are currently provided (3B) or expand the product range (3C). These options may be too complex, if not impossible, to achieve within the existing Dairy site footprint, given its limitations.

Option 5A or 5B (with a potential additional Option 6): The Intermediate Scope

9.8 There are a number of variants which could constitute an Intermediate scope, which are the essential and desirable requirements and outcomes. **Options 5A or 5B - A new, fit for purpose modern build States of Guernsey Dairy on a new site, replacing and upgrading equipment.** Option 5A includes a reduced product range – processing liquid milk and milk-derived products (e.g. cream and butter) from the residual cream. Option 5B includes the same product range that is currently produced in addition to the liquid milk processing i.e. cream, butter, ice-cream and cheese.

9.9 A new build on the existing site has effectively been discounted as unworkable as the consequence would be that milk could not be processed into liquid milk at a Guernsey Dairy for some years. It is possible liquid milk could be processed off island for several years or more, whilst this does not meet policy, would be costly and may cause difficulty in ensuring supply.

9.10 The intermediate scope options includes **option 6, the potential for micro-dairies to be set up by 3rd parties, *in addition to* the States owned Guernsey Dairy**. The scope for this option would be for Micro Dairies or off-island dairy processors to be allowed to produce local milk derived products. Several dairy farmers already produce a limited amount of their own ice-cream and yoghurt and artisan cheese is also produced locally. It is possible that the Guernsey Dairy may agree that third parties can produce milk products e.g. cheese from surplus liquid milk, either off-island, or on-island at a micro dairy. Land Planning policy is supportive of farm diversification.

9.11 A Micro dairy including the supply and sale of liquid milk, effectively in competition with the Guernsey Dairy has been discounted. This would be contrary to the scheme of control envisaged by the Milk Ordinance, as the Ordinance specifies that all milk is supplied by the Guernsey Dairy (or its Distributors). Whilst the Ordinance could be amended to allow micro-dairies to supply fresh milk, this could risk the financial viability of the Guernsey Dairy.

Option 11B: Do Maximum (Heritage and Educational Centre)

9.12 The Maximum scope explores variants beyond the essential and desirable to provide a range of **optional potential requirements**. Option 11B would need to be explored further for its potential merit as a business opportunity, whilst there is some anecdotal evidence of demand for tours of the Guernsey Dairy currently.

9.13 This option would allow for the introduction of new business ventures beyond the concept of just a Dairy to include complementary business propositions. These could be linked to the States of Guernsey's strategic commitment to the Guernsey Cattle Breed and a financially sustainable future for the dairy farming industry. This option could contribute to the reputation and protection of the dairy industry as a whole and have merit in further investigation.

9.14 There may be potential benefits of synergy in terms of the co-location of a Dairy and a Heritage and Educational Centre. Stakeholders and experts within this field in Guernsey suggest that a Heritage and Educational Centre is only likely to be viable in combination with additional facilities, such as a shop, café and viewing platform and would ideally include complimentary attractions nearby. If this option were to be developed, then traffic, planning legislation and policy matters would need to be considered in detail, as well as availability of land.

9.15 These opportunities for the creation of a heritage and educational centre do not rest with the Dairy's or the STSB's mandate. These commercial opportunities could be taken forward either by the States of Guernsey or potentially, by a third party such as the local dairy farming industry or another organisation. Such a facility could be considered at a later phase, following the more urgent provision of a Dairy.

10 The Preferred Way Forward

10.1 On the basis of the analysis within this business case, the preferred and recommended way forward is a new Dairy facility on a new site. The site will need to be flexible to accommodate the future business needs of the Dairy and the wider dairy industry. It will need to meet future expected demand and the range of products going forwards, informed by more detailed market research, analysis and market testing of other potential milk-derived product producers. The options 5A and 5B will continue to be assessed alongside the other options on the short list, as identified above.

10.2 The short listed options will continue to be analysed as part of the Design & Analysis phase, including the selection of one option which may require an Environmental Impact Assessment (EIA). Following completion of the 'Design and Analysis' phase, the project will progress to the completion of the Outline Business Case with a recommendation for the preferred option.

Site Selection

10.3 Further work will be required to identify a suitable site should the recommended way forward be to progress to a new facility on a new site or additional space be required for a refurbishment/replacement on the existing site. The selection of potential sites for the Future Guernsey Dairy project will be subject to Planning Legislation and Policy, including the Land Planning and Development (Guernsey) Law 2005 and the Island Development Plan 2016.

10.4 Opportunities exist within current planning Law and Policy to alter and refurbish the existing Dairy, or to extend the existing site, or to provide a new dairy on a new site, subject to compliance with the relevant Island Development Plan policies including potentially, Policy S5 Development of Strategic Importance.

10.5 The Project Team will continue to liaise with Property Services and the DPA, to identify the optimum sites, but this will need to be informed by more detailed designs and further analysis of requirements. Initial site identification work carried out for the development of the SOC is commercially sensitive.

Main Benefits by Stakeholder Group

10.6 The 'preferred way forward' for investment in the Future Guernsey Dairy Project is anticipated to deliver a range of strategic and operational benefits which will be tested further at the OBC stage. The high level benefits are identified in the table below, according to the Investment Objectives and by stakeholder group:

Investment objective	Main benefits criteria by stakeholder group
Investment Objective 1	Secures the ongoing commitment to the future of the Guernsey Dairy and dairy industry. (CUSTOMERS/ISLANDERS) The public value of the Guernsey Dairy from the perspective of society is conservatively estimated as having a direct Economic Value of £2.4m per annum[23]. (Dairy Industry/SoG) Secures the commitment to the future of Dairy Cattle farming (financial viability and sustainability) and the Guernsey Cattle Breed.(FARMERS) Contributes to the protection of the biodiversity of the countryside (Dairy Farmers' Biodiversity Action Plans) ISLANDERS/ENVIRONMENTAL GROUPS) Potential for farmers to improve financial viability. (FARMERS) To engender greater customer loyalty through the awareness of the Guernsey Cattle heritage (e.g. Heritage & Educational Centre) (Dairy Industry)
Investment Objective 2	Meets Food, environmental pollution and health and safety regulatory requirements and best practice standards, including improving the Food Hygiene Star Rating. (CUSTOMERS/SoG) Ensure safety of products for consumption (CUSTOMERS) Improved consumer reputation following a Food Hygiene Rating of four stars 'good' or five stars 'very good' (CUSTOMERS)
Investment Objective 3	To provide the facilities, accessibility and modern equipment that will reduce costs, reduce equipment downtime and increase effective production and process efficiency. (TRADING ASSETS) Reduce the number of days to process the same amount of milk (same for less) providing the necessary space to store milk enabling processing days to reduce from 7 days per week to 4 days per week– achieving a saving of circa £350k (Option 5B), plus savings in utilities and other costs. (STATES OF GUERNSEY) Future affordability of milk products for the end user, through ongoing efficiency savings (CUSTOMERS) Reduced spend on repairs and maintenance (TRADING ASSETS). To reduce the Guernsey Dairy's carbon footprint.(ISLANDERS)

[23] This is based on an Economic Appraisal undertaken by the States of Guernsey's Economist as part of the Development of the Strategic Outline Case, Appendix **3** The Guernsey Dairy and its value in terms of public goods.

Investment objective	Main benefits criteria by stakeholder group
Investment Objective 4	Improve utilisation of raw milk. (TRADING ASSETS) Compliance with future water pollution controls affecting waste water (TRADING ASSETS) Reduce wastage (waste raw milk, chemicals and waste water) and increase re-use /recycling of by-products. (ISLANDERS) To provide sufficient space and equipment to effectively reduce waste and save costs. (TRADING ASSETS/STATES OF GUERNSEY/ISLANDERS)
Investment Objective 5	Enables the continuity of supply of liquid milk to Islanders (CUSTOMERS) Keeps Farmers in business/ensures a sustainable dairy industry. (DAIRY INDUSTRY)

Table 4: Benefits by Stakeholder Group and Investment Objective

10.7 Further work on the economic appraisal and benefits will be undertaken at the OBC stage. However initial work undertaken by the States Economist indicates that the public value of the Guernsey Dairy from the perspective of society is conservatively estimated as having a direct Economic Value of £2.4m per annum. Taking a wider view of the contribution to the dairy industry, as a means of land management, as part of the islands tourism and for its role in the preservation of the Guernsey Cow the indicative total Economic Value could be around £12m per annum.

11 Financial Considerations

Longer Term Investment Costs

11.1 The proposals set out in this Policy Letter have been developed following the completion of a Strategic Outline Business Case. This five case model business case included an economic analysis and financial case. The financial case suggests that an initial capital investment from the Capital Reserve may be made, for the build, plant and equipment, rather than for the whole 20 year capital costs. This could include only those capital costs that would be required during approximately 2022-23 for the initial build and fit out, rather than for the 'whole life' costs over 20 years.

11.2 The Financial Case within the SOC provides an estimate of the likely capital costs for the substantive investment for the design, analysis, construction, fit out and commissioning of a future Guernsey Dairy, to be in the region of £22m to £26m. The comprehensive financial analysis sets out in detail the early assumptions made and basis for these estimates. A more detailed financial analysis takes place during the next phase of the project, leading up to the preparation of the Outline Business Case on the proposed option.

Affordability

11.3 The impact of the proposed capital expenditure on the Guernsey Dairy Balance Sheet cannot yet be determined, until the funding arrangements have been agreed. In 2018, the Guernsey Dairy deficit was £486k after depreciation. The estimate for 2019 is for a deficit of £384k after depreciation.

11.4 The level of capital investment required is not currently affordable from the Guernsey Dairy's financial reserves, nor is a loan likely to be affordable from any potential future income surplus, as the operating margins are relatively small. Therefore, proposition 2 of this policy letter requests that the States agree that the Future Guernsey Dairy Project is formally included within the capital portfolio (2017 – 2021) to be funded from the States Capital Reserve. Capital investment will enable the Dairy to invest in process efficiencies and reductions in operating costs, thereby improving the financial sustainability of the Trading Asset.

11.5 The Guernsey dairy industry cannot be expected to compete with the economies of scale of the UK dairy farming industry. However, the market cannot be expected to meet price rises beyond what is considered 'affordable' to consumers. In the future, the whole dairy industry will need to continue to address the requirement to supply sufficient milk year round for islanders and to control the costs of producing milk. The financial model for the Guernsey Dairy going forwards, needs to ensure that both the retail price the consumer pays is affordable and that the dairy farming business remains financially sustainable. That also requires the States Guernsey Dairy and the dairy farming industry as a whole, to be as efficient as they can be. Whilst retailers set the retail price, this price is influenced by the Guernsey Dairy gate price and the milk distributors' charges.

11.6 Currently, the Dairy Management Board consider that any significant increase to milk prices would be likely to adversely impact demand and that the capital investment in the Future Guernsey Dairy Project should largely be met by the taxpayer. This more accurately reflects the position of the Guernsey Dairy in support of the wider benefits to the dairy industry and the island's cultural heritage.

Analysis and Design Phase

11.7 Subject to the States agreeing that the Future Guernsey Dairy Project is formally included within the current capital portfolio to be funded from the capital reserve, work can continue to progress the project towards the completion of an Outline Business Case (OBC). The development stage (the 'Design and Analysis Phase') will include all necessary steps to take the project to the OBC stage and next policy letter (up to 2021). The Design and Analysis Phase is estimated to cost around £2.3m and if proposition 2 is approved, the Policy & Resources Committee would be authorised to approve this sum from the capital reserve. These costs are based on estimated professional fees for: project management; specialist dairy/food manufacture technical advice; process engineering; an environmental impact assessment (if required) and other consultancy requirements; factory building construction design professional fees; potential site purchase option and contingency sums at 20%.

Design and Analysis Budget 2019 to 2021

	Analysis and Design Stage		
Year	2019 **£'000**	2020 **£'000**	2021 **£'000**
Project Management	30	70	200
Technical advisors	30	170	100
EIA Fees			250
Design layout professional fees			454
Site Options, Professional Fees (Planning, project reviews, process engineering etc)			591
Contingency (at 20%)	12	48	319
TOTAL	72	288	1,914

Table 5: Design & Analysis Phase 2020/21

11.8 Further financial modelling, including sensitivity analysis and forecasting revenues based on assumptions on supply and demand, will be carried out during the 'Design and Analysis' phase. This will inform the overall investment model. This will be informed by the outcomes of the Marketing Strategy, which will help determine potential future demand and the potential to mitigate decline in liquid consumption and encourage growth in new milk-derived products. This in turn will inform the Supply Agreements with dairy farmers and supply targets for dairy farmers.

12 Timescale and Implementation Plan

12.1 There is an urgency to ensure that the Guernsey Dairy is able to continue to provide business critical services, producing fresh liquid milk for Islanders, as supported by controls on supply, sales and purchasing of milk under the Milk Ordinance, whilst meeting food, environmental pollution, and health & safety regulatory requirements and best practice standards. The Investment Objectives set out an operational requirement that the project is completed by 2024. Whilst it would be preferable to deliver this more quickly, this is likely to be a realistic estimate, given the necessary approvals and construction lead in times.

The key milestones for the Project are set out below:

Milestone activity	Date
Policy Letter to States of Deliberation for debate on the strategic case for the project and for it to be formally included within the capital portfolio.	April 2020
Analysis and specification of Preferred Way Forward (including procurement, process and build design, space and site location)	From May 2020
Cost Estimates and approvals to proceed with preferred way forward	October 2020
Environmental Impact Assessment (if required) and local development framework	January 2021
Outcome of EIA (if required) and decision to go forward to planning	December 2021
Design and Outline Planning	Q1 2022
Decision on Outline Business Case (including States approval of a policy letter to approve the developed project and to agree that STSB tender for the preferred solution)	Q3 2022
Tender /Procurement	Q4 2022
Final Business Case and approval to open the substantive capital vote and commission the preferred bidder(s).	Q1 2023
Construction Commences	Q2 2023
Future Guernsey Dairy Solution Delivered	Late 2024

Table 6: Milestones

13 Engagement and Consultation

13.1 The Investment Objectives and short list of potential options on which the proposal for this project is based, as set out in this Policy Letter, were developed by the Future Guernsey Dairy Project Team. Representatives of the Guernsey Farmers Association (GFA) considered the Options Framework for a Future Guernsey Dairy on the 26th September 2019.

13.2 Further consultation has taken place during the development of this Policy Letter and the associated Strategic Outline Case (SOC) business case. The policy approach was re-endorsed by the Committee *for the* Environment & Infrastructure and noted by the States' Trading Supervisory Board on 24th October 2019. At this same meeting the Investment Objectives and indicative short list of potential options were agreed by the States' Trading Supervisory Board and the Committee *for the* Environment & Infrastructure on the 24th October 2019.

13.3 On the 19th of November 2019, the Dairy Management Board approved the Future Guernsey Dairy Project business case.

13.4 A Briefing paper on the Future Guernsey Dairy Project, investment objectives, options and associated information was considered by the Committee *for* Education, Sport & Culture on the 3rd December 2019 and three Members of the Committee *for* Economic Development on the 17th December 2019.

13.5 Following the completion of a Project Assurance Review in early December 2019, the States' Trading Supervisory Board approved the Strategic Outline Case business case relating to this Policy Letter on the 19th December 2019. Officers from the Policy & Resources Committee were provided with a draft of the Strategic Outline Business Case for a meeting on the 11th December 2019 and a revised draft with the results of the Project Assurance Review on the 15th January 2020.

13.6 On the 19th December 2019, the STSB President wrote to the President of Policy & Resources Committee, providing an update on the Future Guernsey Dairy Project and the need for the refurbishment or rebuild of the facility. It also explained that an SOC had been prepared and it was the intention of States' Trading Supervisory Board to prepare a Policy Letter for consideration in this political term.

13.7 The STSB approved this Policy Letter on 13th February 2020. The Committee *for the* Environment & Infrastructure were consulted on the Policy Letter at their meeting on the 20th February 2020.

14 Compliance with Rule 4

14.1 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.

14.2 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.

14.3 In accordance with Rule 4(3), the Committee has included a Proposition which request the States to approve that the Future Guernsey Dairy Project is formally included within the capital portfolio (2017 – 2021) to be funded from the States Capital Reserve. Further details about the financial implications of this Proposition are provided in Section 11.

14.4 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 States' Trading Supervisory Board, noting that Deputy Roffey was only elected to the Board on 26th February, 2020 and had not yet been briefed on the detail of this Policy Letter.

14.5 In accordance with Rule 4(5), the Propositions relate to the duties of the States' Trading Supervisory Board. The Committee *for the* Environment & Infrastructure, the Committee for Economic Development, the Committee for Education, Sport & Culture have also been consulted on the subject of this Policy Letter.

Yours faithfully

States' Trading Supervisory Board

P T R Ferbrache
President, STSB

J C S F Smithies
Vice President, STSB

S J Falla MBE
J C Hollis
Non-States Members, STSB

The Office of Environmental
Health and Pollution Regulation

Longue Rue
St Martin, Guernsey

GY4 6LD

+44 (0) 1481 711161
envhealth@gov.gg
www.gov.gg

Mr Richard Evans
Deputy Managing Director
States of Guernsey Trading Assets

17th February 2020

Our Ref: WK/202000299

Dear Richard

The EC (Food and Feed Controls) (Guernsey) Ordinance, 2016 (as amended)
The EC (Food and Feed Controls) (Guernsey, Alderney and Sark) Regulations 2019
States Dairy, La Brigade, St. Andrew, Guernsey, GY6 8RJ

Thank you for providing a progress update on the Future Guernsey Dairy Project.

While repairs carried out to discrete areas of the dairy in 2016 remain satisfactory, it is clear that a long-term solution is required to address the disrepair and extensive ongoing maintenance within the dairy. I support options 5A and 5B, which are recommended in the paper, as the preferred way forward as carrying out extensive improvement to the current facility while remaining operational is likely to be exceptionally challenging in terms of hygienic food production.

It must be noted that a new dairy will take several years to be operational and immediate improvements are needed to bring the current facilities up to a reasonable level of legal compliance and on an ongoing basis until production can be transferred.

Please contact me if I can provide any further advice or information.

Yours sincerely

Charlotte Jones
Senior Environmental Health Officer
The Office of Environmental Health and Pollution Regulation

GUERNSEY PRISON

Annual Report 2019

VISION

We ensure public protection and commit to reduce re-offending

Mission

We provide a safe and secure environment that enables prisoners to address the causes of offending behavior and provide them with values, skills and experience to take a positive role in the community upon release

Contents

Governor's Foreword

I am pleased to report another successful and very busy year over the course of 2019. The majority of priorities identified in the 2019 delivery plan have been completed. I am particularly pleased in reporting 75% of prisoners engaged with education learning and skills, with an average of 99% of eligible prisoners employed in work whilst in custody throughout the year.

It was encouraging to see that the average prison roll of 100 recorded for 2018 reduced to a figure of 91 for 2019, without significant variance. Despite the fall in numbers, the makeup and complexity of the population did prove to be a challenge due to a relatively large number of female prisoners and children[1] in custody through most of the year.

The prison implemented a significant restructure of its senior management team during 2019 and identified specific service professionals to lead the main functions of the prison. This initiative created efficiencies, improved resilience and has provided effective succession planning.

2019 saw the prison charity Creative Learning in Prison (CLIP) continue as a huge success story with the completion and establishment of a new workshop facility, which has provided work, education and employment opportunities for prisoners. The prison also managed to secure a contract to recycle the island's electronic hardware devices which offers similar benefits to a much broader spectrum of the prison population.

Guernsey Prison also achieved a world first in providing a combined staff and prisoner professional "Me Others Everyone Certified Coach" Training Course accredited by the Association for Coaching. This 5 day course provided participants with enhanced communication skills, the tools to build and enhance relationships and the ability to focus on and find solutions enabling them to reach their full potential. This course will be rolled out twice a year going forwards and is an exciting initiative that is aimed to improve personal outcomes and promote positive behavior.

I am pleased to present this annual report in accordance with The Prison (Guernsey) Ordinance, 2013, Schedule 1, Section 3 (1).

John De Carteret
Prison Governor

1 The prison can accommodate children from the age of 14 years old to 18 years old.

1.0 Statement

1.1 Accommodation

Guernsey Prison has a Certified Normal Accommodation (CNA) of 134. Each cell used for the confinement of prisoners has sufficient heating, lighting and ventilation and is of adequate size for the number or prisoners it is approved for. Each cell must provide prisoners with a cell call system or other effective means of communication with staff.

The CNA represents the good, decent standard of accommodation that the Service aspires to provide all prisoners.

1.2 2019 budget and staffing figures

The budget for 2019 was set at £5,698,000.

The Prison currently employs 78 uniformed staff and 14 civilian staff. There are also a range of volunteers, tutors and multi-agency staff working at the prison.

1.3 Prisoner cell call system

The prison cell call project suffered from protracted technical issues and supply chain problems which resulted in a complete review of the project's specifications and objectives in the last quarter of 2019. The review resulted in a revised solution and programme of works. The replacement of the cell call system is now envisaged to start at the end of Q2 2020 and is scheduled to be completed at the end of Q3 2020. The new system will allow the prison to report on the amount of cell calls received, the type of call received and the timing in which those calls are answered. These figures will be included within the monthly Key Performance Indicators (KPI's) and presented at the senior management team meetings.

1.4 Shower facilities and laundry upgrade

The legacy issues with Juliet wing showers did show some promise of resolution but further examination, which included a professional survey, identified the cause as emanating from a deep lying fault in the water supply infrastructure. Whilst it was tempting to simply upgrade the façade of the showers the root problem would not have been resolved and as such the upgrade would have represented a waste of money.

The problem has now been clearly identified and this has resulted in a revised capital funding bid to include the entire scope of works, with an approval in principle based on the project's history. States Property Services have revisited the site and have drawn up plans for the new showers and disabled facilities on both the upper and lower landings.

Due to the complexity of the revised plans the prison will also require an upgraded centralised laundry facility. The new laundry will provide services for the whole prison and create efficiencies of resources, employment for every part of the population and a more effective service.

1.5 Repair and repaint external finishes on buildings

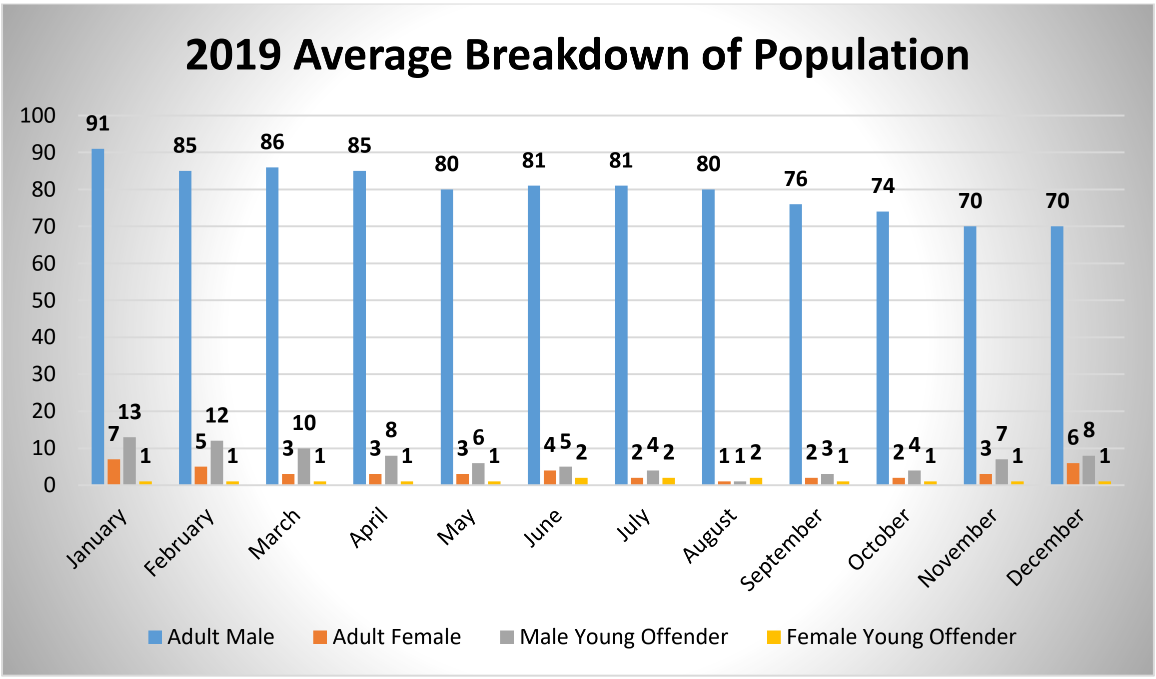
The repair and repaint of the external finishes on the prison remains an urgent priority due to the level of disrepair. The project has been revisited by States Property Services and discussions have taken place to obtain new up to date quotations via the tender process for the works. These quotes will be obtained and reviewed during 2020. The prison will begin a programme to utilise prisoners under the supervision of the facilities team to undertake the more manageable aspects of these works as soon as is practicable.

2.0 Daily average

The average daily prison population throughout 2019 was 91 with the highest daily population reaching 116 and the lowest being 77.

3.0 Monthly average

The chart below shows the monthly average of prisoners throughout 2019 broken down into each category.



4.0 Work undertaken by prisoners

Guernsey Prison is a working prison and all eligible prisoners are allocated daily work. Over 95% of prisoners attend work each day and of those who do not work most are not required to do so. The prisoners who do not work are officially beyond retirement age or are remanded in custody. It is worth noting that all prisoners are allocated a job within the first week of reception.

Work is allocated at a weekly Activities Allocation Board and is usually based on individually assessed need, capacity and capability (as well as risk assessments) derived from the prisoner's sentence plan, which is led by the Offender Management Unit (OMU) with direct input from the prisoner themselves.

On first reception into the prison the vast majority of prisoners are allocated some form of cleaning duties – normally on their own wing. Once they have 'settled in' and completed their initial sentence plan (within 20 working days of reception) they can then seek to move into other roles with more responsibility and autonomy. These range from cleaning common areas of the prison (e.g. corridors, visits area, education or admin areas) to buffing floors, helping with maintenance tasks around the prison (e.g. painting and decorating), gym assistant, librarian & others – or working within one of the main production areas within the prison. These are:

- Various workshops - producing woodwork items, garden furniture & craft goods for sale to the public and for community groups e.g. schools, parish halls, charity groups etc. – as well as contracted products (e.g. 'Guernsey' sweaters, tourist brochure packs & recycled materials)
- Kitchen – preparing, cooking and serving meals for all prisoners twice per day 7 days per week as well as making up breakfast packs.
- Horticulture Site – growing fruit and vegetables to supply the kitchen as well as maintaining a 'show' garden and selling any excess produce on a 'hedge veg' stall outside the prison gates.

Within these areas there are also opportunities, primarily for longer term prisoners, to gain City & Guilds accredited qualifications in:

- Construction Skills (carpentry & joinery)
- Hospitality & Catering (food preparation & cooking)
- Food Hygiene
- Practical Horticulture Skills

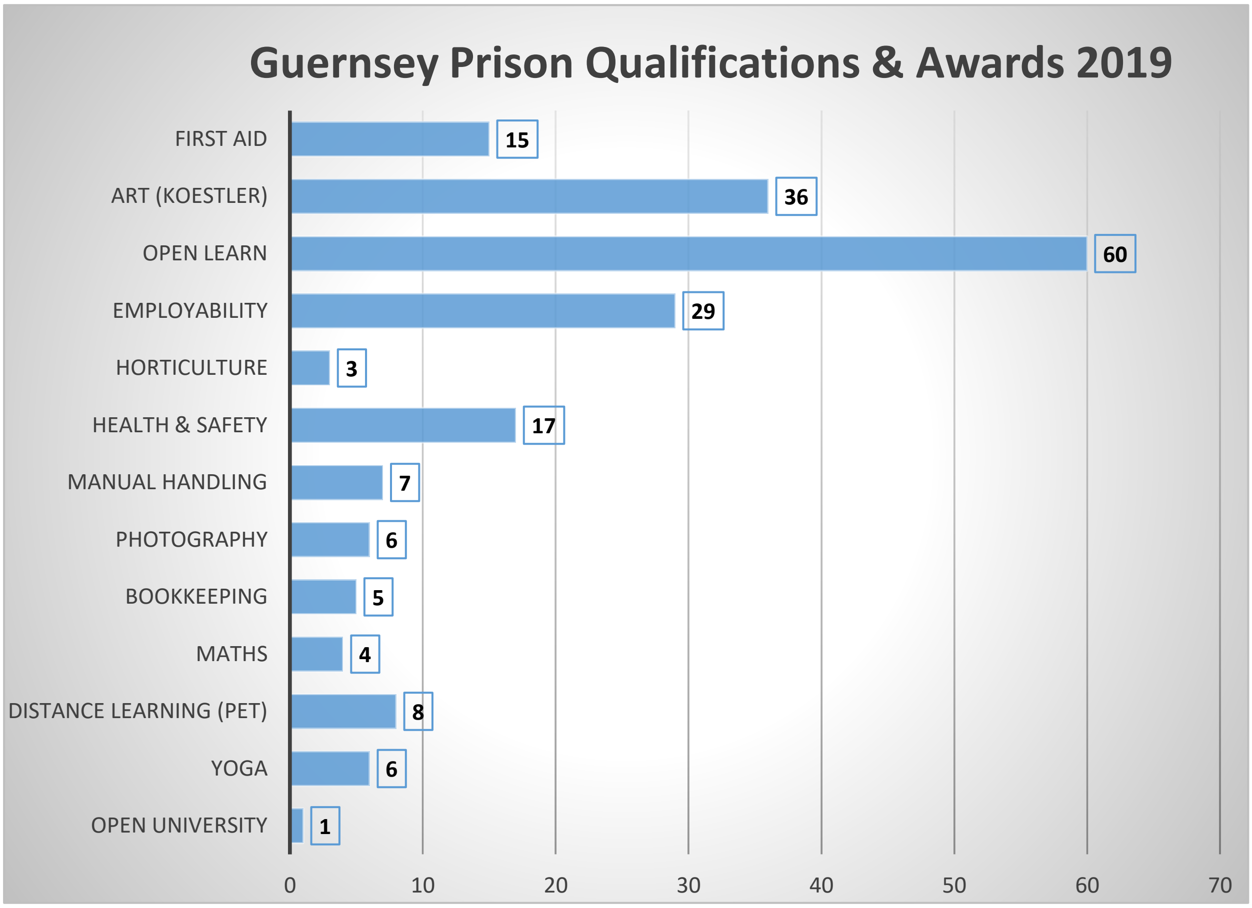
2019 saw an increased drive to enable more prisoners to obtain these and a range of other employment related basic skills qualifications, along with new qualifications in recycling.

Educational and vocational activities

4.1 Learning, skills and regimes

A total of 76 students achieved 144 qualifications/awards in 2019, with over 75% of prisoners involved in some type of educational activity. The most popular courses continue to be vocationally focused, such as Employability Skills, Health and Safety and First Aid. Photography continues to be a favorite, and throughout 2019 36 awards were given in recognition. The Learning and Skills Department has prided itself on offering a wide spectrum of educational opportunities throughout 2019 which have also included the more formal academic qualifications.

The chart below demonstrates the breakdown of qualifications/awards achieved:



Highlights for 2019 included:

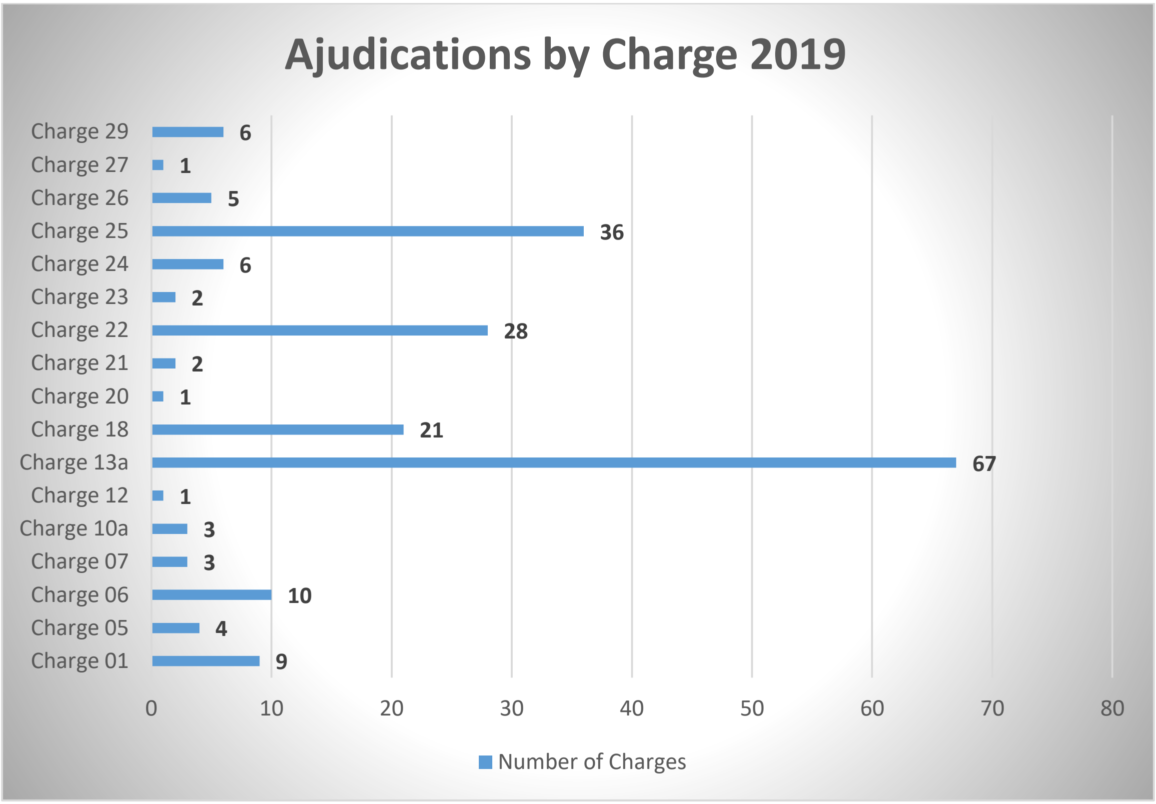
- 29 students who successfully completed the Employability Skills Course in its second year on offer.
- An increase in students undertaking the new Open University 'Open Learn' courses with 13 students completing 60 of these new courses on offer, which encouragingly were mainly facilitated through the use of in-cell computers.
- There were 22 individuals involved in showcasing their artistry through the nationally recognized Koestler Arts competition, and in recognition of their talent, 10 awards were won.

Guernsey Prison has an expectation that prisoners who are able to work will be assigned jobs and expected to go to work each day. An average of more than 99% of all eligible prisoners were in employment during 2019 and 75% of prisoners engaged in Education.

5.0 Disciplinary offenses

5.1 Adjudications

Over the course of 2019, there were a total of 205 offences against discipline by a total of 72 prisoners.



A prisoner may receive an adjudication by the Governor if they are reported for having committed an offence set out in the Prison Rules.

Of the 205 offences, none were referred to the Independent Adjudicator who deals with serious offences, 168 adjudications resulted in penalties, such as loss of privileges, 16 were dismissed, 15, were not proceeded with and 6 were referred to the police. No adjudications were overturned.

The highest level of offences was 67 charges for:

Section 44(1) Para (13) - Has in the prisoner's possession (a) anything which the prisoner is not lawfully required or authorised to possess; or (b) a quantity of anything that is greater than the quantity that that prisoner is lawfully required or authorised to possess.

The penalties for these charges range from cautions to loss of remission, dependent on the items in possession.

The second highest level of offences committed in 2019 was for:

Section 44(1) Para (25) disobeys any lawful order

A full breakdown of offences can be found in Appendix A.

6.0 Statistical and other information

6.1 Prisoner appeals

There is an appeal process for prisoners against any finding of guilt or punishment awarded. There were no appeals during 2019 against any of the punishments awarded. In general, the adjudication will not be proceeded with if technical errors are found within the process.

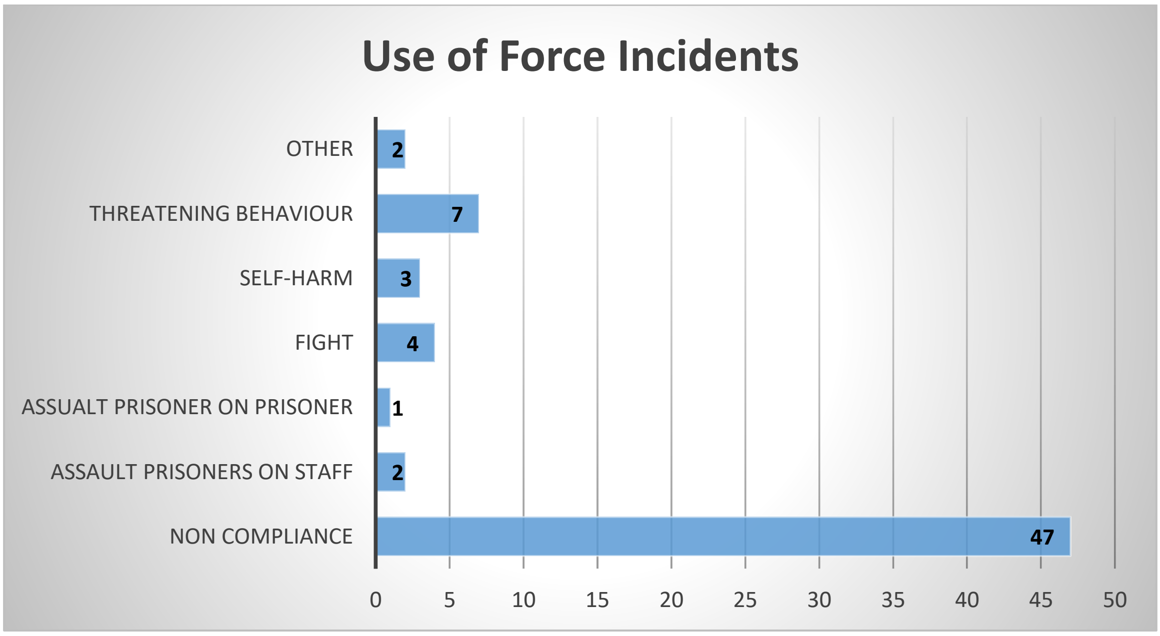
6.2 Use of force

During 2019, there were a total of 66 incidents requiring 'use of force' reports to be completed. Of these, 7 were planned removals with a general theme of prisoners being relocated to the Prison Separation Care and Progression Unit (SCAPU). The remaining incidents were spontaneous interventions, mainly due to non-compliance, and there were infrequent physical interventions to preventing self-harm and altercations between prisoners. Use of force incidents do not necessarily lead on to formal disciplinary charges against a prisoner being recorded.

Of the remaining 59 incidents 11 of these were used on 2 individuals and were the lowest form of intervention. With a further 14 incidents on various prisoners also involving low level guiding techniques to be employed, in order to de-escalate primarily verbal confrontations.

This leaves 34 spontaneous interventions over the 12 month period requiring the prisoner to be actively restrained by staff.

A breakdown of all incidents is listed in the table below:



6.3 Separation, care and progression unit (SCAPU)

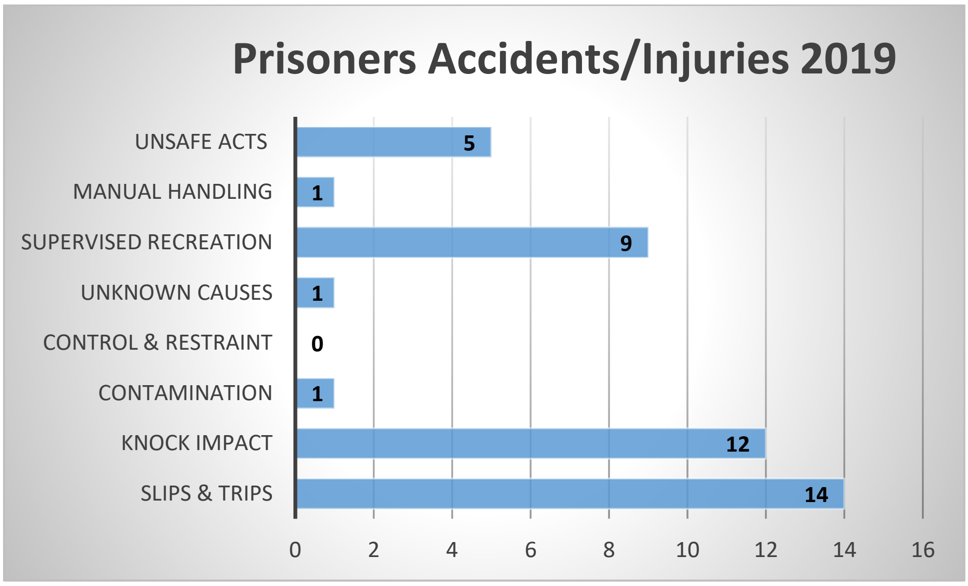
The Prison SCAPU is used primarily to segregate prisoners who are considered to be a risk to the good order and discipline of the establishment due to refractory or serious non-compliant behavior.

The SCAPU has been used by 30 prisoners throughout 2019 on several occasions.

6.4 Assaults

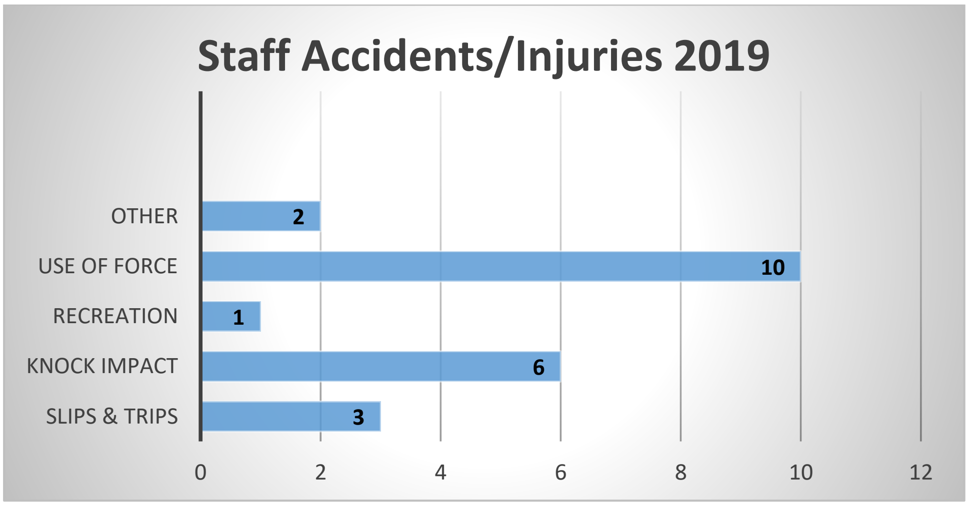
There was a total of 7 assaults recorded in the prison during 2019. These incidents consisted of 2 assaults on staff and 5 assaults involving prisoner on prisoner.

6.5 Prisoner injuries



6.6 Officer injuries

The rise in awareness regarding health and safety amongst staff has reduced the level of accidents in the prison. In addition, 2019 saw the lowest staff injury figures since statistics were recorded.



6.7 Visitor injuries

There were no reported visitor injuries/accidents during 2019

6.8 Deaths

There was 1 recorded death in custody, which was confirmed to be due to natural causes, during 2019. The prison continues to carry out vigorous assessments and takes action accordingly with regards to the risk of suicide and self-harm.

6.9 Escapes

There have been no recorded escapes from custody and public protection remains a priority for the prison.

6.10 Assessment care in custody and teamwork (ACCT)

Prisoners who are at risk of self-harm or suicide are managed through a process known as Assessment Care in Custody and Teamwork (ACCT). 77 ACCT's were opened in 2019 for prisoners whom were considered to be at risk. Out of those 77 opened cases; 38 were for incidents of actual self-harm.

7.0 Healthcare managers annual report

The nursing team provided primary care services equitable to those in the community for the extended hours of 12 hours per weekday and 8 hours on both weekend days.

Nurse-led clinics continued to be provided daily and include: admission and pre-release assessments, immunisation provision, well man/well women; weekly stop smoking sessions; sexual health screening, nurse 'triage'; chronic disease management; detoxification; mental health support.

All newly sentenced prisoners returning from Court continue to be risk assessed by a Registered Nurse in Prison Healthcare.

Mental health care was provided by the Health & Social Care (HSC) Consultant Psychiatrist, Community Psychiatric Nurses (CPNs) and Psychologists from the HSC Psychological Therapy Team and the Learning Disability Team also provided services as required.

Guernsey Bereavement Service provided counselling as requested throughout the year.

The Prison Dentist continued surgeries throughout the year to provide dental care equivalent of what would be on offer in the community.

Optician clinics continued as required within the Prison.

8.0 Any other information

8.1 Staff learning and development

The prison remains committed to ensuring staff receive relevant and timely training which equips and invests in them as practitioners. Annual training in Fire, First Aid, Safeguarding and Use of Force ensures staff are best equipped to deal dynamically with incidents as they arise and contributes to the overall safety of the prison.

During 2019, 7 new officers undertook the Prison Officers Entry Level Training (POELT) Course. The Scottish Vocational Qualification (SVQ) in Custodial Care Level 3 continued to be delivered and there were a total of 10 candidate profiles completed in the course, during the year. In addition, 1 individual completed the Management Development Programme (MDP) for Senior Officers.

9.2 Key Performance Targets

The Guernsey Prison Service is fully committed to monitoring its performance and ensuring that its managers have access to the information they require to judge effectiveness and make informed decisions against the following objectives;

Safety: Prisoners, particularly the most vulnerable, are held safely.

Respect: Prisoners are treated with respect for their human dignity.

Purposeful Activity: Prisoners are able, and expected, to engage in activity that is likely to benefit them.

Rehabilitation and Release Planning: Prisoners are supported to maintain and develop relationships with their family and friends. Prisoners are helped to reduce their likelihood of reoffending and their risk of harm is managed effectively. Prisoners are prepared for their release into the community.

A new set of improvement objectives have been set for 2020; please see the 2020 Delivery Plan.

Appendix A

OFFENCES AGAINST
DISCIPLINE.docx

Guernsey Prison

INDEPENDENT MONITORING PANEL

2019 ANNUAL REPORT

Publication date: 1st May 2020

CONTENTS:

If further information is required in relation to any matter contained within this Report please write to the Chairman of Independent Monitoring Panel c/o Sir Charles Frossard House, La Charroterie, St Peter Port, GY1 1FH or telephone 01481 717000.

EXECUTIVE SUMMARY BY THE CHAIRMAN

In presenting the Independent Monitoring Panel's report covering the year 2019 I would first like to acknowledge my fellow Panel members, who are a group of ordinary volunteers doing an extraordinary job.

I am delighted to report there have been many positive developments during the year under review, some of which we highlight below with bullet points to give you a quick overview. There are still some concerns but considerably fewer than in our last report and the prison continues to be an institution that the island can be proud of. We deal with both the positives and our concerns more fully in the section 'Panel's Observations' on page 5.

Positive developments include:

- Progress in Healthcare
- Drug policy
- Bank facilities for ex-offenders
- Community Workshop
- New regime

Among our concerns are:

- Lack of progress on J Wing refurbishment
- Prison Population
- Visits
- IMP communication & awareness

We are, as always, indebted to the staff at the Guernsey Prison - especially to those prison officers who accompany members throughout their visits and to Principal Officers and the Governor grades who take time to speak with us at the end of our visits and who attend our meetings outside of their normal working day. I take this opportunity to thank them all for their professionalism, courtesy, patience and good humour on our visits.

Tony Talmage

STATUTORY FUNCTION

The Guernsey Prison Service keeps in custody those legally committed to its care. Its duty is to look after them with decency and to help them lead law-abiding lives in custody and after release. The Prison holds a diverse population, including those sentenced and on remand, men and women, young offenders and juvenile and vulnerable prisoners.

The Independent Monitoring Panel is constituted under the Prison (Guernsey) Ordinance 2013 ("the Ordinance") as a body made up of members of the public. It is charged with providing independent oversight of the day-to-day operations of the Prison and prison conditions, monitoring the administration of the prison, the treatment of prisoners and whether the statutory objectives of the prison system are being met. The Panel also oversees the general well-being of staff who are employed by the Guernsey Prison.

To enable the Panel to carry out these duties effectively, its members have right of access to every prisoner and every part of the prison and also to the prison's records. Members:

- undertake a monthly unannounced visit of the Prison premises;
- visit prisoners personally at their request;
- visit prisoners who have been admitted to the Segregation Care and Progress Unit (SCAPU);
- attend, as observers, routine prison meetings; and
- attend bi-monthly Panel meetings.

The Ordinance requires the Panel to prepare an annual report at the end of each calendar year, which must include its findings, observations, recommendations and statistical information.

THE PANEL'S OBSERVATIONS in 2019

The following report arises from observations made on unannounced visits, visits requested by prisoners, informed contact with staff, attendance at prison meetings and discussions with prison management. Where appropriate we have incorporated information gathered in 2020 which are relevant to reporting on our activities in 2019.

1. POSITIVE DEVELOPMENTS

Healthcare and mental health

There has been a step-change for the good since our last report in which we expressed serious concerns, particularly about the provision of mental health support for prisoners and about how information, which may assist prison officers to safely carry out their duties, was not being shared. We are therefore pleased to report that improvements were observed in 2019 and continued to improve into 2020.

A new information-sharing protocol between the Prison and Healthcare has been agreed meaning that information about a prisoner's mental and physical situation is now available to prison officers when they need it. This has fostered a closer working relationship between prison officers and healthcare staff which has generated a more harmonious prison environment.

Another positive development was the appointment to the Healthcare Team of a new nurse with mental health skills and experience. And adding to the overall beneficial impact has been mental health training for staff, developed and delivered by experienced prison officers.

As we pointed out in our last report, the Healthcare Unit's effectiveness could be improved by moving from a paper-based to a computerised clinical notes system.

> Note: The Panel understands that this is in the pipeline and that the Healthcare staff can now access a prisoner's prior health record.

Drug policy

We highlighted in our last report that we were concerned about the approach of mandatory detoxification of prisoners on reception. We are pleased to be able to report that the Prison authorities have worked with CDAT (Community Drug & Alcohol Team) to mitigate the risks associated with drug dependency for those entering and being released from prison, meaning that a prisoners needs are risk assessed on a case by case basis and there is continuity of support where appropriate.

Hooch

We logged our concern in our last report about the illicit brewing of hooch in cells. We are pleased to report that the prison has dealt effectively with this issue.

Prisoner induction procedures

We have previously expressed concern that the induction process made it almost impossible for new prisoners to retain essential information – not least the role of the IMP. We are therefore pleased to report that a 'Team around the Prisoner' (TAP) scheme has now been introduced so that each new arrival has an individual, multi-discipline meeting with various professionals, within 48 hours of reception, ensuring all their needs are met and that they receive essential information. We note that material about the role of the IMP is also available on the in-cell terminals.

Bank accounts

In previous reports we expressed our disappointment that the inability of some ex-prisoners to access bank accounts remained unresolved. Therefore we are pleased to see the launch of "Guernsey Community Savings" – a local scheme supported by the Community Foundation which offers access to basic banking services for those who have been financially excluded from accessing high street bank accounts.

The prison's Resettlement Officer will assist those wanting to apply for an account prior to release. Besides giving an ex-prisoner a feeling of self-esteem, having a bank account is a practical necessity when it comes to employment and paying for accommodation. Having a bank account also helps rehabilitation by encouraging ex-offenders to see themselves as valued members of society.

Community workshop

The new Creative Learning in Prison (CLIP) Community Workshop was commissioned in 2018 and completed in 2019. Funded by a combination of public, private and charitable sector donations, the workshop facility accommodates more prisoners who can work and learn on projects to directly benefit the community. The facility also allows for larger and more ambitious projects to be undertaken, thereby generating additional income and allowing CLIP to become a fully self-funding and sustainable charity.

Work opportunities

Providing employment within the prison creates several positive spin-offs. It gives prisoners the chance to feel valued, keeps them occupied, further reduces the risk of reoffending and aids their rehabilitation by enhancing their chances of permanent employment on release.

This 'working prison' regime brings its own challenges and the staff at the Prison work hard to secure appropriate work opportunities for those in their care. Opportunities for work release in the community are scarce but can be instrumental in securing rehabilitation and resettlement. The Panel would like to encourage more local businesses to work with the prison to further develop and support its rehabilitation agenda.

New regime

A regime re-profiling exercise, introduced in January 2019 to make more efficient use of staff and resources, and to improve safety at the prison, can been deemed a success. New rosters have increased the presence of officers on wings and at weekends, and a change of visiting times to afternoons has aided security during visits and made the introduction of contraband more difficult.

Review of the Incentive and Earned Privileges (IEP) Scheme

The IEP Scheme encourages good behaviour among the population in the prison. Levels are Basic, Standard or Enhanced and each is matched by certain privileges, for example if you are an Enhanced prisoner you may have access to a TV in your cell, the right to purchase items from the prison shop and access to association time on the wing. If you are Basic you have no TV, no access to purchase items and little time for association. Prisoners have always been obliged to apply in writing for 'promotion' to the next level, however it was recently highlighted that this may disadvantage those who have difficulties reading or when expressing themselves in writing.

A review was conducted and a trial has now commenced, of automatic reviews of all prisoners every 28 days, so that those with lower literacy levels now have an equal chance of achieving enhancement, thus avoiding any unintended unfairness.

Prisoner awards

The Prison's annual Recognition of Achievement prize-giving evening is a highlight for IMP members. This year a total of 76 prisoners achieved 144 qualifications/awards. And in the UK-wide Koestler Arts Scheme 27 entrants gained 17 awards, including two Golds. These successes are a reminder of the continuing good work of the Prison education department.

2. CONCERNS

While the appendices provide statistics on specific issues raised during visits, our chief concerns are highlighted below:

Lack of progress on J Wing refurbishment

J Wing is the prison's largest wing and the subject of most complaints about accommodation – in particular the showers which are low pressure and often not hot. It is disappointing that, despite some financial commitments being in place, these deficiencies have still not been remedied even though they have appeared in our reports for several years.

> **Note:** A recently-commissioned survey has revealed the calorifiers (water heaters) are located a long distance from the shower location which means that by the time the water arrives at the showers it has lost pressure and temperature. Revised proposals to deal with the issue will need to be developed and the Panel encourages all agencies involved to work together to resolve this without further delay.

Visits

IMP Members were disappointed to learn that the online 'virtual' visits scheme may take longer to launch at Guernsey Prison. Members were keen to hear about how cutting edge technology can be used in the rehabilitation process and were encouraged that this system may assist prisoners in maintaining family ties, especially if their families do not live locally. The Panel has observed first-hand how important family ties are to prisoners and how important it is for them to maintain contact with their loved ones. The Panel is encouraged that prisoners who have children in the community are able to access additional family visits.

Prison population

Average prison population during 2019 was 91 compared with 100 in 2018. The highest month was January with 111 and the lowest was October with 81. While, pleasingly, numbers have dropped slightly there is still a risk of reaching the Prison's Certified Normal Accommodation – especially when certain wings are out of commission due to refurbishment. Therefore we would like to emphasise how important we regard consideration of early release schemes for low risk prisoners. As we did in our report last year, we would urge all those who are part of the criminal justice system to consider, and implement, alternatives to custodial sentences.

IMP awareness

The profile of the IMP has been raised during the year through information on the in-cell terminals as well as word of mouth. But we acknowledge that with an itinerant prison population, awareness of our role will always fluctuate. We recommend a more detailed presentation be put together about our function, perhaps in the form of a video or PowerPoint presentation, be included as part of the induction process, as well as on the in-cell terminals.

IMP communication problems

Panel members are concerned over inadequacies in sending and receiving electronic information due to the incompatibility between personal devices and the States' IT systems. The result is some messages are delayed, or not received. A solution to this inconvenience would be for all members to be issued with a States standard tablet (second-hand would be acceptable) so that all members would be on an equal footing. We recommend that consideration be given to this.

3. GENERAL COMMENTS

We were sorry to see the departure during the year of Governor David Matthews. During his six years in the post he made a significant contribution to prison life and was responsible for implementing the 'working prison' regime. Governor Matthews also proved that a non-smoking policy could be a success and Guernsey is a shining example to other prisons on how this can be achieved. We send him our best wishes for a well-deserved retirement and more time to enjoy family life.

The IMP itself lost two experienced and valued members and have recruited two excellent replacements, one of whom at aged 21, is the youngest ever to join the panel.

Finally, a few incidents of physical assaults by a prisoners in 2019, serve as a reminder of the day-to-day challenges all those in the Prison Service face when carrying out their roles, which we as a community should never take for granted.

In conclusion, throughout the year we found the state of the prison premises clean and, apart from J Wing showers, fit for purpose. The administration of the prison has been generally good and our attendance at the prison's internal meetings has provided useful background information for our visits. Prisoners have been treated humanely and with dignity and respect, and responses to our visit reports, and any follow-ups, have been constructive.

The IMP met with the President and Members of the Committee *for* Home Affairs in December 2019 and had a productive meeting. The Panel has had no need to raise any issues with the Committee *for* Home Affairs in 2019.

4. RECOMMENDATIONS

1. We recommend all relevant agencies work together to resolve the deficiencies in J Wing showers;

2. We recommend a detailed presentation be put together about our function, perhaps in the form of a video or PowerPoint presentation, to be included as part of the induction process, as well as on the in-cell terminals;

3. We recommend that consideration be given to issuing IMP members with States devices to enable secure communications.

APPENDIX 1 - STATISTICAL ANALYSIS

1. Total number of visits

Type of visit	2019	2018	2017	2016	2015	2014
Unannounced	12	12	12	12	12	12
Requested Visits	35*	18	20	38	15	9
SCAPU*	33	15	12	6	3	2

*The Segregation, Care and Progress Unit (SCAPU) is used to hold prisoners separately from the main population. There are a number of reasons for a prisoner to be segregated; generally the reason for separation is that they present an increased risk to themselves, to staff, or to the rest of the population and cannot be managed effectively if they remain. SCAPU in Guernsey Prison is not used as a punishment although may be used for a period of cooling off should a prisoner be presenting aggressive behaviour. The ethos of the SCAPU within Guernsey Prison is that of individually-focused care. The intention is to support individuals so that they can safely be returned to mainstream accommodation.

There is a need to ensure that the decision to separate a prisoner, and the experience of separation for that prisoner, are governed by the stated principles of fairness and decency. Separation should never be prolonged, or indefinite, and care should be given to ensure that individuals contained within SCAPU are treated with humanity and decency at all times and to ensure that an individual's mental health is not adversely affected by the separation. To this end the IMP are automatically requested to visit when an individual has been placed in SCAPU.

* a prisoner who requested a visit did not wish to see the IMP member on their arrival

Monthly unannounced visits	2019		2018	
Theme of concerns raised	Number of concerns raised by prisoners	Number of enquiries made by IMP	Number of concerns raised by prisoners	Number of enquiries made by IMP
A. Accommodation & Cells			2	
B. Adjudications & Warnings / discipline			2	
C. Canteen			8	
D. Association Time / Gym	1			
E. Equality, Diversity & Discrimination				
F. Fabric or maintenance of the prison building	6	3	12	3
G. Smoking / Detoxification	2		1	
H. Healthcare	1		5	3
I. Incentives & Earned Privileges (IEP) Status & Rules	1			1
J. Release on Temporary Licence (ROTL)				
K. Food / Kitchen	1			2
L. Cleanliness		1		
M. Money / Pay	1		3	
N. Bullying / Unfair treatment				1
O. Personal belongings or issues	1		1	4
P. Prison Information System (PIMS)				
Q. Parole				
R. Regime – Education / Employment			2	
S. Sentence Planning – Access to courses				2
T. Transfers	1			
U. Use of force				
V. Visits			2	
W. Reception into custody / Info	1		4	
X. Support post-release & resettlement	2			
Y. Misc. complaints	1	1		
Z. No concerns raised				

Requested visits by theme	2019		2018	
Theme of concerns raised	Number of concerns raised by prisoners	Number of enquiries made by IMP	Number of concerns raised by prisoners	Number of enquiries made by IMP
A. Accommodation & Cells	2	1	3	
B. Adjudications & Warnings / discipline	2		1	1
C. Canteen				
D. Association Time / Gym	2	2		1
E. Equality, Diversity & Discrimination			1	
F. Fabric or maintenance of the prison building			2	1
G. Smoking / Detoxification			1	3
H. Healthcare	14	11	4	1
I. Incentives & Earned Privileges (IEP) Status & Rules	3	2	2	2
J. Release on Temporary Licence (ROTL)				
K. Food / Kitchen			2	
L. Cleanliness			1	
M. Money / Pay				
N. Bullying / Unfair treatment	2	1		
O. Personal belongings or issues	4	3		
P. Prison Information System (PIMS)				
Q. Parole	1	1		
R. Regime – Education / Employment				
S. Sentence Planning – Access to courses	2	2		1
T. Transfer	1			
U. Use of force				
V. Visits				
W. Reception into custody / Info				
X. Support post-release & resettlement	1	1		
Y. Misc. complaints	4	2		
Z. No concerns raised	1			

APPENDIX 2 - ANONYMOUS EXAMPLES OF PRISONERS' CONCERNS

Confidentiality restricts the Panel in providing specific details of individual concerns raised. The Panel is of the view that to provide even brief summaries could potentially risk identifying the prisoner. Below, we have outline some examples of enquires made.

The Panel has enquired into a number of concerns raised in relation to:

Healthcare

- Appointments with the Doctor
- Detoxification processes
- Mental health concerns

Fabric of the building

- J wing shower temperature & pressure
- Smells emanating from shower drains
- Heating

Regime

- ROTL Progression
- Changing job roles
- Gym times
- Wing moves
- Education – access to online courses

Other complaints:

- Availability of low nicotine products
- Variety of items available in the shop
- Dynamics on the wings
- Prisoner and Officer dynamics
- Cell searches
- Personal belongings