



BILLET D'ÉTAT

WEDNESDAY, 29th NOVEMBER, 2017

LEGISLATIVE BUSINESS

Legislation Laid Before the States

Notifiable Animal Diseases Order, 2017
The Health Service (Benefit) (Limited List) (Pharmaceutical Benefit)
(Amendment No. 3) Regulations, 2017
The Health Service (Pharmaceutical Benefit) (Amendment) Regulations,
2017
The Control of Poisonous Substances (Guernsey) (Amendment)
Regulations, 2017
The Firearms and Weapons (Forms and Particulars) (Guernsey)
Regulations 2017
The Firearms and Weapons (Exceptions, Exemptions and Defences)
(Guernsey) Regulations, 2017
The Firearms and Weapons (Fees) (Guernsey) Regulations, 2017
The Firearms and Weapons (Approved Ranges) (Guernsey) Regulations,
2017
The Data Protection (Transfer In The Substantial Public Interest)
(Amendment) Order, 2017

CONTINUED OVERLEAF

**XXIII
2017**

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OTHER BUSINESS

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BILLET D'ÉTAT

TO
**THE MEMBERS OF THE STATES
OF THE ISLAND OF GUERNSEY**

I hereby give notice that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY**, the **29th November, 2017** immediately after the Meeting of the States of Election convened for **9.30 a.m.**, to consider the items listed in this Billet d'État which have been submitted for debate.

R. J. COLLAS
Bailiff and Presiding Officer

The Royal Court House
Guernsey

10th November, 2017

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

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

No. 59 of 2017

NOTIFIABLE ANIMAL DISEASES ORDER, 2017

In pursuance of sections 1(4) and 33 of the Animal Health Ordinance, 1996, the Notifiable Animal Diseases Order, 2017, made by the Committee *for the Environment & Infrastructure* on 24th August, 2017, is laid before the States.

EXPLANATORY NOTE

This Order substitutes Schedule 1 to the Animal Health Ordinance, 1996 for a new Schedule 1 set out in the Schedule to this Order to reflect the list of diseases currently published by the Office International des Epizooties as significant in terms of animal health or important in terms of economic impact.

Schedule 1 to the 1996 Ordinance lists diseases which are notifiable animal diseases and compulsory slaughter diseases and the animals which are susceptible to those diseases for the purposes of the controls on diseases set out in the Ordinance. In particular, all such diseases must be notified to the Committee under the Ordinance.

The main updates are to –

- move African Swine Fever from the list of compulsory slaughter diseases to the list of other notifiable diseases so that pigs with that disease will not be subject to the compulsory slaughter provisions in the Ordinance;
- add Aujeszky's disease (to which pigs and dogs are susceptible), Chytridiomycosis (chytrid fungus disease) (to which amphibians are susceptible), Epizootic Haemorrhagic Virus Disease (to which deer are susceptible), Epizootic Lymphangitis (to which equines are susceptible), Goat Pox (to which goats are susceptible), Paramyxovirus of Pigeons (to which birds are susceptible), Porcine Epidemic Diarrhoea (PED) (to which pigs are susceptible), Rinderpest (Cattle Plague) (to which cattle are susceptible), Sheep Pox (to which sheep are susceptible) and Teschen disease (Porcine enterovirus encephalomyelitis) (to which pigs are susceptible) to the list of notifiable animal diseases;
- remove Marek's disease, Melioidosis, Transmissible gastroenteritis and Tularemia from the list of notifiable animal diseases; and
- amend the animals listed as susceptible to *Echinococcus granulosus* and *Echinococcus multilocularis*.
-

This Order comes into force on the 24th day of August, 2017.

No. 78 of 2017

**THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL BENEFIT)
(AMENDMENT NO.3) REGULATIONS, 2017**

In pursuance of section 35 of the Health Service (Benefit) Law, 1990, the Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No.3) Regulations, 2017 made by the Committee for Employment & Social Security on 3rd October, 2017, are laid before the States.

EXPLANATORY NOTE

These Regulations amend the Health Service (Benefit) (Limited List) Regulations, 1990 to substitute, for the reference in regulation 2B of those Regulations to the definition of "nurse prescriber" in the Health Service (Benefit) (Nurse Prescribers) Ordinance, 2013, a reference to the definition of "nurse prescriber" in the Health Service (Benefit) (Approved Prescribers) Ordinance, 2017.

These Regulations come into force on the 1st November, 2017.

No. 79 of 2017

THE HEALTH SERVICE (PHARMACEUTICAL BENEFIT) (AMENDMENT) REGULATIONS, 2017

In pursuance of section 35 of the Health Service (Benefit) Law, 1990, the Health Service (Pharmaceutical Benefit) (Amendment) Regulations, 2017 made by the Committee for Employment & Social Security on 3rd October, 2017, are laid before the States.

EXPLANATORY NOTE

The Health Service (Benefit) (Approved Prescribers) Ordinance, 2017 authorises approved prescribers, including nurse prescribers, to issue medical prescriptions for pharmaceutical benefits.

The Health Service (Pharmaceutical Benefit) Regulations, 1990 ("1990 Regulations") set out forms to be used by professionals entitled to issue the medical prescriptions for pharmaceutical benefits, including a form to be used by nurse prescribers.

These Regulations amend the 1990 Regulations to replace the form required to be used by nurse prescribers with a form to be used by all approved prescribers, including nurse prescribers.

These Regulations also extend provisions of the 1990 Regulations relating to medical prescriptions to medical prescriptions issued by any approved prescriber (including a nurse prescriber).

These Regulations come into force on the 1st November, 2017.

No. 80 of 2017

**THE CONTROL OF POISONOUS SUBSTANCES (GUERNSEY) (AMENDMENT) REGULATIONS,
2017**

In pursuance of section 4 of the Poisonous Substances (Guernsey) Law, 1994, the Control of Poisonous Substances (Guernsey) (Amendment) Regulations, 2017 made by the Committee for Employment & Social Security on 3rd October, 2017, are laid before the States.

EXPLANATORY NOTE

These Regulations amend the Control of Poisonous Substances (Guernsey) Regulations, 2014 as amended ("the principal Regulations"), to remove the requirement for professional users to revalidate their certificate of competence, and have regulated equipment inspected by a competent person, every 5 years.

Regulation 2(a) replaces the requirement in regulation 9(1)(b)(iii) of the principal Regulations for professional users to keep records of examinations of regulated equipment by competent persons ("examination records") with a requirement to keep records of maintenance operations carried out on the equipment ("maintenance records").

Regulation 2(b) replaces the requirement in regulation 9(2)(c) of the principal Regulations to keep examination records for 10 years, with a requirement to keep maintenance records for 7 years after the maintenance operation is carried out (in line with regulation 9(2)(a) and (b)).

Regulation 3 deletes the definition of "competent person" in regulation 19(1) of the principal Regulations, as this expression would no longer occur in the principal Regulations after these Regulations come into force.

Regulation 4 amends paragraph 2 of Schedule 3 to the principal Regulations to remove the requirement for professional users to obtain or renew a certificate of competence every five years. It also substitutes paragraphs 6 and 7 of that schedule with a new paragraph 6 requiring professional users to have regulated equipment calibrated in the 12-month period before the application of poisonous substances, and maintained in accordance with the manufacturer's instructions.

Regulation 5 substitutes paragraphs 3A and 3B of Schedule 5 to the principal Regulations with a new paragraph 3A that states that certificates of competence (including any deemed certificates of competence) continue to have effect until any expiry date specified on the certificate, unless revoked earlier.

Regulation 6 revokes the Control of Poisonous Substances (Guernsey) (Amendment) Regulations, 2016, as the amendments made by those regulations have been superseded by these Regulations.

No. 82 of 2017

**THE FIREARMS AND WEAPONS (FORMS AND PARTICULARS) (GUERNSEY) REGULATIONS
2017**

In pursuance of Section 10(1), 12(2), 15(1), 20A(3), 23B(3), 29(1), 30(2), 31(3), 36(1), 36(3) and (5), 40(1), 43(1) and 55A of the Firearms and Weapons (Guernsey) Law, 1998, The Firearms And Weapons (Forms and Particulars) (Guernsey) Regulations 2017, made by the Committee *for* Home Affairs on 9th October 2017, is laid before the States.

EXPLANATORY NOTE

These Regulations prescribe the forms to be used, and particulars and conditions to be included, under the Firearms and Weapons (Guernsey) Law, 1998, for:

- a permit for possession of firearms or ammunition without a certificate,
- a permit for an auctioneer to sell by auction, expose for sale by auction or
- have in his possession for sale by auction a firearm or ammunition without being registered as a firearms dealer,
- a permit to remove a firearm from or to a ship, or a signalling apparatus from or to an aircraft or aerodrome,
- an application for a licence to possess a loaded shotgun in a public place,
- an application for a permit to possess and use an air weapon in a public place for vermin control,
- an application for a firearm certificate or shot gun certificate,
- a firearm certificate or a shotgun certificate,
- the register of firearms dealers,
- an application for a certificate of registration as a firearms dealer,
- the particulars to be furnished to the Chief Officer where a person registered as a firearms dealer proposes to carry on business at a place of business which is not entered in the register of firearms dealers, and
- the particulars to be entered in the register of transactions where a person by way of trade or business manufactures, sells or transfers firearms or ammunition.
- a certificate of registration as a firearms dealer

These Regulations come into force on the 1st November, 2017.

No. 83 of 2017

**THE FIREARMS AND WEAPONS (EXCEPTIONS, EXEMPTIONS AND DEFENCES) (GUERNSEY)
REGULATIONS, 2017**

In pursuance of Sections 5A(2) and (3), 5B(4), 20(2), 26A and 55A of the Firearms and Weapons (Guernsey) Law, 1998, The Firearms and Weapons (Exceptions, Exemptions and Defences) (Guernsey) Regulations, 2017, made by the Committee *for* Home Affairs on 9th October 2017, is laid before the States.

EXPLANATORY NOTE

These Regulations make provision in connection with defences, exceptions and exemptions in relation to offences in the Firearms and Weapons (Guernsey) Law, 1998 ("**the Law**").

Regulation 1 describes persons who may organise and hold historical re-enactments for the purposes of the defence specified in section 5A(2) of the Law.

Regulation 2 sets out a further defence to the offence of manufacturing, importing or selling realistic imitation firearms in section 5A(1) of the Law. This defence relates to making realistic imitation firearms available for the purposes of permitted activities (such as insured airsoft activities) or permitted events.

Regulation 3 places an evidential burden on a person seeking to establish a defence under regulation 2.

Regulations 4 and 5 make provision in connection with the definition of "**realistic imitation firearm**" in section 5B of the Law. These regulations specify the sizes and colours, respectively, which are to be regarded as unrealistic for an imitation firearm.

Regulation 6 specifies exceptions to the offence of carrying an air weapon or imitation firearm in a public place. These exceptions relate to over-18s or any over-12 club member carrying an air weapon or imitation firearm to or from club premises or shooting-permitted premises in a securely-fastened case.

Regulation 7 specifies an exception to the offence of sale or supply to, or possession by, an under-18 of air weapons or imitation firearms. This exception allows air weapons or imitation firearms to be sold or supplied to or possessed by an over-12 club member.

Regulation 8 specifies another exemption from the offence of supply to or possession by, an under-18 of air weapons or imitation firearms. This exemption allows an air weapon or imitation firearm to be lent to, or possessed by, an over-12 solely in order to enable its use under the personal supervision of an over-18 with reasonable safeguards in shooting-permitted premises.

Regulation 9 provides for an exemption similar to regulation 8 in relation to spearguns. Regulation 9 is an exemption from the offence of supply to or possession by, an under-18, of spearguns that are declared to be regulated weapons under the Firearms and Weapons (Guernsey) Ordinance, 2016. This exemption allows a speargun to be lent to, or possessed by, an over-12 solely in order to enable its use under the personal supervision of an over-18 with reasonable safeguards.

Regulation 10 is the interpretation provision. Regulations 11 and 12 are the citation and commencement provisions respectively.

These Regulations come into force on the 1st November, 2017.

No. 84 of 2017

THE FIREARMS AND WEAPONS (FEES) (GUERNSEY) REGULATIONS, 2017

In pursuance of Sections 16(1A), 20A(8), 23B(8), 35(1), 36(5), 38(1) and (2) and 55A of the Firearms and Weapons (Guernsey) Law, 1998, The Firearms and Weapons (Fees) (Guernsey) Regulations, 2017, made by the Committee *for* Home Affairs on 9th October 2017, is laid before the States.

EXPLANATORY NOTE

These Regulations prescribe the fees payable under the Firearms and Weapons (Guernsey) Law, 1998 in respect of –

- (a) the grant, renewal, replacement or variation of a firearm certificate, shot gun certificate or visitor's temporary permit,
- (b) the grant, replacement or variation of –
 - (i) a licence to have a shot gun in a public place, or
 - (ii) a permit for having an air weapon, or using an air weapon to fire a missile in a public place, for vermin control, and
- (c) renewal or renewal of registration as a firearms dealer.

These Regulations come into force on the 1st November, 2017.

No. 85 of 2017

THE FIREARMS AND WEAPONS (APPROVED RANGES) (GUERNSEY) REGULATIONS, 2017

In pursuance of Sections 22 and 55A of the Firearms and Weapons (Guernsey) Law, 1998, The Firearms and Weapons (Approved Ranges) (Guernsey) Regulations, 2017, made by the Committee *for* Home Affairs on 9th October 2017, is laid before the States.

EXPLANATORY NOTE

These Regulations approve ranges at which firearms may be fired, specify the classes of firearms that may be used on such approved ranges and prescribe the regulations for such use, for the purposes of section 22 of the Firearms and Weapons (Guernsey) Law, 1998 ("**the Law**").

These regulations are made for the purposes of transitioning to the new statutory framework created by the Firearms (Guernsey) (Amendment) Law, 2016, pending the making of new regulations concerning approved firing ranges and the rules applicable to the use of these ranges.

Regulation 1 approves the ranges and prescribes the general and special conditions of use of those ranges, as specified in Schedule 1 to these Regulations.

Regulation 2 empowers the Committee *for* Home Affairs and any person authorised by the Committee to enter and inspect any approved range at any reasonable time.

Regulation 3 prohibits any person from obstructing the Committee or an authorised person in the exercise of powers conferred by regulation 2.

Regulation 4 gives effect to additional requirements relating to use of the Fort Le Marchant Rifle Range.

Regulation 5 creates offences relating to use of an approved range otherwise than in accordance with the general and special conditions, failure to carry out functions assigned by Schedule 1, and breach of regulation 3 or any provision of Schedule 2.

Regulations 6, 7 and 8 are the interpretation, citation and commencement provisions respectively.

In effect, these Regulations save sections 1(1), 2, 3, 4(1) and 8 of, and Schedules 1 and 2 to, the Firearms Ordinance, 1987 as regulations, despite the repeal of that Ordinance by the Firearms (Amendment) Law, 2016. The offences created by these Regulations are similar to the offences under that now-repealed Ordinance.

These Regulations come into force on the 1st November, 2017.

No. 92 of 2017

**THE DATA PROTECTION (TRANSFER IN THE SUBSTANTIAL PUBLIC INTEREST)
(AMENDMENT) ORDER, 2017**

In pursuance of paragraph 4(2) of Schedule 4 to, and section 66(2) of, the Data Protection (Bailiwick of Guernsey) Law, 2001, The Data Protection (Transfer In The Substantial Public Interest) (Amendment) Order, 2017 made by the Committee *for* Home Affairs on 24th April 2017, is laid before the States.

EXPLANATORY NOTE

This Order amends the definition of "the Stock Exchange" in the Data Protection (Transfer in the Substantial Public Interest) Order, 2002 to change the reference to the "Channel Islands Securities Exchange Authority Limited" to the "The International Stock Exchange Authority Limited (Guernsey company registration number 57527)".

This reflects the change of name of the regulated exchange entity.

This Order comes into force on the 26th day of April, 2017.

The full text of the statutory instruments and other legislation included in this document can be found at:

<http://www.guernseylegalresources.gg/article/158414/2017>

THE DATA PROTECTION (BAILIWICK OF GUERNSEY) LAW, 2017

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Data Protection (Bailiwick of Guernsey) Law, 2017", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

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

EXPLANATORY MEMORANDUM

The Law repeals and replaces the current Data Protection (Bailiwick of Guernsey) Law, 2001 with provisions to protect the rights of individuals in relation to their personal data, and provide for the free movement of personal data, in a manner equivalent to and consistent with the General Data Protection Regulation (Regulation (EU) 2016/679). The associated Law Enforcement Directive (Directive (EU) 2016/680) will be implemented by an Ordinance to be made under the Law.

The Law imposes duties primarily on controllers (persons who determine the means and purposes of processing) and processors (persons processing the personal data), in relation to the processing of personal data (information relating to identified or identifiable living individuals). It also confers rights on data subjects (the living individuals to whom the personal data relates), and imposes corresponding duties on controllers. The Law also establishes the Data Protection Authority, confers a wide range of functions on it and authorises it to determine complaints, conduct inquiries and order sanctions (including administrative fines).

PROJET DE LOI

ENTITLED

The Data Protection (Bailiwick of Guernsey) Law, 2017

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PROJET DE LOI

ENTITLED

The Data Protection (Bailiwick of Guernsey) Law, 2017

THE STATES, in pursuance of their Resolution of the 26th April, 2017^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I

PRELIMINARY

Object of this Law.

1. The object of this Law is to –
 - (a) protect the rights of individuals in relation to their personal data, and provide for the free movement of personal data, in a manner equivalent to the GDPR and the Law Enforcement Directive, and
 - (b) make other provisions considered appropriate in relation to the processing of personal data.

^a Article VI of Billet d'État No. VIII of 2017.

Application.

2. (1) This Law applies in relation to the processing of personal data only where conditions A and B are satisfied.

(2) Condition A is that –

(a) the processing is wholly or partly by automated means,
or

(b) if the processing is other than by automated means, the personal data forms or is intended to form part of a filing system.

(3) Condition B is that –

(a) the processing is in the context of a controller or processor established in the Bailiwick, or

(b) the personal data is that of a Bailiwick resident, and it is processed in the context of –

(i) the offering of goods or services (whether or not for payment) to the resident, or

(ii) the monitoring of the resident's behaviour in the Bailiwick.

(4) Schedule 1 has effect.

(5) In this section, "**Bailiwick resident**" means an individual who is ordinarily resident in the Bailiwick.

Extent.

3. Subject to section 2, this Law –
 - (a) applies regardless of where the processing takes place, and
 - (b) has extra-territorial application unless the context requires otherwise.

Exception for personal, family or household affairs.

4. Nothing in this Law applies to the processing of personal data by an individual solely for the purpose of the individual's personal, family or household affairs (including recreational purposes).

Other enactments.

5. So far as it is possible to do so, an enactment must be read and given effect in a way which is consistent with this Law.

PART II

DUTIES AND PRINCIPLES OF PROCESSING

Duty to comply with data protection principles.

6. (1) A controller must –
 - (a) ensure that the processing of all personal data in relation to which the person is the controller complies

with the data protection principles in subsection (2)(a) to (f), and

(b) comply with the principle in subsection (2)(g).

(2) The data protection principles are –

(a) **Lawfulness, Fairness and Transparency:**

Personal data must be processed lawfully, fairly and in a transparent manner in relation to the data subject,

(b) **Purpose Limitation:**

Personal data:

(i) must not be collected except for a specific, explicit and legitimate purpose, and

(ii) once collected, must not be further processed in a manner incompatible with the purpose for which it was collected,

(c) **Minimisation:**

Personal data processed must be adequate, relevant and limited to what is necessary in relation to the purpose for which it is processed,

(d) **Accuracy:**

Personal data processed must be accurate and where applicable, kept up to date, and reasonable steps must

be taken to ensure that personal data that is inaccurate (having regard to the purpose for which it is processed) is erased or corrected without delay,

(e) **Storage Limitation:**

Personal data must not be kept in a form that permits identification of the data subject any longer than is necessary for the purpose for which it is processed (but may be stored longer to the extent necessary for a historical or scientific purpose),

(f) **Integrity and Confidentiality:**

Personal data must be processed in a manner that ensures its security appropriately, including protecting it against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures, and

(g) **Accountability:**

The controller is responsible for, and must be able to demonstrate, compliance with the data protection principles in paragraphs (a) to (f).

Lawfulness of processing.

7. For the purposes of the data protection principle of Lawfulness, Fairness and Transparency, processing of personal data is lawful only if, and to the extent that –

- (a) in the case of special category data, at least one condition in Part II or III of Schedule 2 is satisfied, and
- (b) in any other case, at least one condition in Part I or II of Schedule 2 is satisfied.

Fairness of processing.

8. (1) For the purposes of the data protection principle of Lawfulness, Fairness and Transparency –

- (a) subject to paragraphs (b) and (c), whether or not personal data is processed fairly must be determined having regard to the method by which it is obtained, including whether any person from whom it is obtained is deceived or misled as to the purpose or purposes for which it is to be processed,
- (b) personal data must be regarded as obtained fairly if it consists of information obtained from a person who –
 - (i) is authorised by or under any enactment to supply it, or
 - (ii) is required to supply it by or under any enactment or any international agreement imposing an international obligation on the Bailiwick, and

- (c) the processing of personal data containing an identifier of a prescribed kind or description must be regarded as unfair unless the processing complies with any conditions prescribed in relation to identifiers of that kind or description.

(2) In subsection (1)(c), "**prescribed**" means prescribed by an Ordinance made under this Law.

Compatibility of further processing.

9. (1) This section applies for the purposes of the data protection principle of Purpose Limitation, in relation to the requirement in section 6(2)(b)(ii) that personal data, once collected, must not be further processed in a manner incompatible with the purpose for which it was collected.

(2) Subject to subsection (3), whether or not personal data is further processed in a manner incompatible with the purpose for which it was collected must be determined having regard to the proportionality factors.

(3) Further processing of personal data is deemed to be compatible with any purpose for which the data was collected, where –

- (a) the explicit consent of the data subject is obtained for the further processing,
- (b) the further processing is for a historical or scientific purpose, or

- (c) the further processing is specifically authorised or required by an enactment.

Consent to processing.

10. (1) For the purposes of this Law, consent given by a data subject means any specific, informed and unambiguous indication of the data subject's wishes by which the data subject, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to the data subject.

(2) A data subject's consent to the processing of personal data is not valid for the purposes of this Law except where the following conditions are satisfied –

- (a) it is clearly demonstrable that the data subject has given the consent,
- (b) the data subject has freely given the consent,
- (c) before the consent is given, the data subject is informed that the data subject has the right to withdraw consent at any time,
- (d) if the consent is given in writing in the context of other matters (not involving consent to processing of the personal data), the request for consent is -
 - (i) presented in a manner which is clearly distinguishable from the other matters,

- (ii) in an intelligible and easily accessible form,
and
 - (iii) in clear and plain language,
- (e) if the consent is given in the context of the performance of a contract (including by provision of a service) –
- (i) the consent was necessary for the performance of the contract, or
 - (ii) if it was not so necessary, the data subject was given the option of refusing consent without prejudice to the performance of the contract, and advised of this option, and
- (f) if consent is given in the context of the offer of information society services directly to a child under 13 years of age, the consent is given or authorised by a person who has parental responsibility for the child.

(3) A person determining whether the conditions in subsection (2)(a) to (e) are satisfied in the context of consent given by a child must have regard to the age of the child.

(4) For the avoidance of doubt, a data subject's consent is not freely given if it is given on the basis of false, deceptive or misleading information or conduct, knowingly or recklessly provided or perpetrated by –

- (a) the controller,
- (b) the processor,
- (c) any other person who seeks the consent or to whom the consent is given.

(5) A data subject may withdraw the data subject's consent to processing at any time, and the consent is treated as revoked from that time.

(6) Where consent to processing is sought or given, the controller must –

- (a) provide a procedure for withdrawal that is at least as simple as the procedure for giving consent, and
- (b) make reasonable efforts to verify that the person giving or authorising the consent is who that person claims to be, particularly where that person claims to be the person authorised to give or authorise consent for a child under 13 years of age.

(7) Consent to the processing of criminal data is not valid for the purposes of this Law unless –

- (a) the controller to whom the data subject has given consent –

(i) is a person authorised or required by any enactment to process the criminal data of any person at the application or request of, or otherwise with the consent of, the data subject, or

(ii) is a person authorised or required by any enactment to apply to or request any person to process that criminal data, or

(b) otherwise provided by an Ordinance made under this Law.

(8) Nothing in this section affects the general law of contract, including rules on validity, formation or effect of a contract in relation to a child.

Anonymisation.

11. (1) Where personal data is anonymised –

(a) nothing in this Law requires the controller to maintain, acquire or process additional information solely in order to comply with this Law, but

(b) the controller must take reasonable steps to notify the data subject of the anonymisation.

(2) Part III of this Law does not apply to anonymised data unless the data subject provides additional information to enable the anonymised data to be identified with that data subject.

(3) In this section, "**anonymised**", in relation to personal data, means the personal data is manipulated or treated in such a manner that the controller is not capable of identifying the data subject.

PART III
DATA SUBJECT RIGHTS

Data subject rights and corresponding duties of controllers

Right to information for personal data collected from data subject.

12. (1) This section applies where personal data is collected from the data subject by –

- (a) the controller, or
- (b) a processor acting on the controller's behalf.

(2) Where this section applies, the data subject has a right to be given the following information in accordance with subsection (3) –

- (a) the information specified in Schedule 3, and
- (b) a statement as to –
 - (i) whether the provision of the personal data by the data subject is a statutory or contractual requirement, or a requirement necessary to be met in order to enter into a contract, and

- (ii) whether the data subject is obliged to provide the personal data, and the possible consequences of failure to provide that personal data.

(3) The controller must give the data subject that information before or at the time the personal data is collected from the data subject.

(4) For the avoidance of doubt, the controller may give the data subject that information wholly or partly using standardised icons, but any icon presented electronically must be machine-readable.

Right to information for indirectly collected personal data.

13. (1) Where personal data processed in the context of a controller has not been collected from the data subject by either the controller or a processor acting on the controller's behalf, the data subject has a right to be given the information specified in Schedule 3 in accordance with subsection (2).

(2) The controller must give the data subject that information –

(a) within a reasonable period of that personal data being so processed, having regard to the specific circumstances in which the personal data is so processed, and

(b) in any case, before or at the earliest occurrence of any of the following times –

- (i) if the personal data is used for communication with the data subject, the time of the first communication with the data subject,
- (ii) if the personal data is disclosed to another recipient, the time when the personal data is first disclosed to any recipient, and
- (iii) the expiry of one month following the processing of the personal data.

(3) For the avoidance of doubt, the controller may give the data subject that information wholly or partly using standardised icons, but any icon presented electronically must be machine-readable.

(4) Nothing in subsection (1) or (2) requires the controller to give the data subject any information where –

- (a) the data subject already has the information,
- (b) the provision of the information is impossible or would involve a disproportionate effort,
- (c) the provision of the information is likely to prejudice the objectives of that processing,
- (d) the information or the personal data must be kept confidential or secret in order to perform or comply with any duty imposed by law on the controller, or

- (e) the collection of the personal data in the context of the controller, or the disclosure of the personal data to the controller, is required or authorised by the provisions of an enactment other than this Law.

(5) Where subsection (4)(b) applies, the controller must take appropriate measures to protect the significant interests of the data subject, for example by publishing a notice (without making public any personal data) or taking any other equivalent step to inform the data subject in an equally effective manner.

Right to data portability.

14. (1) This section applies where –

- (a) a data subject has provided personal data relating to the data subject ("**relevant personal data**") to a controller ("**the first controller**"), directly or through a processor,
- (b) the processing of the relevant personal data is based wholly or partly on the data subject's consent to processing or on the processing being necessary –
 - (i) for the conclusion or performance of a contract –
 - (A) to which the data subject is a party, or

- (B) made between the first controller and a third party in the interest of the data subject, or
 - (ii) to take steps at the request of the data subject prior to entering into such a contract,
 - (c) the processing of the relevant personal data is not in the context of a public authority exercising or performing –
 - (i) a function that is of a public nature, or
 - (ii) a task carried out in the public interest, and
 - (d) the processing of the relevant personal data is carried out by automated means.
- (2) The data subject has a right –
- (a) to be given the relevant personal data in accordance with subsection (3)(a), and
 - (b) where the relevant personal data is given to the data subject, to transmit that personal data to another controller without hindrance from the first controller.
- (3) On request by the data subject, the first controller must –

- (a) give the data subject the relevant personal data in a structured, commonly used and machine-readable format, suitable for transmission to another controller, and
 - (b) transmit that personal data directly to another controller specified by the data subject unless this is not technically feasible.
- (4) Nothing in this section affects or limits section 21.

Right of access.

15. (1) An individual has a right to be given the following information in accordance with subsections (2) to (4) –

- (a) confirmation as to whether or not personal data relating to the individual is being processed in the context of a controller, and
- (b) if personal data relating to the individual is being processed in the context of a controller –
 - (i) the information specified in Schedule 3,
 - (ii) one copy of the personal data, and
 - (iii) further copies of the personal data.

(2) On request by an individual, the controller must give the individual that information.

(3) For the avoidance of doubt, the controller must give the individual that information free of any charge, except in the case of the further copies specified in subsection (1)(b)(iii), for which the controller may require the payment of a reasonable charge for administrative costs.

(4) Where an individual makes a request under this section to a controller which is a credit reference agency, the request is to be regarded as limited to a request concerning personal data relevant to the individual's financial standing, unless the request shows a contrary intention.

(5) In subsection (4), "**credit reference agency**" means a person carrying on business comprising the furnishing of persons with information relevant to the financial standing of individuals, being information collected for that purpose.

Exception to right of portability or access involving disclosure of another individual's personal data.

16. (1) This section applies where a controller cannot comply with a request made by an individual ("**the requestor**") under section 14 or 15 without disclosing information relating to another individual ("**the other individual**") who is identified or identifiable from that information.

(2) Despite any provision to the contrary in section 14 or 15, if it is reasonable to do so in order to protect the significant interests of the other individual, the controller must –

- (a) in the case of a request to be given that information, refuse to give that information to the requestor, and
- (b) in the case of a request for transmission of that information to another controller, refuse to so transmit that information.

(3) In determining whether it reasonable in accordance with subsection (2) to refuse to give that information to the requestor or transmit that information to another controller, the controller must take into account the following matters –

- (a) whether the controller has taken any steps to seek the other individual's consent to the disclosure of that information,
- (b) whether the other individual has expressly refused consent for the disclosure of that information,
- (c) whether the other individual is capable of giving such consent,
- (d) the nature of that information, including whether it is special category data,
- (e) the requestor and the other individual (including whether either is a child), and any significant interests of each at stake in the disclosure or non-disclosure of that information,

- (f) the context in which that information has been collected or otherwise processed, and in particular the relationship between each data subject and the controller,
- (g) the reasonable expectations of each data subject in relation to the disclosure of that information, including-
 - (i) whether the requestor had provided that information to the controller, directly or through a processor, and
 - (ii) whether the controller owes the other individual a duty of confidentiality,
- (h) the persons to which, and the circumstances in which, the disclosure is to be made,
- (i) if storage of that information is or may be involved following disclosure, the period for which that information is or may be stored,
- (j) the existence of appropriate safeguards for the protection of that information, once disclosed, and
- (k) the possible consequences for each data subject of disclosure of that information.

(4) If the controller determines that it is reasonable in accordance with subsection (2) to refuse to give that information to the requestor or transmit that information to another controller, the controller, taking into account the matters specified in subsection (3), may instead provide the requestor or (as the case may be) the other controller only with access to view or review that information.

(5) Subsections (2), (3) and (4) do not apply where –

- (a) the other individual has given explicit consent for the disclosure of that information, or
- (b) those provisions are disapplied by regulations.

(6) In this section, "**data subject**" means both the requestor and the other individual.

Right to object to processing for direct marketing purposes.

17. (1) This section applies where personal data is processed for direct marketing purposes.

(2) The data subject has a right to require the controller to cease the processing in accordance with subsection (4).

(3) The controller must give the data subject notice of the processing and the data subject right conferred by subsection (2) –

- (a) before or at the time of the controller's first communication with the data subject,

(b) explicitly, and

(c) separately from any other matters notified to the data subject.

(4) If the data subject objects to the processing by a written request to the controller to cease the processing, the controller must cease the processing.

(5) Where the processing of that personal data is in the context of information society services, the request under subsection (4) may be made –

(a) by automated means, and

(b) by stating technical specifications, if appropriate.

Right to object to processing on grounds of public interest.

18. (1) This section applies where the lawfulness of the processing of personal data is based exclusively on either or both the conditions in paragraphs 4 and 5 of Schedule 2.

(2) The data subject has a right to require the controller to cease the processing in accordance with subsections (4) to (6).

(3) The controller must give the data subject notice of the processing and the data subject right conferred by subsection (2) –

(a) before or at the time of the controller's first communication with the data subject,

- (b) explicitly, and
- (c) separately from any other matters notified to the data subject.

(4) The data subject may object to the processing by a written request to the controller to cease the processing, stating any significant interests of the data subject sought to be protected.

(5) Where the processing of that personal data is in the context of information society services, the written request under subsection (4) may be made –

- (a) by automated means, and
- (b) by stating technical specifications, if appropriate.

(6) On receipt of a request made in accordance with subsection (4), the controller must cease the processing unless the public interest in the objective of that processing outweighs the data subject's significant interests.

Right to object to processing for historical or scientific purposes.

19. (1) This section applies where the lawfulness of the processing of personal data is based solely on the processing being necessary for a historical or scientific purpose.

(2) The data subject has a right to require the controller to cease the processing in accordance with subsections (3) and (4).

(3) The data subject may object to the processing by a written request to the controller to cease the processing, stating any significant interests of the data subject sought to be protected.

(4) On receipt of a request made in accordance with subsection (3), the controller must cease the processing unless –

- (a) the controller is a public authority,
- (b) the historical or scientific purpose for which the personal data is processed relates to an objective that is in the public interest, and
- (c) the public interest in the objective outweighs the data subject's significant interests.

Right to rectification.

20. (1) This section applies where a data subject disputes the accuracy or completeness of personal data.

(2) The data subject has a right to require the controller to rectify or change the personal data in accordance with subsections (3) to (6).

(3) The data subject may make a written request to the controller to rectify or change the personal data, stating the inaccuracy or explaining why the personal data is incomplete.

(4) On receipt of a request made in accordance with subsection (3), the controller must –

- (a) take any reasonable steps available to the controller to check whether the personal data is inaccurate or incomplete, and
- (b) take any action required by subsection (5) or (6).

(5) Where the controller is able, by taking reasonable steps, to verify that the personal data is inaccurate or incomplete, the controller must –

- (a) rectify that personal data, or
- (b) complete that personal data (taking into account the purposes of the processing), for example, by adding to the personal data a supplementary statement provided by the data subject.

(6) Where it is not reasonable to expect the controller to verify the accuracy or completeness of the personal data, the controller must add to the personal data a statement to the effect that the data subject disputes the accuracy or (as the case may be) completeness of that personal data.

(7) Nothing in this section affects or limits section 21.

Right to erasure.

21. (1) This section applies where a data subject disputes the accuracy or completeness of personal data in any of the following circumstances –

- (a) the personal data is no longer necessary for the purposes for which it was collected or otherwise processed,
- (b) the lawfulness of the processing of the personal data is based solely on the data subject's consent to the processing, and the data subject has withdrawn that consent,
- (c) the data subject objects to the processing and the controller is required to cease processing the personal data in accordance with section 17, 18 or 19,
- (d) the personal data has been unlawfully processed,
- (e) the personal data is required to be erased in order to perform or comply with any duty imposed by law on the controller, or
- (f) the personal data was collected in the context of an offer of information society services directly to a child under 13 years of age.

(2) The data subject has a right to require the controller to erase the personal data in accordance with subsections (3) to (6).

(3) The data subject may make a written request to the controller to erase the personal data, stating the inaccuracy or explaining why the personal data is incomplete.

(4) On receipt of a request made in accordance with subsection (3), the controller must erase that personal data.

(5) Where the controller has made the personal data public and is required under subsection (4) to erase that personal data, the controller, taking into account available technology and the cost of implementation, must take reasonable steps, including technical measures, to inform other controllers that are processing the personal data that the data subject has requested the erasure by such controllers of any links to, or copy or duplicate of, that personal data.

(6) Subsection (4) does not apply where the lawfulness of the processing of the personal data for which the erasure is requested is based on any condition in paragraph 3, 5, 6, 8, 9, 10, 11, 12 or 13 of Schedule 2.

Right to restriction of processing.

22. (1) This section applies where –

- (a) a data subject disputes the accuracy or completeness of personal data, and the data subject wishes to obtain a restriction of processing for a period enabling the controller to verify the accuracy or completeness of the personal data,
- (b) the processing is unlawful but the data subject opposes the erasure of the personal data and wishes to obtain a restriction of processing instead,

- (c) the controller no longer needs the personal data for the purposes of the processing, but the data subject requires the personal data –
 - (i) for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),
 - (ii) for the purpose of obtaining legal advice, or
 - (iii) otherwise for the purposes of establishing, exercising or defending legal rights, or
- (d) the data subject has objected to the processing under section 18 or 19, but the controller has not ceased the processing pending determination of whether the public interest in the objective for which the personal data is processed outweighs the data subject's significant interests.

(2) The data subject has a right to obtain a restriction of processing in accordance with subsections (3) and (4).

(3) The data subject may make a written request to the controller for a restriction of processing of the personal data in a manner and for a period of time specified in the request, stating any significant interests of the data subject sought to be protected.

(4) On receipt of a request made in accordance with subsection (3), the controller must carry out the restriction of processing in the manner and for the period of time specified in the request, except to the extent that –

- (a) that personal data is stored,
- (b) the data subject gives explicit consent to processing of that personal data in any other manner, or
- (c) the continued processing of the personal data contrary to the restriction requested by the data subject is necessary –
 - (i) for a purpose specified in paragraph 3 or 12 of Schedule 2,
 - (ii) for the protection of the significant interests of a third party, or
 - (iii) for reasons of public interest that outweigh the significant interests of the data subject.

Right to be notified of rectification, erasure and restrictions.

23. (1) This section applies where any rectification or erasure of personal data or restriction of processing is carried out in accordance with section 20, 21 or 22.

(2) The data subject has a right to the notifications required by subsections (3) and (4).

(3) If the controller has disclosed the personal data to another person –

(a) the controller must notify the other person of the rectification, erasure or restriction of processing, unless such notification is impracticable or involves disproportionate effort, and

(b) the controller must notify the data subject of the identity and contact details of the other person if the data subject requests these.

(4) Before lifting or otherwise ceasing a restriction of processing carried out under section 22, the controller must notify the data subject who requested and obtained the restriction.

Right not to be subject to decisions based on automated processing.

24. (1) Subject to subsections (2) to (4) –

(a) a data subject has a right not to be subjected to an automatic decision, and

(b) a controller must not cause or permit a data subject to be subjected to an automatic decision.

(2) A controller may cause or permit a data subject to be subjected to an automatic decision where –

- (a) the data subject has given explicit consent to the automated processing,
- (b) the automated processing is necessary to protect the vital interests of the data subject or any other individual who is a third party,
- (c) the automated processing is necessary –
 - (i) for the conclusion or performance of a contract –
 - (A) to which the data subject is a party, or
 - (B) made between the controller and a third party in the interest of the data subject, or
 - (ii) to take steps at the request of the data subject prior to entering into such a contract, or
- (d) the automated processing is
 - (i) authorised by regulations made by the Committee for this purpose and carried out in accordance with those regulations, or
 - (ii) authorised or required by any other enactment and carried out in accordance with the enactment.

(3) Where a controller causes or permits a data subject to be subjected to an automatic decision under subsection (2), the controller must take reasonable steps to –

- (a) allow the data subject to –
 - (i) express the data subject's views on the decision,
or
 - (ii) appeal or seek a review of the decision,
- (b) allow the data subject to request and obtain human intervention by or on behalf of the controller in that decision,
- (c) ensure that the data subject's views are considered in making or reviewing that decision, and
- (d) put in place any other appropriate safeguards for the significant interests of data subjects.

(4) Subsection (2) does not apply to an automatic decision based on automated processing of special category data unless –

- (a) the data subject has given explicit consent to the automated processing of that special category data,

(b) the automated processing of that special category data is necessary to protect the vital interests of the data subject or any other individual who is a third party, and

(i) the data subject is physically or legally incapable of giving consent, or

(ii) the controller cannot reasonably be expected to obtain the explicit consent of the data subject, or

(c) the automated processing of that kind or description of special category data is –

(i) specifically authorised by regulations made by the Committee for this purpose and carried out in accordance with those regulations, or

(ii) specifically authorised or specifically required by any other enactment and carried out in accordance with the enactment.

(5) In this section –

"automated processing", in relation to any automatic decision, means the automated processing on which the automatic decision is based, and

"**automatic decision**", in relation to any data subject, means a decision that –

- (a) is based solely on automated processing of personal data relating to the data subject, and
- (b) affects the significant interests of the data subject.

Controller must facilitate exercise of data subject rights.

25. A controller must take reasonable steps to facilitate the exercise of data subject rights.

Further provisions relating to controller's duties and data subject rights

Application and effect of sections 27 to 29.

26. (1) Sections 27 to 29 apply where an individual has made a request to the controller to give the individual any information or to take any action under any of sections 14 to 22 (other than section 16).

(2) Sections 14 to 22 (other than section 16) are subject to sections 27 to 29.

(3) In sections 27 to 29 –

"**request**" means the request made by the individual, and

"**requestor**" means the individual making a request.

Compliance with request to exercise data subject right.

27. (1) Subject to the following provisions of this section, sections 28 and 29 and any other exception or exemption provided by sections 14 to 22 or any other provision of this Law, the controller must comply with the request and notify the requestor of any action taken in compliance with the request –

- (a) as soon as practicable, and
- (b) in any event within the designated period,

(2) If a controller fails to comply with any part of a request, the controller must notify the requestor of –

- (a) the controller's reasons for not so complying,
- (b) the right to complain to the Authority under section 67, and
- (c) a complainant's rights of appeal under sections 82 and 83.

(3) The notification in subsection (2) must be given to the requestor –

- (a) as soon as practicable, and
- (b) in any event within the designated period.

(4) The controller may extend the time allowed for notification under subsection (1)(b) or (3)(b) by a further two months where necessary, taking into account the complexity and number of requests, but in this event the controller must notify the requestor, within the designated period, of –

- (a) any such extension, and
- (b) the reasons for the extension.

(5) In this section –

"the designated period", in relation to a request, means the period of one month following the relevant day, and

"the relevant day", in relation to a request, means the latest of the following days –

- (a) the day on which the controller receives the request,
- (b) the day on which the controller receives any information reasonably necessary to confirm the identity of the requestor, and
- (c) the day on which any fee or charge payable under this Law in respect of any information or action requested is paid to the controller.

Requirement to verify identity.

28. (1) Where a controller has any reason to doubt the requestor's identity, the controller may request the provision of any additional information that is reasonably necessary to confirm it.

(2) If, despite taking reasonable steps to confirm the requestor's identity, a controller is unable to do so –

- (a) the requestor is not entitled to exercise any data subject right conferred on the requestor in relation to the controller, and
- (b) the controller is not required to give the information or take the action requested by the individual.

Exceptions based on nature of request.

29. (1) If any part of a request is manifestly unfounded, the controller may refuse to give the information or take the action requested in that part of the request.

(2) If any part of a request is frivolous, vexatious, unnecessarily repetitive or otherwise excessive, the controller may –

- (a) refuse to give the information or take any action requested in that part of the request, or
- (b) in exceptional circumstances, give that information or take that action but charge a reasonable fee for the administrative costs of so doing.

(3) For the avoidance of doubt, if any question is raised in any proceedings under this Law as to whether or not any part of a request is manifestly unfounded or frivolous, vexatious, unnecessarily repetitive or otherwise excessive within the meaning of subsection (1) or (2), the controller bears the burden of proof to show that it is.

PART IV

DUTIES OF CONTROLLERS AND PROCESSORS

Duty of controllers to give information or take action

Requirements to give information or take action under this Law.

30. (1) Where any provision of this Law requires a controller to give a person any information, whether or not in response to a request, the controller must give the information to the person –

- (a) in writing, unless the information is given in response to a request and the person requests that it be given orally, in which case it may be given orally after verifying the identity of that person,
- (b) if the information is given in response to a request and the request is made by electronic means, by similar or commonly used electronic means unless otherwise requested by the person, in which case it may be given by the other means requested after verifying the identity of that person,

(c) if the information is given in writing, in a concise, transparent, easily visible, easily accessible, intelligible and clearly legible, form, and

(d) in any case –

(i) in clear and plain language, and

(ii) if the person is a child, in a manner suitable for a child.

(2) Where any provision of this Law requires a controller to give a person any information or take any action, whether or not in response to a request, the information must be given or (as the case may be) the action taken free of any charge except where otherwise –

(a) prescribed by regulations, or

(b) specified by any other provision of this Law.

(3) Regulations made for the purposes of subsection (2)(a) may prescribe –

(a) the fee or charge payable for the information or action, or

(b) the basis on which the amount of the fee or charge payable is to be calculated or ascertained.

Duty to take steps to ensure compliance

Duty to take reasonable steps for compliance.

31. (1) A controller must take reasonable steps (including technical and organisational measures) –

- (a) to ensure that processing of personal data is carried out in compliance with this Law, and
- (b) to be able to demonstrate such compliance upon request by the Authority.

(2) In discharging the duty in subsection (1), the controller must take into account –

- (a) the nature, scope, context and purpose of the processing,
- (b) the likelihood and severity of risks posed to the significant interest of data subjects, if processing is not carried out in compliance with this Law,
- (c) best practices in technical measures, organisational measures and any other steps that may be taken for the purposes of subsection (1), and
- (d) the costs of implementing appropriate measures.

(3) A controller's compliance or non-compliance with applicable provisions of an approved code or approved mechanism in respect of the processing may be taken into account in determining whether or not the controller is in breach of subsection (1).

Data protection measures by design and default.

32. (1) When determining the purposes and means of processing personal data, a controller must establish and carry out proportionate technical and organisational measures to –

- (a) effectively comply with the data protection principles,
- (b) ensure, by default, that only personal data that is necessary for each specific purpose of processing is processed, and
- (c) integrate any other necessary safeguards into the processing to comply with this Law and safeguard data subject rights.

(2) The measures required by subsection (1)(a) may include pseudonymisation.

(3) Subsection (1)(b) requires measures to limit, by default –

- (a) the amount of personal data collected,
- (b) the extent of its processing,

- (c) the period of its storage, and
- (d) its accessibility, in particular ensuring that personal data is not made accessible to an indefinite number of persons without human intervention.

(4) A controller's compliance or non-compliance with applicable provisions of an approved code or approved mechanism in respect of the processing may be taken into account in determining whether or not the controller is in breach of subsection (1).

(5) Nothing in this section limits the controller's duties under section 31(1).

Joint controllers.

33. (1) Where two or more controllers ("**joint controllers**") jointly determine the purposes and means of processing of personal data, they must explicitly agree on their respective responsibilities for compliance with duties of controllers under this Law, in particular their duties under Part III.

- (2) The agreement required by subsection (1) –
 - (a) must specify the respective roles, relationships, responsibilities and duties of each joint controller, in relation to the data subjects, and
 - (b) may designate a contact point for data subjects.

(3) Joint controllers must publish, or notify data subjects of, the essence of the matters specified in subsection (2)(a) and (b).

(4) Regardless of the terms and conditions of any agreement under subsection (1) or any other agreement –

(a) a data subject may exercise any data subject right against any joint controller, and

(b) each joint controller remains jointly and severally liable for the performance of any duty imposed on a controller by this Law.

(5) Subsections (1), (2) and (3) do not apply where the respective responsibilities of joint controllers are clearly determined by law otherwise than under this section.

Duties of controllers and processors in relation to each other and processing activities

Duties of controllers in relation to processors.

34. (1) A controller must not cause or permit a processor to process personal data unless conditions A and B are satisfied.

(2) Condition A is that the processor provides the controller with sufficient guarantees that reasonable technical and organisational measures will be established and carried out by the processor –

(a) to ensure that the processing meets the requirements of this Law, and

(b) to safeguard data subject rights.

(3) Condition B is that there is a legally binding agreement in writing between the controller and the processor setting out –

(a) the subject matter of the processing,

(b) the duration of the processing,

(c) the nature, scope, context and purpose of the processing,

(d) the category of personal data to be processed,

(e) the categories of data subjects,

(f) the duties and rights of the controller, and

(g) the duties imposed on the processor by sections 35 and 36.

(4) A processor's compliance or non-compliance with applicable provisions of an approved code or approved mechanism in respect of the processing may be taken into account in determining whether or not there are sufficient guarantees by the processor of the matters specified in subsection (2).

(5) An agreement for the purposes of satisfying condition B may be based on standard data protection clauses.

Duties of processors in relation to controllers.

35. (1) A processor must –
- (a) subject to paragraph (b), process personal data only on written instructions from the controller, including with regard to transfers of personal data to an unauthorised jurisdiction,
 - (b) where a processor is required by law to process personal data contrary to paragraph (a), inform the controller of that requirement (unless prohibited by an enactment) before so processing the personal data,
 - (c) ensure that any person authorised by the processor to process the personal data is legally bound to a duty of confidentiality,
 - (d) at the controller's discretion, after the end of the provision of services relating to processing, and unless required to store the personal data by an enactment –
 - (i) delete all personal data, or
 - (ii) return all personal data to the controller, and delete existing copies,

- (e) put in place reasonable technical and organisational measures to assist the controller to exercise or perform the controller's duties under Part III,
- (f) take reasonable steps to assist the controller to comply with the controller's duties under Parts VI and VII, and
- (g) make available to the controller all information necessary to –
 - (i) demonstrate compliance with this section and sections 34 and 36, and
 - (ii) facilitate any lawful audits or inspections, including –
 - (A) inspections conducted by the controller or an auditor authorised by the controller, and
 - (B) any data protection audit required by or under this Law.

(2) The processor must immediately inform the controller if, in the processor's opinion, an instruction given by the controller to the processor breaches this Law or any other enactment.

(3) Where a controller or processor ("**the authorising person**") gives any person ("**the authorised person**") access to any personal data –

- (a) subsections (1)(a) and (b) and (2) apply to the authorised person as if the authorised person were a processor, and
- (b) the authorising person must take reasonable steps to ensure that the authorised person complies with the duties imposed on that person under subsections (1)(a) and (b) and (2) as given effect by paragraph (a) of this subsection.

(4) For the avoidance of doubt, subsection (3) applies whether or not the authorised person is an employee of the authorising person.

(5) A processor's compliance or non-compliance with applicable provisions of an approved code or approved mechanism in respect of the processing may be taken into account in determining whether or not the processor is in breach of subsection (1)(e) or (f).

Duties of processors in relation to further processing by another processor.

36. (1) A processor ("**primary processor**") must not engage another processor ("**secondary processor**") to process personal data unless –

- (a) the controller has specifically authorised the secondary processor to process the personal data, or
- (b) the controller has generally authorised the primary processor to engage other processors to process the personal data, and the engagement of the secondary

processor complies with the requirement in subsection (2).

(2) Subsection (1)(b) refers to the requirement that the primary processor must, before engaging the secondary processor (including any processor engaged to add to or replace the secondary processor) –

- (a) notify the controller of the proposed engagement, and
- (b) give the controller an opportunity to object to the engagement.

(3) Where a primary processor engages a secondary processor to process personal data –

- (a) sections 34 and 35 have effect as if, for the purposes of those provisions –
 - (i) the primary processor were the controller, and
 - (ii) the secondary processor were the processor,and
- (b) the secondary processor must carry out the duties of a processor under sections 34 and 35 and any other applicable provision of this Law.

(4) For the avoidance of doubt, where a primary processor engages a secondary processor to process personal data, and the secondary processor fails to carry out the secondary processor's duties as a processor under this Law, the primary processor remains fully liable for any breach of a processor's duties under this Law.

(5) In subsection (3)(b), "**this Law**" includes any legally binding agreement made between the primary processor and the secondary processor for the purposes of section 34(3), as given effect by subsection (3)(a) of this section.

(6) In subsection (4), "**this Law**" includes any legally binding agreement made between the controller and the primary processor for the purposes of section 34(3).

(7) This section does not apply where the secondary processor –

(a) is an employee of the primary processor, or

(b) processes the personal data under the direction and control of the primary processor.

Duties of controllers and processors to keep records, make returns and cooperate with Authority.

37. (1) A controller or processor must –

(a) maintain any prescribed records for the prescribed periods of time, in the prescribed manner and form,

- (b) on request by an authorised officer, produce for inspection or provide any such records,
- (c) make any prescribed returns of information to the Authority –
 - (i) in the prescribed manner and form, and
 - (ii) at the prescribed intervals and time.

(2) For the avoidance of doubt, the duty of a controller in subsection (1) may be discharged by a controller's representative.

- (3) A controller and a processor must –
 - (a) cooperate with the Authority in the exercise or performance of any of the Authority's functions under this Law, and
 - (b) without limiting the generality of paragraph (a) –
 - (i) comply with any information notice given to the controller or processor under paragraph 1 of Schedule 7,
 - (ii) facilitate and assist or (where required) carry out any data protection audit required by or under this Law, and comply with any

requirement made by an authorised officer in relation to any such audit,

(iii) grant an authorised officer –

(A) entry to any premises which the officer is entitled to enter, and

(B) access to anything which the officer is entitled to access,

under powers granted to authorised officers in Schedule 7, and

(iv) if an enforcement order is made against the controller or processor concerned, comply with section 73(5).

PART V

ADMINISTRATIVE DUTIES

Controllers to designate Bailiwick representatives in certain cases.

38. (1) This section applies where a controller -

(a) is established in the Bailiwick, but

(b) is not a Guernsey, Alderney or Sark person.

(2) A controller to which this section applies must –

- (a) designate in writing a Guernsey, Alderney or Sark person as the representative of the controller in the Bailiwick,
- (b) notify the Authority of the name and contact details of the representative, and
- (c) authorise the representative to receive on behalf of the controller notices and other communications from the Authority and any other competent supervisory authority in respect of any issue relating to the processing of personal data.

(3) Nothing in this section limits or affects the exercise of any rights or powers conferred by this Law against a controller or a processor.

Controllers and processors to be registered.

39. (1) A controller or processor established in the Bailiwick must not cause or permit personal data to be processed unless the controller or (as the case may be) processor is –

- (a) registered in accordance with Schedule 4, or
- (b) exempt from registration by regulations made by the Committee.

(2) Schedule 4 has effect.

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

Registered controllers and registered processors to pay prescribed levies.

40. (1) The Committee may by regulations require registered controllers, registered processors, or both, to pay a levy to the Authority in order to pay for the remuneration, salaries, fees, allowances and other emoluments, costs and expenses of –

- (a) the establishment of the Authority, and
- (b) the Authority's operations, including any capital costs and the exercise or performance of any functions of the Authority.

(2) The regulations must specify –

- (a) the amount of the levy or the basis on which the amount of the levy is to be calculated or ascertained,
- (b) the periods in respect of which, and the times at which, the levy must be paid, or a means for ascertaining those periods and times, and
- (c) the manner and form in which the levy must be paid.

(3) The regulations may –

- (a) impose duties on the Authority, registered controllers, or registered processors in connection with the assessment, collection or payment of the levy, including a duty for registered controllers and registered processors to provide information of a specified kind or description to the Authority,
- (b) confer powers on the Authority in connection with the assessment, collection or payment of the levy, including a power to waive or reduce the levy in prescribed circumstances,
- (c) exempt any person from paying the levy, and
- (d) provide for the payment of interest and penalties in the case of late payment or non-payment of the levy.

(4) A person required by regulations made under this section to pay a levy must do so in accordance with the regulations.

(5) The Authority may recover any levy due and payable by any person to the Authority as a civil debt owed by the person to the Authority.

(6) In this section, a reference to any levy includes a reference to any interest or penalty required under the regulations to be paid in the case of late payment or non-payment of the levy.

PART VI SECURITY OF PERSONAL DATA

Duty to take reasonable steps to ensure security.

41. (1) A controller or processor must take reasonable steps to ensure a level of security appropriate to the personal data.

(2) The steps required under subsection (1) may include technical and organisational measures such as –

- (a) pseudonymising and encrypting personal data,
- (b) ensuring that the controller or processor has and retains the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services,
- (c) ensuring that the controller or processor has and retains the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident, and
- (d) establishing and implementing a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

(3) In discharging the duty in subsection (1), the controller or processor must take into account –

- (a) the nature, scope, context and purpose of the processing,
- (b) the likelihood and severity of risks posed to the significant interest of data subjects, if the personal data is not secure,
- (c) best practices in technical measures, organisational measures and any other steps that may be taken for the purposes of subsection (1), and
- (d) the costs of implementing appropriate measures.

(4) The risks mentioned in subsection (3)(b) include risks presented by processing, in particular from –

- (a) accidental or unlawful destruction, loss or alteration of personal data, or
- (b) unauthorised disclosure of, or access to, personal data.

(5) A controller's or processor's compliance or non-compliance with any applicable provisions of an approved code or mechanism in force in respect of the processing may be taken into account in determining whether or not the controller or processor is in breach of subsection (1).

Notification and records required in case of personal data breach.

42. (1) Where a processor becomes aware of a personal data breach, the processor must –

- (a) give the controller notice of it as soon as practicable, and
- (b) where oral notice is given under paragraph (a), follow up the oral notice with a written notice to the controller at the first available opportunity.

(2) Where a controller becomes aware of a personal data breach, the controller must give the Authority written notice of it –

- (a) as soon as practicable, and
- (b) in any event, no later than 72 hours after becoming so aware, unless this is not practicable.

(3) Subject to subsection (4), a notice under subsection (2) must include –

- (a) a description of the nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned,
- (b) the name and contact details of the data protection officer or other contact point where more information can be obtained,

- (c) a description of the likely consequences of the personal data breach,
- (d) a description of the measures taken or proposed to be taken by the controller to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects, and
- (e) if the notice is given more than 72 hours after the controller becomes aware of the personal data breach, an explanation of the reasons for the delay.

(4) Where it is impracticable to give the Authority all of the information in subsection (3) at the same time as the notice is given, the controller may provide the information in phases as soon as practicable.

(5) Subsection (2) does not apply where the personal data breach is unlikely to result in any risk to the significant interests of the data subject.

(6) In any case, a controller must keep a written record of each personal data breach of which the controller is aware, including –

- (a) the facts relating to the breach,
- (b) the effects of the breach,
- (c) the remedial action taken, and

- (d) any steps taken by the controller to comply with this section, including whether the controller gave a notice to the Authority under subsection (2), and if so, a copy of the notice.

Data subject to be notified if high risk to significant interests.

43. (1) Where a controller becomes aware of a personal data breach that is likely to pose a high risk to the significant interests of a data subject, the controller must give the data subject written notice of the breach as soon as practicable.

- (2) The notice must include –
 - (a) a description of the nature of the breach,
 - (b) the name and contact details of the data protection officer or other source where more information can be obtained,
 - (c) a description of the likely consequences of the breach, and
 - (d) a description of the measures taken or proposed to be taken by the controller to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.
- (3) Subsection (1) does not apply where –

- (a) the controller has established and carried out appropriate technical and organisational measures to protect personal data, and those measures were applied to the personal data affected by the breach, in particular those that render the personal data unintelligible to any person who is not authorised to access it, such as encryption,
- (b) the controller has taken subsequent measures which ensure that the high risk to the significant interests of data subjects referred to in subsection (1) is no longer likely to materialise, or
- (c) performing that duty would involve disproportionate effort.

(4) For the purposes of subsection (3)(a), a controller's compliance or non-compliance with applicable provisions of an approved code or approved mechanism in respect of the processing may be taken into account in determining whether or not the controller has established and carried out appropriate technical and organisational measures to protect personal data.

(5) Where the exception in subsection (3)(c) applies, the controller must publish a notice (without making public any personal data) or take any other step equivalent to publication in order to inform the data subject in an equally effective manner.

(6) Unless a controller has taken steps to notify the data subject in accordance with subsections (1) and (2) or subsection (5), the Authority may by

written notice to the controller require the controller to take steps specified by the Authority to so notify the data subject if the Authority is of the opinion that the controller is obliged to take those steps under subsections (1) and (2) or subsection (5).

PART VII

DATA PROTECTION IMPACT ASSESSMENTS AND PRIOR CONSULTATION

Impact assessment required for high-risk processing.

44. (1) A controller must not cause or permit any high-risk processing before carrying out an assessment of the impact of the proposed processing operations on the protection of personal data.

- (2) The assessment must include –
- (a) a systematic description of the proposed processing operations (including the means of processing), the purposes of the processing and the objectives pursued by the controller in carrying out or determining the purposes or means of the processing,
 - (b) an assessment of the necessity (including proportionality) of the processing in relation to those objectives,
 - (c) an assessment of the risks posed to the significant interests of data subjects by the processing,

- (d) an assessment of compliance or non-compliance with applicable provisions of an approved code or approved mechanism in respect of the processing, and
- (e) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and demonstrate compliance with this Law, taking into account the significant interests of data subjects and any other individuals concerned.

(3) A single data protection impact assessment may address a set of similar processing operations that present similar risks.

(4) In carrying out a data protection impact assessment, the controller must consult –

- (a) the data protection officer (if any), and
- (b) where appropriate and practicable, the data subjects or their representatives, unless this prejudices the objectives or the security of the processing operations.

(5) The controller must review, and where appropriate, revise the data protection impact assessment where –

- (a) there is a change in the risks posed to the significant interests of data subjects by the processing operations,
or

- (b) the controller otherwise considers it necessary.
- (6) A review under subsection (5) must include a review of –
 - (a) whether the processing operations being carried out accord with those described in the data protection impact assessment, and
 - (b) whether the measures established and carried out to address the risks of processing accord with those envisaged in the data protection impact assessment.
- (7) Subsection (1) does not apply to –
 - (a) any processing specifically required or authorised by high-risk legislation within the meaning of section 46, if an assessment including the information required by subsection (2) of this section has been given to the Authority prior to the high-risk legislation being made or enacted, or
 - (b) any other prescribed kind or description of processing.
- (8) In this section and sections 45 and 46, "**high-risk processing**" –
 - (a) means any processing of personal data that is likely to pose a high risk to the significant interests of data subjects,

- (b) is deemed to include any processing of a kind declared to be high-risk processing in a list maintained and published by the Authority, and
- (c) is deemed to exclude any processing of a kind declared not to be high-risk processing in a list maintained and published by the Authority.

Prior consultation required for high-risk processing.

45. (1) This section applies where a data protection impact assessment indicates that any processing is likely to be high-risk processing in the absence of measures taken by the controller to mitigate the risks to the significant interests of data subjects.

(2) Before commencing the processing, the controller must consult the Authority by giving it a written request.

(3) A request must include the following information–

- (a) where applicable, the respective responsibilities of the controller, joint controllers and processors involved in the proposed processing, for example for processing within a group of undertakings,
- (b) a copy of the data protection impact assessment,
- (c) the contact details of any data protection officer, and

(d) any other information required by the Authority.

(4) Where the Authority is of the opinion that the proposed processing would be in breach of an operative provision, for example where the controller has insufficiently identified or mitigated the risk, the Authority –

(a) must give written notice of its opinion to the controller and, where applicable to the processor, and

(b) may exercise any power conferred on the Authority by this Law in relation to a breach or potential breach of an operative provision.

(5) The Authority must give the notice required by subsection (4)(a) –

(a) as soon as practicable, and

(b) in any event within eight weeks of the designated date.

(6) The Authority may extend the time allowed for the notice in subsection (5)(b) by a further six weeks taking into account the complexity of the proposed processing, but in this case, the Authority must inform the controller and, where applicable, the processor, of the extension and the reasons for it within eight weeks of the designated date.

(7) In this section, "**designated date**" means the latter of –

- (a) the date on which the Authority receives the request made by the controller, or
- (b) if the Authority has requested information from the controller or processor within the eight-week period following the date specified in paragraph (a), the date on which the Authority receives the information requested.

Prior consultation required for high-risk legislation.

46. (1) Where a public committee or any other public authority of the Bailiwick authorised to make or recommend the enactment of legislation proposes to make or recommend the enactment of high-risk legislation, the committee or other public authority must consult the Authority unless consultation with the Authority has already taken place.

(2) Failure to comply with subsection (1) does not invalidate any high-risk legislation made or enacted.

(3) In this section, "**high-risk legislation**" means a Law, an Ordinance or subordinate legislation (excluding an Ordinance or subordinate legislation made under this Law) that requires or authorises the processing of personal data in circumstances where that processing is likely to be high-risk processing despite any safeguards in the legislation concerned for the protection of the significant interests of data subjects.

PART VIII

DATA PROTECTION OFFICERS

Mandatory designation of a data protection officer.

47. (1) This section applies where –

- (a) processing is carried out in the context of a public authority, or
- (b) processing operations are carried out as part of a core activity of a controller or processor and, by virtue of their nature, scope or purpose, those operations require or involve –
 - (i) large-scale and systematic monitoring of data subjects, or
 - (ii) large-scale processing of special category data.

(2) Where this section applies, the controller and the processor must jointly designate an individual as a data protection officer in accordance with section 49.

(3) A group of undertakings may designate a single data protection officer for the group if –

- (a) in the case of a group of public authorities (other than the States), it is appropriate to do so, having regard to their organisational structure and size, and
- (b) in any case –

- (i) the data protection officer is easily accessible from each undertaking forming part of the group, and
- (ii) the data protection officer allocates an appropriate and adequate proportion of the officer's time to the performance of the officer's functions under this Law in relation to each undertaking in the group.

Voluntary or prescribed designation of data protection officers.

48. Where a data protection officer is not required to be designated under section 47 –

- (a) a controller, a processor, or any association or other body representing controllers or processors of any kind or description may designate an individual as a data protection officer for the controller, the processor or the body concerned in accordance with section 49, and
- (b) the States of Deliberation may by Ordinance require a controller, a processor, or any association or other body representing controllers or processors of any kind or description to designate an individual as a data protection officer for the controller, the processor or the body concerned in accordance with section 49.

Requirements for designation.

49. (1) A designating entity may designate an individual as a data protection officer whether or not the individual is a staff member of the designating entity.

(2) An individual must not be designated as a data protection officer unless –

(a) the designating entity considers that the individual possesses the appropriate professional skills, knowledge and abilities to adequately perform the functions of a data protection officer under this Law, and

(b) the individual satisfies any prescribed requirements.

(3) In this section and sections 50 and 51, "**designating entity**", in relation to a data protection officer –

(a) means the controller, processor, group of undertakings, or other body that designates or wishes to designate a data protection officer, and

(b) in the case of a group of undertakings, includes each undertaking within the group.

Functions of data protection officers.

50. (1) A data protection officer must –

- (a) inform and advise the officer's designating entity and its employees who carry out processing operations ("**relevant employees**") of their duties under this Law and any other enactments relating to data protection,
- (b) monitor the designating entity's compliance with –
 - (i) this Law,
 - (ii) any other enactments relating to data protection,
 - (iii) the policies of the designating entity in relation to data protection, including in relation to the assignment of responsibilities, awareness-raising and training of relevant employees, and
 - (iv) any data protection audits required by or under this Law,
- (c) where requested, provide advice to the designating entity and relevant employees relating to data protection impact assessments and monitor the carrying out of such assessments,
- (d) act as the contact point for the Authority on issues relating to processing, including any prior consultation required by section 45 and any other consultation with the Authority with regard to any other matter, and

- (e) cooperate with the Authority in the exercise or performance of any of the Authority's functions under this Law.

(2) In performing any function under this Law, a data protection officer must have due regard to the risk associated with processing operations, taking into account the nature, scope, context and purpose of the processing concerned.

(3) Where a data protection officer is required to be designated under section 47(2) or 48(b), the controller and the processor must take reasonable steps to ensure that the officer carries out the officer's functions in accordance with this section.

Further duties in relation to data protection officers.

51. (1) Upon the designation of a data protection officer, the designating entity must –

- (a) give written notice to the Authority of, the name and contact details of the officer, and
- (b) publish a notice stating –
 - (i) the fact that a data protection officer has been designated, and
 - (ii) the contact details of the officer.

(2) The designating entity must ensure that the data protection officer is involved, appropriately and in a timely manner, in all issues which relate to the protection of personal data within and by the designating entity.

(3) The designating entity must support the data protection officer in the performance of the officer's functions under this Law by ensuring that –

- (a) the officer reports directly to the highest tier of management of the designating entity,
- (b) the officer does not receive any instructions regarding the performance of those functions, other than to perform those functions in a professional and competent manner and to the best of the officer's abilities,
- (c) the officer is provided the resources necessary -
 - (i) to perform those functions,
 - (ii) to gain access to personal data and processing operations, and
 - (iii) to maintain the officer's expert knowledge,
- (d) the officer is not dismissed or penalised for performing those functions, other than for failing to perform those functions in a professional and competent manner and to the best of the officer's abilities,

- (e) data subjects are allowed to contact the officer directly with regard to any issues related to the processing of their personal data or the exercise of their rights under this Law, and
- (f) any other tasks and duties assigned to the officer do not result in a conflict of interest in relation to the performance of the officer's functions.

PART IX

CODES OF CONDUCT AND CERTIFICATION MECHANISMS

Authority may approve code of conduct.

52. (1) The Authority may, by publishing the code, approve a code of conduct prepared by any person representing a category of controllers or processors for the purposes of –

- (a) encouraging or facilitating compliance with this Law, or
- (b) allowing controllers or processors that are not otherwise subject to this Law to demonstrate that they have appropriate safeguards for the protection of personal data, for the purposes of personal data transfers authorised by section 59(1)(j).

(2) A code may include provisions relating to any or all of the following –

- (a) fair and transparent processing,
- (b) legitimate interests pursued by controllers in specific contexts,
- (c) the collection of personal data,
- (d) the pseudonymisation of personal data,
- (e) the information to be provided to the public and to data subjects,
- (f) the exercise of data subject rights,
- (g) the protection of children, including the information to be provided to them and the manner in which the consent of the person who has parental responsibility for them is to be obtained,
- (h) any steps or measures required to be established, taken or carried out by controllers or processors under this Law,
- (i) the notification of personal data breaches to competent supervisory authorities and the communication of such personal data breaches to data subjects,

- (j) the transfer of personal data to a person outside the Bailiwick or in an unauthorised jurisdiction, or to international organisations,
 - (k) out-of-court proceedings and other dispute resolution procedures for resolving disputes between controllers and data subjects with regard to processing, without prejudice to the rights of data subjects under this Law, or
 - (l) any other matter relating to compliance with this Law or safeguards for the protection of personal data.
- (3) The Authority must not approve a code unless –
- (a) the code provides for a body accredited by the Authority (or a competent supervisory authority) to monitor compliance with the code by controllers and processors who purport to apply the code,
 - (b) the code requires any controller or processor that purports to apply the code but is not subject to this Law to enter into legally binding and enforceable commitments to apply provisions of the code,
 - (c) where the code relates to processing operations carried out in a Member State of the European Union, the European Commission has stated that the code has general validity within the European Union, and

- (d) the Authority is of the opinion that –
 - (i) the contents of the code are compatible with the GDPR, and
 - (ii) the code provides appropriate safeguards for the protection of personal data.

(4) Subsection (3)(a) does not apply to any code relating to processing operations carried out by public authorities.

(5) In determining whether or not to approve a code, the Authority must take into account –

- (a) the particular circumstances of the processing sectors to which the code relates, and
- (b) the needs of any micro, small or medium-sized undertakings that are controllers or processors to which the code applies.

(6) The Authority must keep a register of codes approved under this section.

(7) In this section and section 53, "**code**" or "**code of conduct**", includes an amendment to or extension of a code of conduct.

Accreditation and duties of monitoring body.

53. (1) For the purposes of section 52(3)(a), the Authority may accredit a body to monitor compliance with a code only if the Authority is of the opinion that the body has –

- (a) adequate expertise and independence in relation to the subject-matter of the code,
- (b) established procedures which allow that body –
 - (i) to assess the eligibility of controllers and processors concerned to apply the code,
 - (ii) to monitor their compliance with the provisions of the code, and
 - (iii) to periodically review their application of the code,
- (c) established procedures and structures –
 - (i) to handle complaints about infringements of the code or the manner in which the code has been, or is being, applied by a controller or processor, and
 - (ii) to publish those procedures and structures or otherwise make them available to data subjects, and

- (d) no conflict of interest, for example in connection with the body's discharge or performance of its other tasks and duties.

(2) In cases of infringement of the code by any controller or processor that purports to apply the code, the accredited monitoring body must –

- (a) take appropriate action including suspension or exclusion from the code where appropriate, and
- (b) notify the Authority of any action taken by the body and the reasons for the action.

(3) The Authority may suspend or revoke an accreditation if –

- (a) the conditions for accreditation are not, or no longer, satisfied, or
- (b) the accredited body breaches subsection (2).

(4) The Authority may publish further criteria to be applied by it in determining whether or not to accredit a body for the purposes of subsection (1).

Regulations may provide for certification mechanisms.

54. (1) The Committee may make regulations to provide for the establishment, approval, use and application of mechanisms, seals and marks to certify –

- (a) that particular processing operations carried out by controllers or processors comply with this Law, or
 - (b) the existence of appropriate safeguards for the protection of personal data provided by controllers or processors that are not otherwise subject to this Law, for the purposes of personal data transfers authorised by section 59(1)(j).
- (2) Regulations under subsection (1) –
- (a) must not require any certification mechanism, seal or mark to be used or applied on a mandatory basis,
 - (b) may confer powers or impose duties on the Authority, and
 - (c) may provide for the withdrawal or suspension of any certificate, seal or mark.
- (3) In this section, "**use**", in relation to a certification mechanism includes following the mechanism.

PART X
TRANSFERS TO UNAUTHORISED JURISDICTIONS

Prohibition of transfers to unauthorised jurisdictions.

55. (1) Except as otherwise authorised by section 56, 57 or 59, a controller or processor must not transfer personal data to a person in an unauthorised jurisdiction—

- (a) for processing, or
- (b) in circumstances where the controller or processor knew or should have known that the personal data will be processed after the transfer.

(2) In sections 56 and 57, "**further controller or processor**", in relation to any transfer of personal data –

- (a) means the controller or processor of the personal data following its transfer, and
- (b) includes the recipient of the personal data.

Transfers on the basis of available safeguards.

56. (1) A controller or processor may transfer personal data to a person in an unauthorised jurisdiction where the controller or processor is satisfied that –

- (a) one or more of the safeguards specified in subsection (2) are in place in relation to the personal data, and

- (b) there is a mechanism for data subjects to enforce their data subject rights and obtain effective legal remedies against the further controller or processor.
- (2) Subsection (1)(a) refers to the following safeguards –
- (a) where both the transferor of the personal data and the further controller or processor are public authorities, a legally binding and enforceable agreement between the transferor and the further controller or processor,
 - (b) binding corporate rules approved –
 - (i) by the Authority under section 58, or
 - (ii) by another competent supervisory authority under any provision of law equivalent or similar to Article 47 of the GDPR,
 - (c) standard data protection clauses,
 - (d) an approved code combined with binding and enforceable commitments of the further controller or processor to apply any relevant safeguards in the code, including as regards data subject rights, or
 - (e) an approved mechanism combined with binding and enforceable commitments of the further controller or

processor to apply the relevant safeguards in the mechanism, including as regards data subject rights.

Transfers on the basis of specific authorisation by Authority.

57. (1) A controller or processor may transfer personal data to a person in an unauthorised jurisdiction if the Authority has specifically authorised the transfer.

(2) The Authority may authorise a transfer for the purposes of subsection (1) only where it is satisfied that –

- (a) one or more of the safeguards specified in subsection (3) or section 56(2) are in place in relation to the personal data, and
- (b) there is a mechanism for data subjects to enforce their data subject rights and obtain effective legal remedies against the further controller or processor.

(3) Subsection (2)(a) refers to the following safeguards –

- (a) contractual clauses between the transferor of the personal data and the further controller or processor, or
- (b) where both the transferor and the further controller or processor are public authorities, provisions in administrative arrangements between those public authorities which include enforceable and effective data subject rights.

(4) In determining whether to authorise a transfer under this section, the Authority must take into account any opinions or decisions of the European Data Protection Board (established under Article 68 of the GDPR) issued or adopted under Article 64, 65 or 66 of the GDPR.

Approval of binding corporate rules.

58. For the purposes of section 56(2)(b)(i), the Authority must approve binding corporate rules for a group of undertakings, or a group of enterprises engaged jointly in a business, if those rules –

- (a) are legally binding on, apply to and are to be enforced and implemented by, every member of the group concerned, including their employees,
- (b) expressly confer enforceable rights on data subjects with regard to the processing of their personal data, and
- (c) specify the matters required to be specified by Schedule 5 in a manner that provides appropriate safeguards for the protection of personal data and protection of the significant interests of data subjects.

Other authorised transfers.

59. (1) A controller or processor may transfer personal data to a person in an unauthorised jurisdiction where –

- (a) required to do so by an order or a judgment of a court or tribunal having the force of law in the Bailiwick,
- (b) required to do so by a decision of a public authority of the Bailiwick based on an international agreement imposing an international obligation on the Bailiwick,
- (c) required to do so by –
 - (i) an order or a judgment of a court or tribunal of a country other than the Bailiwick, or
 - (ii) a decision of a public authority of any country other than the Bailiwick,

having the force of law in the Bailiwick, and based on an international agreement imposing an international obligation on the Bailiwick,

- (d) the data subject has explicitly consented to the proposed transfer, after having been informed of the possible risks of such transfers for the data subject due to the absence of an adequacy decision in respect of the unauthorised jurisdiction,
- (e) the transfer is necessary –
 - (i) for the conclusion or performance of a contract –

- (A) to which the data subject is a party, or
 - (B) made between the controller and a third party in the interest of the data subject, or
 - (ii) to take steps at the request of the data subject prior to entering into such a contract,
- (f) the transfer is necessary –
- (i) for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),
 - (ii) for the purpose of obtaining legal advice, or
 - (iii) otherwise for the purposes of establishing, exercising or defending legal rights,
- (g) the transfer is necessary to protect the vital interests of the data subject or of another individual, and-
- (i) the data subject is physically or legally incapable of giving consent, or
 - (ii) the controller cannot reasonably be expected to obtain the explicit consent of the data subject,

- (h) the personal data transferred is personal data in a public register,
- (i) the transfer is made from a register to which any member of the public has access who satisfies conditions specified by law for such access, where the transfer is made to or at the request of a person who satisfies those conditions,
- (j) the transfer in question satisfies the following conditions–
 - (i) the transfer is not repetitive,
 - (ii) the transfer concerns only a limited number of data subjects,
 - (iii) the transfer is necessary for the purposes of compelling legitimate interests pursued by the controller that outweighs the significant interests of the data subject, and
 - (iv) the controller has assessed all the circumstances surrounding the data transfer and has on the basis of that assessment provided appropriate safeguards for the protection of personal data, or

(k) authorised to do so by regulations made for reasons of public interest.

(2) Nothing in subsection (1)(d) or (e) authorises the transfer of personal data by a public authority acting in the exercise or performance of a function that is of a public nature.

(3) Nothing in subsection (1)(h) authorises the transfer of the entire personal data or an entire category of personal data contained in the register.

(4) Where a transfer is authorised under subsection (1)(j), the controller –

(a) must notify the Authority of the transfer as soon as practicable, and

(b) must inform the data subject of the transfer and the compelling legitimate interests pursued (in addition to any other matters required to be notified to the data subject under this Law).

PART XI

THE DATA PROTECTION AUTHORITY

Establishment and constitution of the Authority.

60. (1) This subsection establishes a body to be called the Data Protection Authority.

(2) The Authority –

- (a) is a body corporate with perpetual succession and a common seal, and
 - (b) is capable of suing and being sued in its own name.
- (3) Schedule 6 has effect.

General functions of the Authority.

61. (1) The Authority has the following functions –
- (a) to administer and enforce this Law,
 - (b) to monitor and report to the States of Deliberation on –
 - (i) whether the object of this Law is being attained, and
 - (ii) whether any amendment is required to be made to this Law or any other action is required to be taken, in order to attain the object of this Law,
 - (c) to promote public awareness of risks, rules, safeguards and rights in relation to processing, especially in relation to children,
 - (d) to promote the awareness of controllers and processors of their duties under this Law,

- (e) on request, to provide reports and other information to the Committee or the States on any matter connected with the protection of personal data,
- (f) on request, to provide information to any data subject concerning the exercise of their rights under this Law and, if appropriate, cooperate with competent supervisory authorities to this end,
- (g) to cooperate with, including share information and provide mutual assistance to, other competent supervisory authorities with a view to ensuring that this Law is applied and enforced in a manner equivalent to the GDPR and the Law Enforcement Directive,
- (h) to monitor relevant developments, insofar as they have an impact on the protection of personal data, in particular the development of information and communication technologies and commercial practices,
- (i) to encourage the drawing up of codes of conduct,
- (j) to keep confidential records of alleged breaches of this Law and of the exercise of any of its powers under Part XII, and
- (k) any other function conferred or imposed on it by this Law or any other enactment.

(2) The Authority may impose a fee or charge for the performance of its functions in response to a request made by any person, where the fee or charge is authorised by –

- (a) regulations made by the Committee, or
- (b) any other provision of this Law.

(3) Regulations made for the purposes of subsection (2)(a) may prescribe –

- (a) the fee or charge payable, or
- (b) the basis on which the amount of the fee or charge payable is to be calculated or ascertained.

(4) If a request made to the Authority to perform a task associated with any function of the Authority is manifestly unfounded, the Authority may refuse to perform the task.

(5) If a request made to the Authority to perform a task associated with any function of the Authority is frivolous, vexatious, unnecessarily repetitive or otherwise excessive, the Authority may –

- (a) refuse to perform the task, or

(b) in exceptional circumstances, perform the task but charge the requestor a reasonable fee for the administrative costs of so doing.

(6) For the avoidance of doubt, if any question is raised in any proceedings under this Law as to whether or not a request is manifestly unfounded or frivolous, vexatious, unnecessarily repetitive or otherwise excessive within the meaning of subsection (4) or (5), the Authority bears the burden of proof to show that it is.

(7) Subject to subsection (5)(b), nothing in this section authorises the Authority to impose a fee or charge on any data subject or data protection officer for the performance of any of the Authority's functions in relation to the data subject or data protection officer.

Authority to be independent.

62. In exercising or performing its functions, the Authority must –

(a) act independently and in a manner free from direct or indirect external influence, and

(b) neither seek nor take instructions from any person.

Power to issue opinions and guidance.

63. (1) On its own initiative or on request by any person, the Authority may publish –

- (a) opinions or guidance on any issue related to the protection of personal data, including compliance with any provision of this Law, and
- (b) guidance about how the Authority proposes to exercise or perform any of its functions under this Law.

(2) An opinion or guidance published under subsection (1) is not legally binding, but may be taken into account in any proceedings under this Law.

Power to issue public statements.

64. (1) This section applies to any of the following matters –

- (a) a notification of a personal data breach made to the Authority,
- (b) a complaint, investigation or inquiry,
- (c) a determination made under section 71(1),
- (d) a recommendation or determination made under section 72(1), or
- (e) any sanction imposed under section 73, including any order made under that section.

(2) Where the Authority considers that because of the gravity of the matter or other exceptional circumstances, it would be in the public interest to do

so, the Authority may issue a public statement about any aspect of a matter to which this section applies.

(3) Without limiting the generality of subsection (2), a public statement may include all or any of the following –

- (a) details of any personal data breach,
- (b) information describing or identifying any data subject whose personal data is or has been the subject of a personal data breach,
- (c) information about the nature or progress of any complaint, investigation or inquiry, or
- (d) information about the outcome of any complaint, investigation or inquiry.

(4) Before issuing a public statement, the Authority must so far as practicable –

- (a) consult any data subject whose personal data is to be included in the statement or who is otherwise likely to be identified or identifiable from the statement, and
- (b) give written notice of the contents of the statement to any controller and any processor that is likely to be identified or identifiable from the statement.

Authority to take steps to develop and facilitate international cooperation.

65. The Authority must so far as practicable take steps to –
- (a) develop international cooperation mechanisms to facilitate the effective enforcement of legislation for the protection of personal data, including making agreements with the European Commission or any competent supervisory authority if appropriate,
 - (b) provide international mutual assistance in the enforcement of legislation for the protection of personal data, including through notification, complaint referral, investigative assistance and information exchange, subject to appropriate safeguards for the protection of personal data and the significant interests of data subjects,
 - (c) engage relevant stakeholders in discussion and activities aimed at furthering international cooperation in the enforcement of legislation for the protection of personal data, and
 - (d) promote the exchange and documentation of personal data protection legislation and practice, including on jurisdictional conflicts.

Further provisions relating to international cooperation and mutual assistance.

66. (1) For the purposes of this Law, the Authority is to be regarded as –

- (a) the designated authority in the Bailiwick for the purposes of Article 13 of the Convention, and
- (b) the competent supervisory authority of the Bailiwick under the GDPR and the Law Enforcement Directive.

(2) The Committee may by regulations make provision as to the functions to be exercised or performed by the Authority as if it were the designated authority and the competent supervisory authority mentioned in subsection (1).

(3) The Committee may by regulations make provision as to cooperation by the Authority with the European Commission or any competent supervisory authority in connection with the performance of their respective duties including –

- (a) the exchange of information with the European Commission or any competent supervisory authority, and
- (b) the exercise or performance within the Bailiwick at the request of a competent supervisory authority of functions conferred on the Authority by those regulations.

(4) The Committee may make regulations to give effect to –

- (a) any agreement made under section 65 between the Authority and the European Commission or any competent supervisory authority, or
 - (b) any international obligations of the Bailiwick.
- (5) Regulations made under this section may do all or any of the following –
- (a) regulate or restrict the functions conferred on the Authority by section 65,
 - (b) confer additional powers and functions on the Authority, and
 - (c) create and impose duties on controllers, processors and recipients of personal data.

PART XII

ENFORCEMENT BY THE AUTHORITY

Right to make a complaint.

67. An individual may make a complaint in writing to the Authority in a form approved by the Authority if the individual considers that –

- (a) a controller or processor has breached or is likely to breach an operative provision, and

- (b) the breach involves or affects or is likely to involve or affect –
 - (i) any personal data relating to the individual, or
 - (ii) any data subject right of the individual.

Investigation of complaints.

68. (1) Upon receiving a complaint, the Authority must –
- (a) promptly give the complainant a written acknowledgment of receipt of the complaint, and
 - (b) as soon as practicable and in any event within two months of receiving the complaint, determine whether or not to investigate it.
- (2) The Authority must investigate the complaint unless –
- (a) the complaint is manifestly unfounded,
 - (b) the complaint is frivolous, vexatious, unnecessarily repetitive or otherwise excessive, or
 - (c) the Authority determines that it is inappropriate to investigate the complaint, having regard to any other action that may be or is taken by the Authority under –
 - (i) section 65, or

(ii) any regulations made under section 66.

(3) Where a complaint is investigated, the Authority must give the complainant and the controller or processor concerned –

(a) as soon as practicable, and in any event within two months of receiving the complaint, written notice that the complaint is being investigated, and

(b) at least once within three months of giving the notice under paragraph (a), written notice of the progress and, where applicable, the outcome of the investigation.

(4) If the Authority determines not to investigate a complaint, the Authority must give the complainant written notice of its determination and the reasons for it within two months of receiving the complaint.

(5) A notice under subsection (4) must include information as to the complainant's right of appeal under section 82.

(6) Despite subsections (3) and (4), where the Authority is of the opinion that giving a notice required by either of those subsections within the time specified for the notice to be given is likely to seriously prejudice an investigation, the Authority may delay giving the notice.

(7) If the Authority delays giving a notice under subsection (6), the Authority must give the notice, including an update as to the progress and,

where applicable, the outcome of the investigation, as soon as it becomes possible to do so without seriously prejudicing the investigation.

Inquiries.

69. (1) The Authority may conduct an inquiry on its own initiative into the application of this Law, including into whether a controller or processor has breached or is likely to breach an operative provision.

(2) An inquiry may be conducted –

(a) on the basis of a request made or information provided by any person, or

(b) on any other basis.

(3) An inquiry may be conducted together with, or in addition to and separately from, an investigation under section 68.

(4) Where the Authority decides to conduct an inquiry into whether a controller or processor has breached or is likely to breach an operative provision, the Authority must give the controller or processor concerned –

(a) as soon as practicable, and in any event within two months of commencing the inquiry, written notice of the nature of the inquiry, and

(b) at least once within three months of giving the notice under paragraph (a), written notice of the progress and, if possible, the outcome of the inquiry.

(5) Despite subsection (4), where the Authority is of the opinion that giving a notice required by that subsection within the time specified for the notice to be given is likely to seriously prejudice the inquiry, the Authority may delay giving the notice.

(6) If the Authority delays giving a notice under subsection (5), the Authority must give the notice, including an update as to the progress and, where applicable, the outcome of the inquiry, as soon as it becomes possible to do so without seriously prejudicing the inquiry.

(7) Nothing in this section limits –

(a) an individual's right to make a complaint under section 67, or

(b) the duties of the Authority under section 68.

Powers of the Authority.

70. Schedule 7 has effect.

Determinations on completion of investigation.

71. (1) On completing an investigation, the Authority must determine–

(a) whether or not the controller or processor concerned has breached or is likely to breach an operative provision, and

- (b) if the Authority makes a breach determination against the controller or processor, which sanction to impose against that controller or processor.

(2) As soon as practicable after making a determination under subsection (1), the Authority must give the controller or processor concerned and the complainant written notice of –

- (a) the determination and the reasons for it, and
- (b) their respective rights of appeal under sections 83 and 84.

Recommendations and determinations on completion of inquiry.

72. (1) On completing an inquiry, the Authority may do either or both of the following –

- (a) make a recommendation to the Committee, the States of Deliberation or any of the States, for any action to be taken to ensure that the object of this Law is attained, or
- (b) make a determination –
 - (i) that a controller or processor has breached or is likely to breach an operative provision, and
 - (ii) if the Authority makes a breach determination against the controller or processor, as to which

sanction to impose against that controller or processor.

(2) As soon as practicable after making a determination under subsection (1)(b), the Authority must give the controller or processor concerned written notice of –

- (a) the determination and the reasons for it, and
- (b) the right of appeal under section 84.

Sanctions following breach determination.

73. (1) If the Authority makes a breach determination, the Authority may by written notice to the person concerned impose all or any of the following sanctions against that person –

- (a) a reprimand,
- (b) a warning that any proposed processing or other act or omission is likely to breach an operative provision, and
- (c) an order under subsection (2).

(2) For the purposes of subsection (1)(c), the Authority may make an order against the person concerned requiring that person to do all or any of the following –

- (a) bring specified processing operations into compliance with a specified operative provision, or take any other

specified action required to comply with any operative provision,

- (b) notify a data subject of any personal data breach,
- (c) comply with a request made by a data subject to exercise a data subject right,
- (d) rectify or erase any personal data in accordance with any provision of this Law,
- (e) restrict or limit any processing operation, which may include –
 - (i) restricting the processing operation in accordance with any provision of this Law,
 - (ii) ceasing the processing operation, or
 - (iii) suspending any transfer of personal data to a person in an unauthorised jurisdiction,
- (f) notify any other person to whom personal data has been disclosed of a rectification, erasure or temporary restriction on processing, in accordance with any provision of this Law, and
- (g) in any case where the person concerned has breached an operative provision, pay a civil penalty by way of an

administrative fine ordered by the Authority in accordance with section 74.

(3) Nothing in subsection (2)(d), (e) or (f) limits subsection (2)(c).

(4) An order under subsection (2)(a) to (f) may, in relation to each requirement in the order, specify –

(a) the time at which, or by which, the requirement must be complied with, and

(b) the period during which the requirement must be complied with (including the occurrence of any action or event upon which compliance with the requirement may cease).

(5) The person concerned must comply with an order under subsection (2) within the time specified in it for compliance.

(6) A person who fails to comply with an order under subsection (2) within the time specified in it for compliance is guilty of an offence.

(7) Subsection (6) does not apply in respect of a failure to comply with an order to pay a civil penalty by way of an administrative fine under subsection (2)(g).

(8) The Authority may revoke or amend an order under subsection (2) by giving written notice to the person concerned.

Specific provisions concerning administrative fines.

74. (1) For the purposes of section 73(2)(g), the Authority may order the person concerned to pay to the States of Guernsey (whether directly or through the Authority) an administrative fine for any of the following matters –

- (a) failure to make reasonable efforts to verify that a person giving consent to the processing of the personal data of a child under 13 years of age in the context of the offer of information society services directly to the child is a person duly authorised to give consent to that processing under section 10(2)(f),
- (b) failure to take reasonable steps to inform the data subject of anonymisation, in breach of section 11(1)(b),
- (c) breach of any duty imposed on the person concerned by any provision of Part IV (except section 31), V, VI, VII (except section 46) or VIII,
- (d) where the person concerned is an accredited monitoring body, breach of the duty imposed on the body by section 53(2),
- (e) breach of any duty imposed on the person concerned by section 6(1), including (for the avoidance of doubt) a breach of the data protection principle relating to lawfulness of processing,

- (f) breach of any duty imposed on the person concerned under Part III,
- (g) transfer of personal data to a person in an unauthorised jurisdiction in breach of section 55, or
- (h) breach of any provision of any Ordinance or regulations made under any Part of this Law imposing a duty on a controller or processor in respect of the processing of personal data.

(2) In determining whether or not to order an administrative fine and, if ordered, the amount of the administrative fine, the Authority must have regard to –

- (a) the nature, gravity and duration of the breach of the operative provision concerned, taking into account –
 - (i) the nature, scope and purpose of the processing concerned,
 - (ii) the categories of personal data affected by the breach,
 - (iii) the number of data subjects affected, and
 - (iv) the level of any damage suffered by these data subjects,

- (b) the manner in which the breach became known to the Authority, in particular whether, and if so to what extent, the person concerned notified the breach to the Authority,
- (c) whether the breach was intentional or negligent,
- (d) the degree of responsibility of the person concerned, taking into account technical and organisational measures implemented by that person for the purposes of any provision of this Law,
- (e) any relevant previous breaches by the person concerned,
- (f) the degree to which the person concerned has cooperated with the Authority to remedy the breach and mitigate its possible adverse effects,
- (g) any other action taken by the person concerned to mitigate any damage suffered by data subjects,
- (h) where an enforcement order has previously been issued to the person concerned with regard to the same subject-matter, the actions taken in compliance with the order,

- (i) compliance or non-compliance with applicable provisions of an approved code or approved mechanism in respect of the processing concerned, and
- (j) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits gained, or losses avoided, directly or indirectly, from the breach.

(3) In ordering any administrative fine, the Authority must take into account the need for administrative fines to be effective and proportionate and have a deterrent effect.

(4) An order imposing an administrative fine –

(a) must specify –

- (i) the date by which the fine must be paid, and
- (ii) the reasons for the amount of the fine, including any aggravating or mitigating factors that the Authority has taken into account, and

(b) may provide for the fine to be paid by instalments –

- (i) of any specified number and amounts, and
- (ii) at any specified times and intervals.

(5) An administrative fine imposed on an unincorporated body by order of the Authority must be paid from the funds of the body.

(6) The Authority may publish the amount of an administrative fine ordered by the Authority and the name of the person concerned.

(7) The Authority may recover an administrative fine as a civil debt owed and due to the Authority by the person concerned.

(8) Any administrative fine paid to or recovered by the Authority must be paid to the general revenue account of the States of Guernsey as soon as practicable.

(9) Nothing in this section authorises the Authority to order any of the following persons to pay an administrative fine –

- (a) the States,
- (b) a public committee,
- (c) a holder of a public office,
- (d) a court or tribunal,
- (e) any person hearing or determining an appeal, or conducting a public inquiry, under any enactment,

- (f) the salaried police force of the Island of Guernsey or any police force which may be established by the States of Alderney or Chief Pleas of Sark, or
- (g) a parish Douzaine of the Island of Guernsey or the Douzaine of the Island of Sark.

Limits on administrative fines.

75. (1) An administrative fine issued against a person for any matter specified in section 74(1)(a) to (d) must not exceed –

- (a) £5,000,000, or
- (b) any higher or lower limit prescribed by Ordinance made by the States of Deliberation in place of the limit in paragraph (a).

(2) An administrative fine issued against a person for any other matter specified in section 74(1) must not exceed –

- (a) £10,000,000, or
- (b) any higher or lower limit prescribed by Ordinance made by the States of Deliberation in place of the limit in paragraph (a).

(3) An administrative fine issued against a person must not exceed £300,000, unless the amount of the fine is less than 10% of the total global

annual turnover or total global gross income in the preceding financial year of that person.

(4) An administrative fine issued against a person must not exceed 10% of the total global annual turnover or total global gross income of that person during the period of the breach in question, up to a maximum period of 3 years.

(5) Where a person breaches several operative provisions in relation to the same processing operations, or associated or otherwise linked processing operations, the total aggregate of the administrative fines issued against the controller or processor in respect of those processing operations must not exceed the limit specified for the gravest breach under subsection (1) or (as the case may be) subsection (2).

(6) The Committee may by regulations prescribe the manner in which the total global annual turnover or total global gross income of a person is to be calculated for the purposes of subsection (3) or (4).

Procedure to be followed before making breach determination or order.

76. (1) This section applies where the Authority, otherwise than with the agreement of the person concerned, proposes to make –

- (a) a breach determination, or
- (b) an enforcement order.

(2) Before making the determination or order, the Authority must give the person concerned notice in writing stating –

- (a) that the Authority is proposing to make the determination or order,
- (b) the terms of, and the reasons for, the proposed determination or order,
- (c) that the person concerned may, within a period of 28 days beginning on the date of the notice or any longer period that may be specified in the notice, make written or oral representations to the Authority in respect of the proposed determination or order in a manner specified in the notice, and
- (d) the right of appeal of the person concerned under section 84 if the Authority were to make the proposed determination or order.

(3) The Authority must consider any representations made in response to a notice under subsection (2) before giving further consideration to the proposed determination or order.

(4) The Authority may reduce the period of 28 days mentioned in subsection (2)(c) where the Authority considers it necessary to do so—

- (a) in the interests of data subjects, any class or description of data subjects, or the public, or
- (b) where there are reasonable grounds for suspecting –

- (i) that, if that period of notice were given, information relevant to or relating to the proposed determination or order would be concealed, falsified, tampered with or destroyed, or
- (ii) that the giving of that period of notice is likely to seriously prejudice -
 - (A) any criminal, regulatory or disciplinary investigation, or any prosecution, in the Bailiwick or elsewhere,
 - (B) co-operation or relations with investigatory, prosecuting, regulatory or disciplinary authorities, in the Bailiwick or elsewhere, or
 - (C) the performance by the Authority of its functions.

(5) The Authority may dispense with the requirements of subsections (2) and (3) altogether if it is of the opinion that the determination or order needs to be made immediately or without notice because of the interests or grounds mentioned in subsection (4).

(6) For the avoidance of doubt, a notice of a proposed administrative fine must state the amount of the proposed fine.

Exclusion of courts and tribunals acting in a judicial capacity.

77. Nothing in this Law authorises the Authority –

- (a) to investigate, inquire into or determine any matter, or
- (b) exercise any of its other powers,

in relation to processing operations carried out by, or any other act or omission of, a court or tribunal acting in its judicial capacity.

PART XIII

CIVIL PROCEEDINGS FOR BREACH OF STATUTORY DUTY

Interpretation of this Part.

78. In this Part, unless the context requires otherwise –

"**action**" means an action under section 79(2),

"**breach of duty**" means a breach of the duty created by section 79(1),
and

"**controller or processor**" excludes any controller or processor that is a public authority of any country other than the Bailiwick.

Civil action against a controller or processor for breach of duty.

79. (1) A controller or processor has a duty not to breach an operative provision.

(2) Where a controller or processor breaches the duty in subsection (1), and the breach causes damage to another person ("**the injured party**"), the breach is actionable in court by the injured party against the controller or processor in the same manner and by the same remedies and other means as if the controller or processor had committed the tort of breach of statutory duty against the injured party.

(3) A court in which an action is brought may grant any order, relief and remedy that the court may grant in the case of the tort of breach of statutory duty, including, for the avoidance of doubt, in the Royal Court –

- (a) an award of damages (including punitive or exemplary damages) in respect of the breach of duty,
- (b) an injunction or interim injunction to restrain any actual or anticipated breach of duty, and
- (c) a declaration that the controller or processor has committed a breach of duty, or that a particular act, omission or course of conduct on the part of the controller or processor would result in a breach of duty.

(4) Despite any rule of law to the contrary, a court in which an action is brought may grant an order, relief or remedy of a kind mentioned in subsection (3) in respect of any distress, inconvenience or other adverse effect suffered by an injured party even if it does not result from any physical or financial loss or damage.

(5) This section replaces any action for the tort of breach of statutory duty that may lie against a controller or processor in relation to the breach or anticipated breach of an operative provision.

(6) Except as otherwise provided by subsection (5), nothing in this section affects or limits any other administrative, civil or other action, right, remedy or relief that any person has or may have against a controller or processor.

Further provisions on liability.

80. (1) A defendant in any action is exempt from liability for breach of duty if the defendant proves that the defendant is not in any way responsible for the damage that is the subject of the action.

(2) A processor is exempt from liability for damages under any action unless the processor –

- (a) has breached a provision of this Law specifically imposing a duty on processors, or
- (b) has acted outside or contrary to lawful instructions given by the controller.

(3) For the avoidance of doubt –

- (a) where both a controller and a processor, or more than one controller or one processor, are involved in the same processing that caused the damage that is the subject of the action, each controller and each processor

so involved is jointly and severally liable for the damage concerned, and

- (b) where a controller or a processor ("A") has, in accordance with paragraph (a), paid full compensation for any damage, A is entitled to reimbursement from each of the other controllers and processors ("B") involved in that processing, for that part of the compensation corresponding to the responsibility of B for the damage concerned, subject to subsections (1) and (2).

PART XIV

APPEALS AND OTHER PROCEEDINGS

Interpretation of this Part.

81. In this Part –

"**complainant**" means a person who makes a complaint, and

"**the Court**", in relation to any appeal, means –

- (a) where the appellant –
 - (i) is an Alderney person, or –
 - (ii) is neither a Guernsey person nor a Sark person, but has the appellant's principal or prospective principal place of business in Alderney,

the Court of Alderney,

- (b) where the appellant –
 - (i) is a Sark person, or
 - (ii) is neither a Guernsey person nor an Alderney person, but has the appellant's principal or prospective principal place of business in Sark,
- the Court of the Seneschal, and
- (c) in any other case, the Royal Court.

Complainant may appeal failure to notify investigation or progress.

82. (1) A complainant may appeal to the Court against any failure of the Authority to give the complainant –

- (a) written notice that the complaint is either being investigated or not being investigated, within the two-month period specified by section 68(3)(a) or (4), or
- (b) if the complaint is being investigated, written notice of the progress and, where applicable, the outcome of the investigation within the three-month period specified by section 68(3)(b).

(2) The grounds of an appeal under this section are that the Authority failed to comply with a requirement to give written notice in accordance with section 68(3) or (4), but for the avoidance of doubt any such requirement is subject to the exception in section 68(6).

(3) An appeal under this section must be made within the period of 28 days immediately following –

- (a) in an appeal under subsection (1)(a), the date on which the two-month period mentioned in that provision expires, and
- (b) in an appeal under subsection (1)(b), the date on which the three-month period mentioned in that provision expires.

(4) An appeal under this section is made by summons served on the Authority stating the grounds and material facts on which the appellant relies.

(5) Where an appeal is made under this section, the Authority may apply to the Court by summons served on the appellant for an order to dismiss the appeal for want of prosecution; and on hearing the application the Court may –

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

(6) The provisions of subsection (5) are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007^b, rule 51 of the Court of Alderney Civil Rules, 2005^c or any similar civil rule of the Court of the Seneschal.

(7) Upon determining an appeal under this section, the Court may–

- (a) dismiss the appeal, or
- (b) uphold the appeal and order the Authority to give the appellant the written acknowledgment or notice sought in the appeal,

and make any other order it considers just.

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

Complainant may appeal determinations.

83. (1) A complainant may appeal to the Court against a determination of the Authority –

- (a) under section 68(1)(b) not to investigate the complaint,
- or

^b Order of the Royal Court No. IV of 2007, as amended by Order of the Royal Court No. II of 2008 and No. IV of 2009.

^c As amended by the Court of Alderney Civil (Amendment) Rules, 2015.

(b) under section 71(1)(a) that a controller or processor has not breached or is not likely to breach an operative provision, in connection with the complaint.

(2) The grounds of an appeal under this section are that –

(a) the determination was *ultra vires* or there was some other error of law,

(b) the determination was unreasonable,

(c) the determination was made in bad faith,

(d) there was a lack of proportionality, or

(e) there was a material error as to the facts or as to the procedure.

(3) An appeal under this section must be made within the period of 28 days immediately following the date on which the complainant receives written notice of the determination from the Authority.

(4) An appeal under this section is made by summons served on the Authority stating the grounds and material facts on which the appellant relies.

(5) Where an appeal is made under this section, the Authority may apply to the Court by summons served on the appellant for an order to dismiss the appeal for want of prosecution; and on hearing the application the Court may –

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

(6) The provisions of subsection (5) are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007, rule 51 of the Court of Alderney Civil Rules, 2005 or any similar civil rule of the Court of the Seneschal.

(7) Upon determining an appeal under this section, the Court may –

- (a) confirm the determination, or
- (b) annul the determination and remit the matter back to the Authority for reconsideration,

and make any other order it considers just.

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

Sanctioned person may appeal breach determination or enforcement order.

84. (1) The person concerned may appeal to the Court against –
- (a) a breach determination made by the Authority, or

(b) an enforcement order.

(2) The grounds of an appeal under this section are that –

(a) the determination or order was *ultra vires* or there was some other error of law,

(b) the determination or order was unreasonable,

(c) the determination or order was made in bad faith,

(d) there was a lack of proportionality, or

(e) there was a material error as to the facts or as to the procedure.

(3) An appeal must be made within the period of 28 days immediately following the date on which the person concerned receives written notice of the determination or order from the Authority.

(4) An appeal is made by summons served on the Authority stating the grounds and material facts on which the appellant relies.

(5) Where an appeal is made, the Authority may apply to the Court by summons served on the appellant for an order to dismiss the appeal for want of prosecution; and on hearing the application the Court may –

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

(6) The provisions of subsection (5) are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007, rule 51 of the Court of Alderney Civil Rules, 2005 or any similar civil rule of the Court of the Seneschal.

(7) On the application of the appellant, the Court may, on such terms as the Court thinks just, suspend or modify the effect of the determination or order appealed pending the determination of the appeal.

(8) Upon determining an appeal under this section, the Court may –

- (a) confirm the determination or order, with or without modification, or
- (b) annul the determination or order and –
 - (i) remit the matter back to the Authority for reconsideration, or
 - (ii) make, in its place, any determination or order that the Authority is authorised to make under this Law,

and make any other order it considers just.

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

Authority may bring civil proceedings in respect of breach or anticipated breach.

85. (1) On request by a data subject or on its own initiative, the Authority may bring proceedings before the Court in respect of any breach or anticipated breach of an operative provision by a controller or a processor.

(2) Where proceedings are brought under subsection (1) and the Court is satisfied that an operative provision has been or is likely to be breached by the controller or processor, the Court may make any order, relief and remedy it considers just under the circumstances, including, for the avoidance of doubt, in the case of the Royal Court –

- (a) an award of compensation to any person who suffers damage as a result of the breach,
- (b) an injunction or interim injunction to restrain any actual or anticipated breach of an operative provision, and
- (c) a declaration that the controller or processor has committed a breach of an operative provision, or that a particular act, omission or course of conduct on the part of the controller or processor would result in a breach of an operative provision.

(3) Despite any rule of law to the contrary, a court in which an action is brought under this section may grant an order, relief or remedy of a kind mentioned in subsection (2) in respect of any distress, inconvenience or other adverse effect suffered by a person even if it does not result from any physical or financial loss or damage.

Suspension of court proceedings.

86. (1) This section applies where –
- (a) any proceedings ("**Court A's proceedings**") relating to processing in the context of a controller or processor are pending before any court ("**Court A**") under or in relation to this Law (including an action or appeal under this Law, or an appeal against any determination made under this Law), and
 - (b) proceedings ("**Court B's proceedings**") are pending in any other court or tribunal ("**Court B**"), whether in the Bailiwick or elsewhere, concerning the same subject matter and processing in the context of the same controller or processor.
- (2) Where this section applies, Court A –
- (a) must contact Court B to confirm the existence and nature of Court B's proceedings,

- (b) may suspend Court A's proceedings until Court B's proceedings have been completed and determined, and
- (c) may decline to hear and determine Court A's proceedings if –
 - (i) Court A's proceedings are proceedings at first instance, and
 - (ii) Court B had been seized of Court B's proceedings before Court A was seized of Court A's proceedings.

PART XV

OFFENCES AND CRIMINAL PROCEEDINGS

Unlawful obtaining or disclosure of personal data.

87. (1) A person is guilty of an offence who knowingly or recklessly –
- (a) obtains or discloses personal data without the consent of the controller,
 - (b) procures the disclosure of personal data to another person without the consent of the controller, or
 - (c) after any personal data is obtained or disclosed without the consent of the controller, retains that personal data without the consent of the person who would otherwise have been the controller of the data.

- (2) Subsection (1) does not apply to a person who shows –
- (a) that the obtaining, disclosing, procuring or retaining was required or authorised by law,
 - (b) that the person acted in the reasonable belief that the obtaining, disclosing, procuring or retaining was required or authorised by law,
 - (c) that the person acted in the reasonable belief that the person would have had the consent of the controller if the controller had known of the obtaining, disclosing, procuring or retaining and the circumstances of it,
 - (d) that the person acted –
 - (i) for the purpose of journalism or an artistic, literary or academic purpose,
 - (ii) with a view to the publication by any person of any journalistic, artistic, literary or academic material, and
 - (iii) in the reasonable belief that in the particular circumstances the obtaining, disclosing, procuring or (as the case may be) retaining was justified as being in the public interest,

- (e) that the obtaining, disclosing, procuring or retaining was necessary for a law enforcement purpose, or
- (f) that in the particular circumstances the obtaining, disclosing, procuring or (as the case may be) retaining was justified as being in the public interest.

(3) A person who sells personal data is guilty of an offence if the person has obtained the data in contravention of subsection (1).

(4) A person who offers to sell personal data is guilty of an offence if –

- (a) the person has obtained the data in contravention of subsection (1), or
- (b) the person subsequently obtains the data in contravention of that subsection.

(5) For the purposes of subsection (4), an advertisement indicating that personal data is or may be for sale is an offer to sell the data.

(6) For the purposes of this section, a reference to personal data includes information extracted from personal data.

Obstruction, etc. or provision of false, deceptive or misleading information.

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

- (a) intentionally obstructs,

- (b) without reasonable excuse, fails to comply with any requirement made by, or
- (c) removes, tampers or otherwise interferes with any thing secured against interference by,

an Authority official acting in the exercise or performance of any function under this Law.

- (2) A person is guilty of an offence if –
 - (a) for the purposes of or in connection with an application made under this Law,
 - (b) in purported compliance with any condition of a registration or an approval under this Law,
 - (c) for the purposes of, or in connection with, obtaining consent to processing,
 - (d) in purported compliance with any requirement imposed by, or otherwise for the purposes of, this Law, or
 - (e) otherwise than as mentioned in paragraphs (a) to (d) but in circumstances in which the person intends, or could reasonably be expected to know, that the information would or might be used by an Authority

official acting in the exercise or performance of a function under this Law,

that person does any of the following –

- (i) makes a statement which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (iii) produces or furnishes, or causes or permits to be produced or furnished, any information which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information which is false, deceptive or misleading in a material particular.

(3) For the avoidance of doubt, in this section, "**requirement**" includes any requirement made in the exercise of a power conferred by Schedule 7.

Impersonation of Authority officials.

89. A person is guilty of an offence if, with intent to deceive, the person –

- (a) impersonates an Authority official,
- (b) makes any statement or does any act calculated to falsely suggest that the person is an Authority official,
or
- (c) makes any statement or does any act calculated to falsely suggest that the person has powers as an Authority official that exceed the powers that the person actually has.

Duty of confidentiality.

90. (1) This section applies where a designated official acquires any information from which a person (whether or not an individual) ("**the identifiable person**") is identified or identifiable –

- (a) in the exercise or performance of any function under this Law, or otherwise under or for the purposes of this Law, or
- (b) directly or indirectly from any person who acquired the information in the exercise or performance of any function conferred or imposed on that person under this Law, or otherwise under or for the purposes of this Law.

(2) Except as authorised by section 91, the designated official must not, without the consent of the identifiable person –

(a) use the information, or

(b) disclose the information.

(3) Where the designated official is an individual, the individual's duty in subsection (2) survives the expiry or termination of that individual's office, employment, appointment or designation as a designated official.

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

(5) In this section and section 91, "**designated official**" means –

(a) an Authority official,

(b) an agent of the Authority or the Commissioner, or

(c) a data protection officer.

Exceptions to confidentiality.

91. (1) A designated official may use, or disclose to another person, the information mentioned in section 90(1) where –

(a) at the time of use or disclosure, the information is or has already been made public (other than through an act or omission of the official),

- (b) the information used or disclosed is in the form of a summary or collection so framed as not to enable information relating to any identifiable person to be ascertained from it,

- (c) the use or disclosure is necessary for the purpose of –
 - (i) exercising or performing any function conferred or imposed on the official by this Law,

 - (ii) enabling or assisting any other person to exercise or perform functions conferred or imposed by this Law,

 - (iii) enabling or assisting a competent supervisory authority to exercise or perform functions conferred or imposed by or under a comparable foreign enactment, or

 - (iv) seeking advice from a qualified person on any matter requiring the exercise of professional skills, for a purpose mentioned in subparagraph (i), (ii) or (iii),

- (d) the use or disclosure is necessary for the purposes of any legal proceedings, including any proceedings arising out of this Law or a comparable foreign enactment,

- (e) the use or disclosure is necessary to enable or assist the pursuit of a law enforcement purpose,
- (f) the use or disclosure is necessary for the purposes of enabling or assisting the instigation, defence, or conduct of disciplinary proceedings against any person in relation to–
 - (i) a breach of a provision of this Law, or
 - (ii) compliance with this Law resulting in a breach of the person's professional or other duties,
- (g) the use or disclosure is necessary for the purposes of complying with an order of a court or tribunal, or
- (h) the use or disclosure is necessary for the purposes of discharging any international obligations of the Bailiwick.

(2) In subsection (1), "**comparable foreign enactment**" means any enactment in any country other than the Bailiwick that is similar or comparable in purpose or effect to this Law.

Criminal liability of directors and other officers.

92. (1) Where an offence under this Law is committed by a body corporate, limited partnership with legal personality or foundation and is proved to

have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) in the case of a body corporate, any director, controller, manager, secretary or other similar officer,
- (b) in the case of a limited partnership with legal personality, any general partner,
- (c) in the case of a foundation, any foundation official, or
- (d) any person purporting to act in a capacity described in paragraph (a), (b) or (c),

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

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

Criminal proceedings against unincorporated bodies.

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

- (a) in the case of a partnership (not being a limited partnership with legal personality, or a limited liability

partnership incorporated under the Limited Liability Partnerships (Guernsey) Law, 2013^d), any partner,

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

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

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

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

Penalties and court orders for offences.

94. (1) A person guilty of an offence under section 90 is liable –

^d Order in Council No. VI of 2014; as amended by Order in Council No. VI of 2017; Ordinance No. XII of 2015; and No. IX of 2016.

(a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, and

(b) on conviction on indictment, to a fine.

(2) A person guilty of an offence under any other provision of this Law is liable –

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

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

(3) Subject to subsection (4), the court by or before which a person is convicted of an offence under this Law may order any document used in connection with the processing of personal data and appearing to the court to be connected with the commission of the offence to be forfeited, destroyed or erased.

(4) The court must not make an order under subsection (3) in relation to any document where a person (other than the offender) claiming to be the owner of or otherwise interested in the document applies to be heard by the court, unless an opportunity is given to that person to show cause why the order should not be made.

Penalties for offences tried before the Court of Alderney or the Court of the Seneschal.

95. In relation to offences under this Law tried before the Court of Alderney or the Court of the Seneschal, the penalties stipulated by this Law in relation to summary conviction for an offence are applicable notwithstanding the provisions of section 13 of the Government of Alderney Law, 2004^e or section 11 of the Reform (Sark) Law, 2008^f.

PART XVI

GENERAL AND MISCELLANEOUS

General exceptions and exemptions.

96. Schedule 8 has effect.

Representation of data subjects.

97. Any person may, by agreement with a data protection organisation, authorise the organisation on the person's behalf, to –

- (a) make a complaint under section 67 and represent the person in any proceedings arising from the complaint, or
- (b) bring an action under section 79 and represent the person in any proceedings arising from the action,

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

^f Order in Council No. V of 2008; as amended by Order in Council No. VI of 2008; No. XXVII of 2008; No. XIV of 2010; No. XII of 2011; No. XI of 2014; Sark Ordinance Nos. II and VI of 2015.

including, if agreed with that person, receiving all or any part of any damages awarded to that person when the action is determined.

Avoidance of certain contractual terms relating to health records.

98. (1) Any term or condition of a contract is void in so far as it purports to require an individual to supply or produce to any other person –

- (a) a health record, or
- (b) a copy or part of any health record.

(2) In subsection (1), "**health record**", in relation to any individual, means any health data –

- (a) made or compiled by or on behalf of a health professional in connection with the care of that individual, and
- (b) obtained or to be obtained by the individual in the exercise of a data subject right.

Proceedings concerning unincorporated bodies.

99. Subject to section 93, where a breach of an operative provision is alleged to have been committed by an unincorporated body, any complaint, investigation, action, order or notice, or other proceedings, for or otherwise in relation to the breach must be brought, issued or (as the case may be) served in the name of the body and not in the name of any of its members.

Protection from self-incrimination.

100. (1) A statement made by a person in response to a requirement imposed by or under this Law ("**the statement concerned**") –

(a) may be used in evidence against the person in proceedings other than criminal proceedings, and

(b) may not be used in evidence against the person in criminal proceedings except –

(i) where evidence relating to the statement concerned is adduced, or a question relating to the statement concerned is asked, in the proceedings by or on behalf of that person, or

(ii) in proceedings for –

(A) an offence under section 88(2),

(B) perjury,

(C) perverting the course of justice, or

(D) any other offence where, in giving evidence the person makes a statement inconsistent with the statement concerned, in which case it is admissible only to the extent necessary to establish the inconsistency.

(2) Despite subsection (1)(b), information disclosed by any person in compliance with any request under section 14 or 15 is not admissible against the person in proceedings for any offence under this Law.

Exclusion of liability.

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

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

Service of documents.

102. (1) Any document to be given or served under or for the purposes of this Law may be given or served –

- (a) on an individual, by being delivered to the individual, or by being left at, or sent by post or transmitted to, the individual's usual or last known place of abode,
- (b) on a company, by being left at, or sent by post or transmitted to, its registered office,

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

- (c) on an overseas company, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in the Bailiwick or, if there is no such place, its registered or principal office or last known registered or principal office elsewhere,
 - (d) on an unincorporated body, by being given to or served on any partner, member, manager or authorised officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in the Bailiwick or, if there is no such place, its principal or last known principal place of business elsewhere, or
 - (e) on an Authority official, by being left at, or sent by post or transmitted to, the offices of the Authority or any other prescribed office.
- (2) In subsection (1) –
- (a) the expression "**by post**" means by recorded delivery service or ordinary letter post, and
 - (b) the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the

communication; in which event the document is to be regarded as served when it is received.

(3) If a person notifies the Authority of an address for service within the Bailiwick for the purposes of this Law, any document to be given to or served on the person may be given or served by being left at, or sent by post or transmitted to, that address.

(4) If service of a document cannot, after reasonable enquiry, be effected by the Authority in accordance with this section, the document may be served –

(a) by being published in such manner and for such period as the Authority thinks fit, or

(b) by being published in La Gazette Officielle on two occasions falling in successive weeks,

and a document served under this subsection is sufficient if addressed to the person for whom it is intended.

(5) Subsections (1) to (4) are without prejudice to any other lawful method of service.

(6) Despite subsections (1) to (5) and (8) and any other enactment or rule of law in relation to the service of documents, no document to be given to or served on the Authority under or for the purposes of this Law is to be regarded as having been given or served until it is received.

(7) If a person upon whom a document is to be served under this Law is person under legal disability, the document must be served on the person's guardian; and if there is no guardian, the party wishing to effect service may apply to the court for the appointment of a person to act as guardian for the purposes of this Law.

(8) A document sent by post is, unless the contrary is shown, deemed for the purposes of this Law to have been received –

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any day which is not a working day.

(9) Service of a document sent by post is to be proved by showing the date of posting, the address thereon and the fact of prepayment.

(10) In this section –

"document" excludes a summons, and

"**working day**" means any day other than a Saturday, a Sunday or a non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^h.

(11) The provisions of this section are subject to any contrary provision in this Law.

Ordinances for law enforcement purposes.

103. (1) The States of Deliberation may by Ordinance make such provision as they think fit relating to –

- (a) the processing of personal data for a law enforcement purpose, or
- (b) personal data which is or was processed for a law enforcement purpose.

(2) Without limiting the generality of subsection (1), the States of Deliberation may by Ordinance make provision to protect the rights of individuals in relation to their personal data in a manner equivalent to the Law Enforcement Directive.

Ordinances relating to electronic communications.

104. (1) The States of Deliberation may by Ordinance make such provision as they think fit relating to respect for private life and protection of personal data in relation to electronic communications.

^h Ordres en Conseil Vol. XVII, p. 384 as amended by Ordres en Conseil Vol. XXIV, p. 84, Vol. XXXIV, p. 504 and Vol. XXXV (1), p. 367.

(2) Without limiting the generality of subsection (1), the States of Deliberation may by Ordinance –

- (a) make provision to protect the rights of individuals in relation to their personal data in a manner equivalent to any Community provision relating to respect for private life and protection of personal data in relation to electronic communications, and
- (b) repeal or amend all or any part of –
 - (i) the European Communities (Implementation of Privacy Directive) (Guernsey) Ordinance, 2004ⁱ,
 - (ii) the European Communities (Implementation of Council Directive on Privacy and Electronic Communications) (Sark) Ordinance, 2004, and
 - (iii) the European Communities (Implementation of Council Directive on Privacy and Electronic Communications) (Alderney) Ordinance, 2009^j.

ⁱ Ordinance No. XXIV of 2004; as amended by Ordinance No. II of 2010; No. XIII of 2012; and No. IX of 2016.

^j Alderney Ordinance No. VIII of 2009; as amended by Alderney Ordinance No. III of 2010; and Alderney Ordinance No. XIII of 2012.

Ordinance relating to identifiers or personal data.

105. (1) The States of Deliberation may by Ordinance make any provision they think fit for any or all of the following purposes –

- (a) requiring or authorising any identifier or personal data to be processed in a specified manner or in specified circumstances, or
- (b) prohibiting or restricting any identifier or personal data from being processed in a specified manner or in specified circumstances.

(2) Without limiting the generality of subsection (1), an Ordinance made under subsection (1) may include provisions relating to –

- (a) the processing of personal data in the context of employment or in the context of the provision of medical, health or social care or treatment,
- (b) safeguards for the significant interests of data subjects,
- (c) the transparency of processing,
- (d) the transfer of identifiers or personal data within a group of undertakings or within a group of enterprises engaged jointly in a business, or
- (e) the monitoring of the application of the Ordinance or this Law.

(3) In subsection (2)(a) "**in the context of employment**" includes in the context of –

- (a) recruitment,
- (b) the performance of a contract of employment, including the discharge of duties laid down by law,
- (c) management, planning and organisation of work, including business continuity,
- (d) equality and diversity in the workplace,
- (e) health and safety at work,
- (f) protection of the property of employers or customers,
- (g) the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and
- (h) the termination of an employment relationship.

Power to amend this Law.

106. (1) The States of Deliberation may by Ordinance amend this Law where it appears to be necessary or expedient to do so in order to –

- (a) protect the rights of individuals in relation to their personal data, and provide for the free movement of personal data, in a manner equivalent to the GDPR or the Law Enforcement Directive,
- (b) implement any other Community provision or any provision of the Convention or any other international agreement (whether or not applicable in or binding on the Bailiwick) relating to the processing or protection of personal data,
- (c) enable the Authority and the Commissioner to effectively and efficiently exercise or perform their functions,
- (d) ensure the effective, efficient and fair conduct of investigations and inquiries by the Authority,
- (e) maintain or enhance the reputation or standing of the Bailiwick, in relation to the processing or protection of personal data,
- (f) make provision relating to any matter of a kind for which regulations may be made under any provision of this Law,
- (g) ensure the effective enforcement of this Law, or

(h) provide for any other matters necessary or expedient for giving full effect to this Law and for its due administration.

(2) Without limiting subsection (1), the States of Deliberation may by Ordinance amend all or any part of Schedule 2.

(3) In subsection (1)(b), "**implement**" in relation to any provision, includes to enforce or enact the provision, and to secure the administration, execution, recognition, exercise or enjoyment of the provision, in or under the law of the Bailiwick.

Power to make transitional, savings and consequential provisions by Ordinance.

107. (1) The States of Deliberation may by Ordinance make any transitional, savings or consequential provisions they think fit in connection with the commencement of any provision of this Law.

(2) Without limiting subsection (1), an Ordinance under that subsection may –

(a) repeal, revoke or amend any provision of any enactment that is inconsistent with any provision of this Law, and

(b) make any other consequential amendments to any enactment that the States of Deliberation think fit.

(3) This section does not affect or limit any other provision of this Law empowering the States of Deliberation to make an Ordinance.

- (4) In this section and section 108, "**enactment**" –
 - (a) includes this Law, but
 - (b) excludes an Act of Parliament that applies or extends to the Bailiwick.

General provisions as to Ordinances.

- 108.** (1) An Ordinance under this Law –
- (a) may be amended or repealed by a subsequent Ordinance, and
 - (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to any enactment).
- (2) Any power to make an Ordinance under this Law may be exercised –
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to prescribed exceptions, or in relation to any prescribed cases or classes of cases, and

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

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

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

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

(3) Without prejudice to the generality of the other provisions of this Law, an Ordinance under this Law may –

(a) exempt from all or any part of this Law, or conversely apply all or any part of this Law (with or without modifications) to –

(i) the processing of personal data in any specified manner or circumstances, or

(ii) personal data of any specified kind or description,

- (b) subject to subsection (4), make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences,
- (c) empower the Authority, any public committee, any other body or authority (including, without limitation, any court of the Bailiwick), or any other person to –
 - (i) make subordinate legislation, or
 - (ii) issue codes or guidance,in relation to any matter for which an Ordinance may be made under this Law,
- (d) provide that no liability shall be incurred by any person in respect of anything done or omitted to be done in the discharge or purported discharge of any of the person's functions unless the thing is done or omitted to be done in bad faith,
- (e) make provision under the powers conferred by this Law despite the provisions of any enactment for the time being in force,
- (f) repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law, and

(g) without prejudice to the generality of the foregoing, make any such provision of any such extent as might be made by Projet de Loi, but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

(4) An Ordinance may not –

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

(b) authorise the imposition –

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

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

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

(a) the Authority,

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

- (c) in the case of an Ordinance having effect in Sark, the Policy and Performance Committee of the Chief Pleas of Sark,

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

General provisions as to regulations.

109. (1) Regulations under this Law -

- (a) may be amended or repealed by subsequent regulations made under this Law,
- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the Committee to be necessary or expedient, and
- (c) must be laid before a meeting of the States of Deliberation as soon as possible and, if at that or the next meeting the States of Deliberation resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

(2) Any power conferred by this Law to make regulations may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified

exceptions, or in relation to any specified cases or classes of cases,

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

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

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

(iii) any such provision either unconditionally or subject to any conditions specified in the regulations.

(3) Without prejudice to the generality of the other provisions of this Law, regulations under this Law –

(a) may, subject to subsection (4), make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences,

(b) may empower the Authority, any public committee, any other body or authority (including, without limitation, any court of the Bailiwick), or any other

person to issue codes or guidance in relation to any matter for which regulations may be made under this Law, and

(c) may repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law.

(4) Regulations under this Law may not –

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

(b) authorise the imposition –

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

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

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

(a) the Authority,

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

- (c) in the case of regulations having effect in Sark, the Policy and Performance Committee of the Chief Pleas of Sark,

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

Expressions with special meanings.

110. Schedule 9 has effect.

Interpretation of this Law.

111. (1) In this Law, unless the context requires otherwise –

"adequacy decision", in respect of any country, sector within a country or international organisation, means a decision made by the European Commission that the relevant country, sector or international organisation ensures an adequate level of protection within the meaning of Article 45(2) of the GDPR,

"administrative fine" means a fine ordered by the Authority under sections 73(2)(g) and 74,

"Alderney person" means –

- (a) an individual ordinarily resident in Alderney,

- (b) a company incorporated under the Companies (Alderney) Law, 1994^k, or
- (c) a public authority of Alderney,

"approved code" means –

- (a) a code of conduct, or an amendment or extension to such a code, approved under section 52, or
- (b) any other code of conduct, or an amendment or extension to such a code, approved by a competent supervisory authority of an authorised jurisdiction.

"approved mechanism" means –

- (a) a certification mechanism approved in accordance with regulations made under section 54, or
- (b) any other certification mechanism approved by a competent supervisory authority of an authorised jurisdiction,

"authorised jurisdiction" means –

- (a) the Bailiwick,

^k Ordres en Conseil Vol. XXXV(2), p. 777; there are amendments not relevant to this Law.

- (b) a Member State of the European Union,
- (c) any country, any sector within a country, or any international organisation that the Commission has determined ensures an adequate level of protection within the meaning of Article 45(2) of the GDPR (or the equivalent article of the former Directive), and for which the determination is still in force, or
- (d) a designated jurisdiction,

"authorised officer" means –

- (a) the Commissioner, or
- (b) in relation to any function of an authorised officer –
 - (i) any other employee of the Authority, or
 - (ii) any other individual,

authorised by the Authority or the Commissioner to exercise or perform the function,

"the Authority" mean the Data Protection Authority established by Part XI,

"Authority official" or **"official"** means –

- (a) the Authority or any member of it,
- (b) the Commissioner or any other employee of the Authority, or
- (c) any authorised officer, where the officer is neither a member nor an employee of the Authority,

"automated processing" includes profiling,

"the Bailiwick" –

- (a) means the Bailiwick of Guernsey, including the territorial waters adjacent to it, and
- (b) includes any part of the Bailiwick of Guernsey,

"bankrupt", in relation to any individual, means –

- (a) that the individual has been declared by the Royal Court to be insolvent or that a Commissioner or Committee of Creditors has been appointed by the Royal Court to supervise or secure the individual's estate,
- (b) that the individual's affairs have been declared in a state of "désastre" by the individual's arresting creditors at a meeting held before a Commissioner of the Royal Court,

- (c) that a preliminary vesting order has been made against the individual in respect of any of the individual's real property in the Bailiwick, or
- (d) that a composition or arrangement with creditors has been entered into in respect of the individual whereby the individual's creditors will receive less than 100p in the pound or that possession or control has been taken of any of the individual's property or affairs by or on behalf of creditors,

and includes analogous procedures and declarations in any country other than the Bailiwick,

"binding corporate rules" means personal data protection policies which are adhered to by a controller or processor established in an authorised jurisdiction for transfers or a set of transfers of personal data to a controller or processor in one or more unauthorised jurisdictions within a group of undertakings, or group of enterprises engaged jointly in a business,

"biometric data" means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of an individual, which allows or confirms the unique identification of that individual, such as facial images or dactyloscopic data,

"body corporate" means a body corporate, of whatever description, incorporated with or without limited liability in any part of the world,

"breach" or **"likely to breach"**, in relation to any operative provision or duty: see paragraph 7 of Schedule 9,

"breach determination", in relation to a controller or processor, means a determination by the Authority under section 71(1)(a) or 72(1)(b)(i) that the controller or processor has breached or is likely to breach an operative provision,

"business" –

- (a) includes any activity, trade or profession, whether or not carried on for profit, and
- (b) for the avoidance of doubt, includes an activity, trade or profession carried out by a non-profit organisation or charity,

"by law" includes by –

- (a) any enactment,
- (b) any judgment or decision of a court or tribunal having legal and binding effect,
- (c) any rule of law (including a rule of common law),
- (d) professional privileges and duties, or
- (e) customary law,

"category" –

- (a) in relation to personal data, processing, data subject or other persons, means a kind or description of the personal data, processing or (as the case may be) data subject or other person, and
- (b) in relation to personal data, includes whether the personal data is special category data,

"child" means an individual under 18 years of age,

"the Commissioner" means the individual appointed as the Commissioner by the Authority under paragraph 5 of Schedule 6,

"the Committee" means the States of Guernsey Committee for Home Affairs,

"Community provision" has the meaning given by section 3(1) of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994¹,

"competent supervisory authority" –

- (a) means any public authority of an authorised jurisdiction that exercises or performs functions

¹ Ordres en Conseil Vol. XXXV(1), p. 65.

equivalent or similar to the Authority's functions under this Law, and

- (b) includes the European Data Supervisory Board,

"complaint" means a complaint under section 67,

"consent": see section 10,

"controller" –

- (a) means a person that, alone or jointly with others, determines the purposes and means of the processing of any personal data, and
- (b) for the avoidance of doubt, includes a processor or any other person, where the processor or other person determines the purposes and means of processing personal data,

"controller's representative" means a person designated to be the representative of a controller in the Bailiwick under section 38,

"controlling undertaking", in relation to a group of undertakings, means the undertaking which can exert a dominant influence over the other undertakings in the group, by virtue, for example, of –

- (a) ownership, financial participation or the rules which govern the group,

- (b) the power to have personal data protection rules implemented within the group, or
- (c) control over the processing of personal data in undertakings affiliated to it, and

"**controlled undertaking**" has a corresponding meaning,

"**the Convention**" means the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data which was opened for signature on 28th January 1981^m, and includes any protocol to the Convention extended to the Bailiwick,

"**country**" includes territory,

"**criminal data**" means personal data relating to –

- (a) the commission or alleged commission of a criminal offence by an individual, or
- (b) proceedings for a criminal offence committed or alleged to have been committed by an individual, the disposal of such proceedings or the sentence of a court in such proceedings,

^m European Treaty Series No. 108.

"**damage**" includes financial loss, distress, inconvenience and other adverse effects,

"**data protection impact assessment**" means an assessment carried out in accordance with section 44,

"**data protection officer**" means an individual designated as a data protection officer under section 47 or 48,

"**data protection organisation**" means –

- (a) a non-profit organisation or charity, which has as one of its objects or purposes, the protection of personal data, data subject rights or any other significant interests of data subjects, or
- (b) any other prescribed organisation,

"**data protection principle**" means a principle specified in section 6(2),

"**data subject**", in relation to personal data, means the identified or identifiable individual to whom the personal data relates,

"**data subject right**" means a right conferred on a data subject by or under Part III,

"**designated jurisdiction**" means any of the following, where designated by an Ordinance made by the States of Deliberation –

- (a) the United Kingdom,
- (b) a country within the United Kingdom,
- (c) any other country within the British Islands, or
- (d) any sector within a country mentioned in paragraph (a), (b) or (c),

"document" includes any document in electronic form,

"duty" includes obligation,

"enactment" includes –

- (a) an Act of Parliament that extends to the Bailiwick, and
- (b) a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

"enforcement order" –

- (a) means an order made by the Authority under section 73(2), including an order to pay an administrative fine, and
- (b) includes any amendment to such an order,

"enterprise" means any individual or other person engaged in business, irrespective of its legal form, including partnerships or associations regularly engaged in a business,

"equipment" includes any computer or other electronic equipment,

"established in the Bailiwick", in relation to any controller, processor or other person, includes a controller, processor or other person that –

- (a) is a Guernsey person, Alderney person or Sark person,
- (b) maintains in the Bailiwick –
 - (i) an office, branch or agency through which the person carries on an activity, or
 - (ii) a regular practice,
- (c) causes or permits any processing equipment in the Bailiwick to be used for processing personal data otherwise than for the purposes of transit through the Bailiwick, or
- (d) is engaging in effective and real processing activities through stable arrangements in the Bailiwick,

"fairly", in relation to processing: see section 8,

"**filing system**" means any structured set of personal data which is accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis,

"**former Directive**" means European Parliament and Council Directive 95/46/ECⁿ of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data,

"**foundation**" means –

- (a) a foundation created under the Foundations (Guernsey) Law, 2012^o, or
- (b) an equivalent or similar body (however named) created or established under the law of any other jurisdiction,

"**foundation official**" means –

- (a) in relation to a foundation created under the Foundations (Guernsey) Law, 2012, a foundation official within the meaning of that Law, and
- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a

ⁿ O.J. L 281 of 23.11.1995, p. 31.

^o Order in Council No. I of 2013; as amended by Ordinance No. IX of 2016; and No. VI of 2017.

person with functions corresponding to those of a foundation official described in paragraph (a),

"function" includes –

- (a) any power or duty, and
- (b) in relation to a public authority, any act or omission in furtherance of an objective conferred or imposed on the public authority by an enactment,

"function that is of a public nature", in relation to any person, includes a function conferred or imposed on the person by any enactment,

"the GDPR" means Regulation (EU) 2016/679^P of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC,

"general partner" means –

- (a) in relation to a limited partnership falling within paragraph (a) of the definition of **"limited partnership"** in this subsection, a general partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995^Q, and

^P O.J. L 119 of 4.5.2016, p. 1.

^Q Ordres en Conseil Vol. XXXVI, p. 264; as amended by Ordres en Conseil Vol. XXXVI, p. 571; Vol. XLI, p. 158; Order in Council No. X of 2007; No. VIII of 2008;

- (b) in relation to a limited partnership falling within paragraph (b) of the definition of "**limited partnership**" in this subsection, a person whose liability for, and functions in relation to, the partnership correspond to that of a general partner described in paragraph (a) of this definition,

"**genetic data**" means personal data relating to the inherited or acquired genetic characteristics of an individual which gives unique information about the physiology or the health of that individual, including as a result of an analysis of a biological sample from the individual,

"**group of undertakings**" –

- (a) means any controlling undertaking and its controlled undertakings,
- (b) includes the States or any other group of public authorities (excluding any court or tribunal acting in its judicial capacity),

"**Guernsey person**" means –

- (a) an individual ordinarily resident in Guernsey,

Ordinance No. XXXIII of 2003; No. IX of 2016; G.S.I. No. 89 of 2008 and No. 51 of 2016.

- (b) a company incorporated under the Companies (Guernsey) Law, 2008^r,
- (c) a limited liability partnership incorporated under the Limited Liability Partnerships (Guernsey) Law, 2013,
- (d) an arrangement which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995,
- (e) a foundation created under the Foundations (Guernsey) Law, 2012, or
- (f) a public authority of Guernsey or the Bailiwick of Guernsey,

"health" means physical or mental health,

"health data" means personal data relating to the health of an individual, including the provision of health care services, which reveals information about the individual's health status,

"health professional" means any person who may lawfully practise a profession or occupation referred to in paragraph (a) or (b) of the definition

^r Order in Council No. VIII of 2008; there are amendments not relevant to this Law.

of "**health profession**" in section 4(1) of the Regulation of Health Professions (Enabling Provisions) (Guernsey) Law, 2012^s,

"**high risk**", in relation to the significant interests of data subjects: see paragraph 6 of Schedule 9,

"**historical or scientific purpose**", in relation to processing: see paragraph 5 of Schedule 9,

"**identifiable**", in relation to any individual: see paragraph 1 of Schedule 9,

"**identifier**", in relation to any individual –

- (a) means a number or code –
 - (i) that is assigned to an individual by a controller or processor for the purposes of the operations of the controller or processor, and
 - (ii) that uniquely identifies that individual, for the purposes of that controller or processor, and
- (b) for the avoidance of doubt –
 - (i) includes location data, and

^s Order in Council No. IX of 2013; as amended by Ordinance No. IX of 2016.

- (ii) includes a social security number or any other unique identification number or unique identification code issued to an individual by a public authority, but
- (iii) excludes an individual's name used to identify that individual,

"in the context of": for processing in the context of a controller or processor, see paragraph 2 of Schedule 9,

"individual" means a living natural person,

"information" includes –

- (a) personal data,
- (b) a copy of personal data in any form,
- (c) any notification or notice required under this Law,
- (d) any record, and
- (e) any document,

"information notice" has the meaning given by paragraph 1(8) of Schedule 7,

"information society service" means a service as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535^t of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services,

"inquiry" means an inquiry under section 69,

"international organisation" means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries,

"investigation" means an investigation under section 68,

"this Law" includes any Ordinance or subordinate legislation made under this Law,

"Law Enforcement Directive" means Directive (EU) 2016/680^u of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA,

^t O.J. L 241 of 17.9.2015, p. 1.

^u O.J. L 119 of 4.5.2016, p. 89.

"law enforcement purpose" means the purpose of –

- (a) prevention, investigation, detection or prosecution of a criminal offence within or outside the Bailiwick,
- (b) the execution of criminal penalties within or outside the Bailiwick, or
- (c) safeguarding against or preventing threats to public security or the security of the British Islands,

"lawfully", in relation to processing, has the meaning given by section 7,

"legal proceedings" includes –

- (a) any proceedings by a disciplinary or regulatory body under any enactment, and
- (b) any appeal, or public inquiry, under any enactment,

"limited partnership" means –

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

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

(i) one or more of them is, or are jointly and severally, liable without limitation for all debts and obligations to third parties incurred pursuant to the arrangement, and

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

whether with or without legal personality,

"machine-readable format" means a format that can easily and readily be processed by a computer, and **"machine-readable"** has a corresponding meaning,

"member" means a member of the Authority,

"monitoring body" means a body accredited by the Authority under section 53 to monitor compliance with an approved code,

"**necessary**", in relation to any purpose or aim of processing: see paragraph 3 of Schedule 9,

"**non profit organisation**" has the meaning given by section 4(1) of the Charities and Non Profit Organisations (Enabling Provisions) (Guernsey and Alderney) Law, 2009^v,

"**operative provision**" means any provision of Parts II to X of this Law,

"**organisational measures**" includes policies and procedures,

"**parental responsibility**" has the meaning given by section 5 of the Children (Guernsey and Alderney) Law, 2008^w,

"**person**" includes –

- (a) an individual,
- (b) a body corporate,
- (c) any other legal person,
- (d) an unincorporated body of persons, and

^v Order in Council No. V of 2010; as amended by Ordinance No. IX of 2016.

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

(e) for the avoidance of doubt, a public authority,

"the person concerned" –

(a) in relation to any breach determination or sanction, means the controller or processor against whom the determination is made or sanction imposed,

(b) for the avoidance of doubt, in relation to an enforcement order, means the controller or processor against whom the order is made, and

(c) in relation to an information notice, means the person to whom the information notice is given,

"personal data" means any information relating to an identified or identifiable individual,

"personal data breach" means a breach of security leading to –

(a) accidental or unlawful destruction, loss, or alteration of,
or

(b) unauthorised disclosure of, or access to,

personal data transmitted, stored or otherwise processed,

"police officer" means –

- (a) in relation to Guernsey, Herm and Jethou –
 - (i) a member of the salaried police force of the Island of Guernsey, or
 - (ii) within the limits of the officer's jurisdiction, a member of the special constabulary of the Island of Guernsey,

- (b) in relation to Alderney –
 - (i) a member of the salaried police force of the Island of Guernsey,
 - (ii) a member of any police force which may be established by the States of Alderney, or
 - (iii) within the limits of their jurisdiction, a special constable appointed under section 47 of the Government of Alderney Law, 2004, and

- (c) in relation to Sark -
 - (i) the Constable, the Vingtenier or the Assistant Constable of Sark,
 - (ii) a member of the salaried police force of the Island of Guernsey, or

- (iii) within the limits of their jurisdiction, a special constable appointed by the Court of the Seneschal,

"prejudice" includes hinder, seriously impair or prevent,

"premises" includes any place and any vehicle, vessel, aircraft, offshore installation, tent or moveable structure,

"prescribed", in relation to any provision of this Law, means prescribed by regulations for the purposes of the provision,

"privileged items" means –

- (a) items subject to legal professional privilege, within the meaning given by section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003^x, and
- (b) any communication between a professional legal adviser and the adviser's client in connection with the giving of legal advice to the client with respect to the client's duties, liabilities or rights under this Law,

^x Order in Council No. XXIII of 2003; there are amendments not relevant to this provision.

"processing" –

- (a) means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, for example –
 - (i) collection, recording, organisation, structuring or storage,
 - (ii) adaptation or alteration,
 - (iii) retrieval, consultation or use,
 - (iv) disclosure by transmission, dissemination or otherwise making available,
 - (v) alignment or combination, or
 - (vi) restriction, erasure or destruction,
- (b) includes any further or continued processing of personal data, falling within paragraph (a), and
- (c) for the avoidance of doubt, includes profiling,

and **"process"** and any other cognate expression has a corresponding meaning,

"processing equipment" means any equipment used to process personal data,

"processor" –

- (a) means an individual or other person that processes personal data on behalf of a controller, and
- (b) includes a secondary processor within the meaning of section 36(1),

"profiling" means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to an individual, including aspects concerning that individual's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements,

"progress", in relation to any investigation or inquiry, includes whether further investigation or coordination with another competent supervisory authority is necessary,

"proportionality factors" has the meaning given by paragraph 4 of Schedule 9,

"pseudonymisation" means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, where that additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data is not attributed to an identified or identifiable individual, and **"pseudonymise"** has a corresponding meaning,

"public authority" means –

- (a) the States,
- (b) a public committee,
- (c) a holder of a public office,
- (d) a statutory body,
- (e) a court or tribunal of the Bailiwick,
- (f) any person hearing or determining an appeal, or conducting a public inquiry, under any enactment,
- (g) the salaried police force of the Island of Guernsey or any police force which may be established by the States of Alderney or Chief Pleas of Sark,
- (h) a parish Douzaine of the Island of Guernsey or the Douzaine of the Island of Sark,
- (i) any person exercising or performing functions or holding any office similar or comparable to any of the persons described in paragraphs (a) to (h) in respect of any country other than the Bailiwick, or

- (j) any other person that exercises or performs any function that is of a public nature in respect of the Bailiwick or any other country,

"public committee" means any authority, board, committee or council of the States (however named) constituted by or under a Resolution, a Law or an Ordinance approved by the States,

"public office" means any office, however created –

- (a) to which functions are specifically assigned by an enactment, and
- (b) the holder of which is remunerated out of funds provided by the States or any public committee,

"public register" means a register of information that is required to be published by or under any enactment,

"public security", includes –

- (a) the health or safety of the population,
- (b) the security of any infrastructure facility, information systems or communications network, which if prejudiced may endanger human life, and
- (c) the economic or environmental security,

of the whole or any part of the British Islands,

"publication" in relation to any information, means to make that information available to the public or any section of the public in any form or manner, whether free of charge or otherwise, and **"publish"** has a corresponding meaning,

"recipient", in relation to personal data –

- (a) means any person to which the personal data is disclosed, but
- (b) excludes any public authority receiving the personal data in the context of the exercise or performance of its functions in accordance with any enactment,

"register", in relation to any controller or processor, means register in accordance with Schedule 4,

"regulations" means regulations made by the Committee in accordance with section 109,

"restriction of processing" –

- (a) means the marking of stored personal data with the aim of limiting its processing in the future, and

- (b) includes restricting or otherwise limiting the processing of that personal data in a manner and for a period of time specified in a request made under section 22(3),

"Royal Court" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of any appeal, or any application for an order, under this Law the Court may appoint one or more assessors to assist it in the determination of any matter before it,

"safeguard data subject rights" –

- (a) to allow and facilitate the exercise of data subject rights by data subjects, and
- (b) to otherwise protect data subject rights,

"safeguards", in relation to the protection of personal data or the significant interests of individuals, may include –

- (a) technical or organisational measures to ensure that the personal data is processed fairly,
- (b) encryption or pseudonymisation of the personal data concerned, and
- (c) duties imposed by law, such as duties of confidentiality or secrecy,

"**sanction**" means a sanction authorised by section 73,

"**Sark person**" means –

- (a) an individual ordinarily resident in Sark, or
- (b) a public authority of Sark,

"**significant interests**", in relation to any individual, means -

- (a) any rights or freedoms conferred by law on the individual,
- (b) the existence or extent of a duty imposed by law on the individual, or
- (c) any other interests of the individual that can reasonably be regarded as significant under the circumstances,

"**special category data**" means –

- (a) personal data revealing an individual's –
 - (i) racial or ethnic origin,
 - (ii) political opinion,
 - (iii) religious or philosophical belief, or

- (iv) trade union membership,

- (b) genetic data,

- (c) biometric data,

- (d) health data,

- (e) personal data concerning an individual's sex life or sexual orientation, or

- (f) criminal data,

"standard data protection clauses" means standard contractual clauses for data protection –

- (a) approved or adopted by the European Commission for the purposes of Article 28 of the GDPR, or

- (b) approved by the Authority for the purposes of this Law,

"the States" means –

- (a) in respect of Guernsey, Herm and Jethou, the States of Guernsey,

- (b) in respect of Alderney, the States of Alderney, and

(c) in respect of Sark, the Chief Pleas of Sark,

"statutory body" means any authority, board, commission or other body constituted by or under an enactment, other than a public committee,

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance,

"third party", in relation to any processing of personal data, means a person other than–

(a) the data subject, controller or processor, or

(b) a person who, under the direct authority of the controller or processor, is authorised to process the personal data,

"unauthorised jurisdiction" means any country, sector in a country or international organisation that is not an authorised jurisdiction,

"undertaking" includes –

(a) any establishment, and

(b) any public committee or other public authority,

"**vital interests**", in relation to any individual, includes the life, health or safety of the individual, and

"**voting member**", in relation to the Authority, means the Chairman or any other voting member appointed by resolution of the States of Deliberation under paragraph 1(2) of Schedule 6.

(2) A reference in this Law to a provision or Part of this Law includes a reference to an Ordinance or any regulations made under the provision or Part of this Law.

(3) An expression used in this Law that is also used in the GDPR has the same meaning as in the GDPR unless –

(a) the expression is otherwise defined in this Law, or

(b) the context requires otherwise.

(4) The Interpretation (Guernsey) Law, 1948^y applies to the interpretation of this Law throughout the Bailiwick.

(5) Any reference in this Law to an enactment or a Community provision is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

^y Ordres en Conseil Vol. XIII, p. 355.

Index of defined expressions.

112. Schedule 10 sets out an index of the expressions defined or given meaning by a provision of this Law.

Repeals.

113. The following enactments are repealed –

- (a) the Data Protection (Bailiwick of Guernsey) Law, 2001^z,
- (b) the Data Protection (Bailiwick of Guernsey) (Amendment) Ordinance, 2010^{aa},
- (c) the Data Protection (Bailiwick of Guernsey) (Amendment) Ordinance, 2011^{bb}, and
- (d) the Data Protection (Bailiwick of Guernsey) (Amendment) Ordinance, 2012^{cc},

Citation.

114. This Law may be cited as the Data Protection (Bailiwick of Guernsey) Law, 2017.

^z Order in Council No. V of 2002; as amended by Ordinance No. XXXIII of 2003; No. II of 2010; No. XXXIV of 2011; No. XLIX of 2012; No. XXIX of 2013; and No. IX of 2016.

^{aa} Ordinance No. II of 2010.

^{bb} Ordinance No. XXXIV of 2011.

^{cc} Ordinance No. XLIX of 2012.

Commencement.

115. (1) This Law shall come into force on a date appointed by the States of Deliberation by Ordinance.

(2) An Ordinance under subsection (1) may appoint different dates for different provisions of this Law and for different purposes.

SCHEDULE 1

APPLICATION TO THE CROWN, PUBLIC COMMITTEES AND THE POLICE

Section 2(4)

1. Application to the Crown and public committees.

- (1) This Law binds the Crown and is applicable to public committees.
- (2) Each public committee is to be regarded as a person separate from the other public committees.
- (3) An individual in the service of the States is to be regarded as a servant of the public committee to which the individual's responsibilities or duties relate.
- (4) Where any notice under this Law is served on a public committee by means of service on the chief officer, chief secretary, president or chairman, however designated, of the public committee, the chief officer, chief secretary, president or chairman, however designated, must ensure that the notice is complied with if the notice requires compliance.
- (5) A public committee is not liable to prosecution under this Law.

2. Application to the Police.

- (1) This Law applies to the Chief Officer of Police.
- (2) For the purposes of this Law –
 - (a) every member of the salaried police force of Guernsey,
 - (b) every member of the special constabulary of Guernsey whilst acting as such, and
 - (c) every special constable appointed by the Court of Alderney whilst acting as such,is to be regarded as a servant of the Chief Officer of Police.
- (3) In this paragraph, "**Chief Officer of Police**" means the chief officer of the salaried police force of Guernsey.

SCHEDULE 2

CONDITIONS FOR PROCESSING TO BE LAWFUL

Sections 7, 18(1), 21(6), 22(4)(c) and 106(2)

The following are conditions for processing to be lawful –

Part I

1. The data subject has requested or given consent to the processing of the personal data for the purpose for which it is processed.
2. The processing is necessary –
 - (a) for the conclusion or performance of a contract –
 - (i) to which the data subject is a party, or
 - (ii) made between the controller and a third party in the interest of the data subject, or
 - (b) to take steps at the request of the data subject prior to entering into such a contract.
3. The processing is necessary to protect the vital interests of the data subject or any other individual who is a third party.
4. The processing is necessary for the purposes of the legitimate interests of the controller or a third party, except where the processing is in the context of the exercise or performance by a public authority of a function or task described in paragraph 5.
5. The processing is necessary for the exercise or performance by a public authority of –
 - (a) a function that is of a public nature, or

- (b) a task carried out in the public interest.
6. The processing is necessary for the controller to exercise any right or power, or perform or comply with any duty, conferred or imposed on the controller by law, otherwise than by an enactment or an order or a judgment of a court or tribunal having the force of law in the Bailiwick.

Part II

7. The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.
8. The processing is necessary for the controller to exercise any right or power, or perform or comply with any duty, conferred or imposed on the controller by an enactment.
9. The processing is necessary in order to comply with an order or a judgment of a court or tribunal having the force of law in the Bailiwick.
10. (a) The processing is necessary for a health or social care purpose and is undertaken by –
- (i) a health professional, or
 - (ii) a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if the person were a health professional.
- (b) In subparagraph (a) –
- "health or social care purpose"** includes the purpose of –
- (i) preventative or occupational medicine,
 - (ii) the assessment of the working capacity of an employee or worker,

- (iii) medical diagnosis,
- (iv) the provision of medical, health or social care or treatment, or
- (v) the management of medical, health or social care systems and services.

11. (a) The processing –
- (i) is necessary for reasons of public health, for example –
 - (A) for protection against serious threats to public health, or
 - (B) to ensure high standards of quality and safety for health care, medicinal products or medical devices, and
 - (ii) is carried out with appropriate safeguards for the significant interests of data subjects.
- (b) In subparagraph (a)(i)(B) –
- "medical device"** means –
- (i) any medical device, within the meaning of Article 1(2)(a) of Council Directive 93/42/EEC^{dd} of 14 June 1993 concerning medical devices, or
 - (ii) any accessory, within the meaning of Article 1(2)(b) of that Council Directive, and

"medicinal product" has the meaning given by section 133 of the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008^{ee}.

12. The processing is necessary –
- (a) for the purpose of, or in connection with –

^{dd} O.J. L 169 of 12.7.1993, p. 1.

^{ee} Order in Council No. V of 2009; as amended by Ordinance No. XXIV of 2009; and No. XLI of 2013.

- (i) any legal proceedings (including prospective legal proceedings), or
 - (ii) the discharge of any functions of a court or tribunal acting in its judicial capacity,
 - (b) for the purpose of obtaining legal advice, or
 - (c) otherwise for the purposes of establishing, exercising or defending legal rights.
- 13.** The processing is necessary for –
- (a) the administration of justice, or
 - (b) the exercise of any function of the Crown, a Law Officer of the Crown, the States or a public committee.
- 14.** The processing –
- (a) is in the context of the legitimate activities of any person which –
 - (i) is not an individual,
 - (ii) is not established or conducted for profit, and
 - (iii) exists for political, philosophical, religious or trade-union purposes,
 - (b) is carried out with appropriate safeguards for the significant interests of data subjects,
 - (c) relates only to individuals who either are members of the body or association or have regular contact with it in connection with its purposes, and
 - (d) does not involve disclosure of the personal data to a third party without the consent of the data subject.
- 15.** The processing is necessary for a historical or scientific purpose.

16. This condition is satisfied if the condition in subparagraph (a) is satisfied, subject to subparagraphs (b) and (c) –

(a) The personal data processed is of a category specified in the left-hand column of the table below, and the processing is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between the groups of people specified in the right-hand column of that table in relation to each category of personal data, with a view to enabling such equality to be promoted or maintained:

Category of personal data	Groups of people (in relation to a category of personal data)
Personal data revealing racial or ethnic origin	People of different racial or ethnic origin
Personal data revealing religious or philosophical beliefs	People holding different religious or philosophical beliefs
Health data	People with different states of health
Personal data concerning an individual's sexual orientation	People of different sexual orientation

(b) Processing does not satisfy the condition in subparagraph (a) if it is carried out–

- (i) in order to make a decision, or facilitate or allow a decision to be made, with respect to a particular data subject, or
- (ii) in such a way that substantial damage is, or is likely to be, caused to any data subject.

(c) Processing does not satisfy the condition in subparagraph (a) if–

- (i) a data subject has given notice in writing to the controller requiring the controller not to process the personal data, and has not given notice in writing withdrawing that requirement,

- (ii) the notice gave the controller a reasonable period in which to stop processing such data, and
 - (iii) that period has ended.
17. The processing is –
- (a) authorised by regulations made by the Committee for this purpose and carried out in accordance with those regulations, or
 - (b) authorised or required by any other enactment and carried out in accordance with the enactment.

Part III

18. The data subject has given explicit consent to the processing of the personal data for the purpose for which it is processed.
19. The processing is necessary to protect the vital interests of the data subject or any other individual who is a third party, and –
- (a) the data subject is physically or legally incapable of giving consent, or
 - (b) the controller cannot reasonably be expected to obtain the explicit consent of the data subject.

SCHEDULE 3
INFORMATION TO BE GIVEN TO DATA SUBJECTS

Sections 12(2)(a), 13(1) and 15(1)(b)

1. The identity and contact details of the controller and, where applicable, any controller's representative.
2. The contact details of the data protection officer, where applicable.
3. Whether any of the personal data is special category data.
4. If any of the personal data has not been collected from the data subject by either of the controller or a processor acting on the controller's behalf –
 - (a) the source of the personal data, and
 - (b) if applicable, whether the personal data was obtained from a publicly available source.
5. The purposes and the legal basis of the processing.
6. Where the lawfulness of processing is based on the processing being necessary for the legitimate interests of the controller or a third party, the legitimate interests concerned.
7. The recipients or categories of recipients of the personal data, if any.

8. If the controller intends to transfer the personal data to a recipient in an authorised jurisdiction, other than a Member State of the European Union, a statement of which of the following applies to that authorised jurisdiction –
 - (a) an adequacy decision is in force in respect of the authorised jurisdiction, or
 - (b) the authorised jurisdiction is a designated jurisdiction.

9. If the controller intends to transfer the personal data to a recipient in an unauthorised jurisdiction, reference to the appropriate or suitable safeguards applying to the transfer and the means to obtain a copy of them or where they have been published or otherwise made available.

10. The period for which the personal data is expected to be stored, or if that is not possible, the criteria used to determine that period.

11. The data subject rights under sections 14 to 24.

12. Where the lawfulness of processing is based on the consent (explicit or otherwise) of the data subject, the existence of the right to withdraw consent at any time (without affecting the lawfulness of processing based on consent before its withdrawal).

13. The right to complain to the Authority under section 67, and the rights of appeal under sections 82 and 83.

14. Whether any decision would be made based on automated processing of the personal data, and in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

SCHEDULE 4

REGISTRATION OF BAILIWICK CONTROLLERS AND PROCESSORS

Sections 39 and 111(1)

1. Applications for registration.

- (1) Any person established in the Bailiwick may apply to the Authority for registration as a controller or processor.
- (2) An application –
 - (a) must be made in a form and manner required by the Authority or prescribed,
 - (b) must include the prescribed fee, and
 - (c) must include any information required by the Authority or prescribed.

2. Registration by the Authority.

Upon receipt of an application made in accordance with paragraph 1, the Authority must register the applicant as a controller or (as the case may be) processor.

3. Public register to be kept.

The Authority must –

- (a) maintain a register of controllers and processors in any form and manner it considers appropriate, and
- (b) publish any prescribed information on the register.

SCHEDULE 5

MATTERS TO BE SPECIFIED IN BINDING CORPORATE RULES

Section 58(c)

The following matters must to be specified in binding corporate rules in order for the Authority to approve those rules under section 58 for a group of undertakings or a group of enterprises engaged jointly in a business –

1. The structure and contact details of the group and each of its members.
2. The data transfers or set of transfers, including the categories of personal data, the category of processing and its purposes, the categories of data subjects affected and the identification of the unauthorised jurisdiction in question.
3. The legally binding nature of those rules, both internally and externally.
4. The application of the data protection principles, including the legal basis for processing (including processing of special category data) for the purposes of the data protection principle relating to lawfulness, fairness and transparency.
5. How the group members intend to comply with their duties under sections 31 and 41 and, in respect of onward transfers to bodies not bound by the binding corporate rules, section 55.
6. The data subject rights under sections 14 to 24, and how these rights may be exercised; the right to make a complaint under section 67; the rights of appeal under sections 82 and 83; the right to bring an action under section 79; and

how to obtain redress and, where appropriate, compensation for breach of the binding corporate rules.

7. The acceptance by the controller, processor or recipient of personal data of liability for any breaches of the binding corporate rules, subject to exemption from such liability only to the extent that the controller, processor or recipient concerned proves that it is not responsible for the event giving rise to the breach.
8. How the information on the binding corporate rules, in particular on the matters specified in paragraphs 4, 5, 6 and 7, is to be provided to the data subjects in addition to any other matters required to be notified to the data subject under this Law.
9. The tasks of –
 - (a) any data protection officer designated in relation to the group, or
 - (b) any other person in charge of monitoring compliance with the binding corporate rules within the group, as well as monitoring, training and complaint-handling.
10. The applicable complaint procedures.
11. The mechanisms within the group for verifying compliance with the binding corporate rules, including –
 - (a) data protection audits,
 - (b) mechanisms to ensure that corrective actions are taken where required to protect the rights of data subjects,

- (c) communicating the results of such audits or actions to an officer or other person mentioned in paragraph 9 and to the board of the controlling undertaking of the group, and
 - (d) making those results available to the Authority on request.

- 12. The mechanisms for reporting and recording changes to the rules and reporting those changes to the Authority.

- 13. The mechanism for cooperating with the Authority to ensure compliance by members of the group, including by making the results of audits or corrective actions mentioned in paragraph 11(a) or (b) available to the Authority on request.

- 14. The mechanisms for reporting to the Authority any duties imposed by law –
 - (a) to which a member of the group is subject in any unauthorised jurisdiction, and
 - (b) which are likely to have a substantial adverse effect on the safeguards for data protection rights provided by the binding corporate rules.

- 15. The appropriate data protection training to individuals having permanent or regular access to personal data.

SCHEDULE 6

THE DATA PROTECTION AUTHORITY

Sections 60(3) and 111(1)

1. Constitution of the Authority.

- (1) The Authority comprises –
 - (a) the Chairman,
 - (b) no fewer than four and no more than eight other voting members, with the exact number being determined by the Committee, and
 - (c) the Commissioner, as an *ex officio* and non-voting member.
- (2) Subject to paragraph 2(5), the Chairman and the other voting members must be appointed by resolution of the States of Deliberation from individuals nominated by the Committee.
- (3) In determining who to nominate for appointment, the Committee must have particular regard to the need to ensure that voting members of the Authority–
 - (a) have the qualifications, experience and skills necessary to exercise and perform the functions of a member, in particular relating to the protection of personal data,
 - (b) have a strong sense of integrity, and
 - (c) are able to maintain confidentiality.
- (4) Before nominating an individual for appointment, the Committee may require the individual to provide, and to authorise the Committee to obtain, any information and references that the Committee reasonably requires to ascertain that individual's suitability for appointment as a voting member.
- (5) Each voting member is to be appointed for a term of five years or any shorter period that the Committee thinks fit in a particular case.
- (6) Each voting member may be reappointed in accordance with this paragraph, but must not be appointed as a voting member for more than three terms in aggregate (whether consecutive or not).

- (7) An individual is ineligible to be a voting member if the individual –
- (a) is now, or has ever been in the preceding 12 months, a member of the States of Deliberation, the States of Alderney or the Chief Pleas of Sark,
 - (b) is a person employed, whether on a full-time or part-time basis, by the States,
 - (c) is otherwise under the direction and control of the States, or
 - (d) is engaged in any employment, occupation (whether gainful or not) or business, or receives any benefits, that is incompatible with the functions of a member of the Authority.

2. Removal or resignation of voting members.

- (1) The States of Deliberation may by Resolution remove a voting member from office before the expiration of the voting member's term of office only if the States of Deliberation is satisfied, based on a report and recommendation submitted by the Committee, that the voting member –
- (a) is guilty of serious misconduct,
 - (b) has been convicted of a criminal offence,
 - (c) is bankrupt,
 - (d) is incapacitated by physical or mental illness,
 - (e) is otherwise unable or unfit to perform the voting member's duties, or
 - (f) is ineligible to be a voting member under paragraph 1(7).
- (2) The Committee must not recommend a voting member to be removed from office on the ground specified in subparagraph (1)(a) unless a panel consisting of three or more individuals (none of whom is a member of the States of Deliberation, the Committee or the Authority) appointed by the Committee determines the voting member to be guilty of serious misconduct.

- (3) A panel convened under subparagraph (2) may determine and adopt its own procedures to determine whether or not the voting member is guilty of serious misconduct.
- (4) Any voting member may resign from office at any time by giving written notice to the Committee.
- (5) If the individual who is the Chairman resigns from the Chairman's office, but not from office as a voting member of the Authority –
 - (a) this in itself does not affect that individual's continuance in office as a voting member,
 - (b) the Authority must elect another voting member to act as Chairman for the remainder of that member's term of office as a voting member, and
 - (c) the Committee must notify the States of that election at the next available sitting of the States.

3. Emoluments and expenses of voting members.

Each voting member of the Authority must be paid the fees, allowances and other emoluments and expenses determined by the Committee in consultation with the Authority; the Committee must publish those fees, allowances and other emoluments and expenses.

4. Appointment of staff.

- (1) The Authority may appoint employees on terms and conditions it thinks fit for the exercise of its functions.
- (2) The Authority may establish and maintain such schemes or make such other arrangements as it thinks fit for the payment of pensions and other benefits in respect of its employees.
- (3) The Authority may take any steps it considers necessary and reasonable to protect and indemnify its current and former members and employees

against any costs, claims, liabilities and proceedings arising from or in consequence of anything done or omitted to be done in the discharge or purported discharge by them of their functions as members or (as the case may be) employees of the Authority.

- (4) This paragraph is subject to paragraph 5.

5. The Commissioner.

- (1) The Authority must appoint a Commissioner.
- (2) The Commissioner –
- (a) is the chief executive and an employee of the Authority,
 - (b) is responsible for managing the other employees of the Authority,
 - (c) is in charge of the day-to-day operations of the Authority, and
 - (d) has any other function conferred or imposed on the Commissioner by this Law or any other enactment.
- (3) Subject to subparagraphs (4) to (8), the Commissioner holds office subject to terms and conditions determined by the Authority, for example regarding salary, allowances and other emoluments, expenses, and resignation.
- (4) The Commissioner holds office for –
- (a) a term of five years, or
 - (b) any shorter term specified in the terms and conditions of the Commissioner's appointment.
- (5) The Commissioner may be reappointed by the Authority.
- (6) The Authority may remove the Commissioner from office before the expiration of the Commissioner's term of office only if the Authority is satisfied that the Commissioner –
- (a) is guilty of serious misconduct, based on a determination made by a panel convened by the Authority in consultation with the Committee and consisting of three or more individuals, none of whom is a member of the Authority or the Committee,

- (b) has been convicted of a criminal offence,
 - (c) is bankrupt,
 - (d) is incapacitated by physical or mental illness, or
 - (e) is otherwise unable or unfit to perform the Commissioner's duties.
- (7) A panel convened under subparagraph (6)(a) may determine and adopt its own procedures to determine whether or not the Commissioner is guilty of serious misconduct.
- (8) Except with the approval of the Authority, the Commissioner must not engage in any other employment, occupation (whether gainful or not) or business, or receive any benefits other than the salary, allowances and other emoluments and expenses awarded by the Authority.

6. Commissioner may discharge Authority's functions (other than a reserved function).

- (1) Subject to any policies, procedures and specific directions issued by the Authority, the Commissioner may exercise or perform, on behalf of the Authority and in its name, any function of the Authority under this Law other than a reserved function.
- (2) A function exercised or performed by the Commissioner under subparagraph (1) is deemed for all purposes to have been exercised or performed by the Authority.
- (3) Nothing in subparagraph (1) or (2) prevents the Authority from exercising or performing the function concerned.

7. Other resources.

The Authority may procure any accommodation, equipment, services or facilities it reasonably requires for the proper and effectual discharge of its functions.

8. Meetings.

- (1) The Authority must meet –
 - (a) at least once every two months, or
 - (b) less frequently if resolved by the Authority, but no fewer than four times a year.
- (2) If the Authority resolves to meet less frequently than once every two months, it must record the reason in its resolution.
- (3) The person who presides at meetings is –
 - (a) the Chairman, if the Chairman is present, or
 - (b) if the Chairman is not present, the person elected to chair the meeting by, and from among, the other voting members present.
- (4) At a meeting –
 - (a) a quorum is constituted by the nearest whole number of voting members above one half of the number of voting members for the time being in office,
 - (b) decisions are made by a majority vote,
 - (c) the Commissioner has no vote, but may participate in the Authority's proceedings,
 - (d) each voting member other than the person presiding has one vote, and
 - (e) the person presiding has no original vote, but in the event of equality in the votes of the other voting members present, the person presiding must exercise a casting vote.

9. Disclosure of interest.

- (1) A voting member who has any direct or indirect personal interest in the outcome of the deliberations of the Authority in relation to any matter must disclose the nature of the interest at a meeting of the Authority and the disclosure must be recorded in the minutes of the Authority.

- (2) For the purposes of this paragraph, a general notice given by a voting member to the effect that the voting member is a member, director or other office-holder, of any specified legal entity and is to be regarded as interested in any matter concerning that legal entity is a sufficient disclosure in relation to any such matter.
- (3) A voting member need not attend in person at a meeting of the Authority in order to make any disclosure required under this paragraph if the voting member makes disclosure by a notice in writing delivered to the Chairman and that notice is brought to the attention of every meeting of the Authority at which deliberations of the kind mentioned in subparagraph (1) are to take place and before those deliberations commence.

10. Transaction of business without meeting.

The Authority may, if it thinks fit, transact any business by the circulation of papers to all members, and a resolution in writing approved in writing by a majority of its voting members is as valid and effectual as if passed at a meeting by the votes of the members approving the resolution.

11. Records and minutes.

The Authority must keep proper minutes of its proceedings, including records of any business transacted as permitted by paragraph 10.

12. Financial and accounting provisions.

- (1) All expenditures of the Authority, including the fees, allowances and other emoluments and expenses of its members, must be paid from –
 - (a) any levies, fees, charges or other monies (other than administrative fines) paid to or received by the Authority under this Law, and
 - (b) where those monies are insufficient or unlikely to be sufficient to enable the Authority to properly and effectually discharge its

functions under this Law, an amount allocated by the States of Guernsey from its general revenue account (including from the proceeds of administrative fines).

- (2) Where subparagraph (1)(b) requires the States of Guernsey to allocate an amount from its general revenue account to the Authority, the amount so allocated must be sufficient to enable the Authority to properly and effectually discharge its functions under this Law.
- (3) The Authority must not borrow any money except with the prior consent of the States of Guernsey Policy & Resources Committee.
- (4) The Authority must maintain proper financial accounts and proper records in relation to those accounts.
- (5) The financial accounts of the Authority must be audited annually by auditors approved by the States of Guernsey Policy & Resources Committee.
- (6) As soon as practicable after the end of each calendar year, the Authority must submit to the States of Guernsey Committee for Home Affairs a report containing –
 - (a) a statement of its financial accounts (giving a true and fair view of the state of affairs of the Authority),
 - (b) the auditor's report following the audit under subparagraph (5), and
 - (c) an annual report in accordance with paragraph 13.
- (7) The States of Guernsey Committee for Home Affairs must in turn submit that report to the States of Deliberation.

13. Annual report.

An annual report of the Authority must include –

- (a) a summary of the Authority's activities during the calendar year to which the report relates, including –
 - (i) the number of data protection complaints received,

- (ii) the number of investigations and inquiries conducted by the Authority,
 - (iii) the number of investigations and inquiries resulting in a determination that an operative provision has been or is likely to be breached,
 - (iv) an anonymised summary of any sanctions imposed by the Authority under section 73, and
 - (v) where practicable and useful to promote the awareness of controllers, processors and the public, anonymised examples of data protection complaints and the outcome of the Authority's investigations into those, and
- (b) the Authority's observations on whether the object of this Law is being attained, and if not, any amendment to this Law required to be made or any other actions required to be taken in order to better meet that object, and
 - (c) any other information required by the Committee or by Resolution of the States of Deliberation.

14. Delegation of functions by the Authority.

- (1) The Authority may in writing delegate –
 - (a) any of its functions, other than a reserved function, to any employee of the Authority, and
 - (b) any of its functions to a committee comprising any number of voting members specified by the Authority.
- (2) A function delegated under subparagraph (1) may be exercised or performed by the employee or committee concerned in accordance with the delegation and, when so exercised or performed, is deemed to have been exercised or performed by the Authority.
- (3) A delegation under subparagraph (1) –

- (a) does not prevent the Authority from exercising or performing the delegated function, and
 - (b) may be varied or revoked at will by the Authority.
- (4) Nothing in this paragraph authorises –
- (a) the Authority to delegate the power of delegation conferred by subparagraph (1) to any person, or
 - (b) an employee or committee to whom a function is delegated under subparagraph (1) to sub-delegate the function to any person.
- (5) For the avoidance of doubt, section 4 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^{ff} applies neither –
- (a) to the Authority and its functions under this Law, nor
 - (b) to the Commissioner and the Commissioner's functions under this Law.

15. Delegation by the Commissioner.

- (1) The Commissioner may in writing delegate to any other employee of the Authority any of the Commissioner's functions under this Law, including the Commissioner's power under paragraph 6 to exercise or perform, on behalf of the Authority and in its name, any function of the Authority under this Law other than a reserved function.
- (2) A function delegated by the Commissioner under subparagraph (1) may be exercised or performed by the employee concerned in accordance with the delegation and, when so exercised or performed, is deemed to have been exercised or performed by the Commissioner.
- (3) A delegation under subparagraph (1) –
- (a) does not prevent the Commissioner from exercising or performing the delegated function, and

^{ff} Ordres en Conseil Vol. XXXIII, p. 478.

- (b) may be varied or revoked at will by the Commissioner.
- (4) Nothing in this paragraph authorises –
 - (a) the Commissioner to delegate the power of delegation conferred by subparagraph (1) to any person, or
 - (b) an employee to whom a function is delegated under subparagraph (1) to sub-delegate the function to any person.

16. Residual power to regulate procedure.

Subject to the provisions of this Schedule, the Authority may regulate its own procedure.

17. Validity of proceedings.

The validity of any proceedings of the Authority is unaffected by –

- (a) any vacancy in its membership,
- (b) any defect in the appointment or election of any member,
- (c) any ineligibility of an individual to be a voting member, or
- (d) any lack of qualification of an individual to act as a member.

18. Authentication of the seal.

The application of the common seal of the Authority is to be authenticated by the signature of the Chairman, the Commissioner or another person authorised for this purpose.

19. Presumption of authenticity.

Unless the contrary is shown –

- (a) any document purporting to be issued by the Authority or the Commissioner must be regarded as issued by the Authority or (as the case may be) Commissioner, and

- (b) any document purporting to be signed by or on behalf of the Authority or the Commissioner must be regarded as signed by or on behalf of the Authority or (as the case may be) Commissioner.

20. **Interpretation.**

In this Schedule, "**reserved function**" means –

- (a) the issuing of a public statement under section 64,
- (b) the making of an order to pay an administrative fine under sections 73(2)(g) and 74,
- (c) the making of the annual report required by paragraph 13, or
- (d) any other function specified by the Authority by written notice given to the Commissioner.

SCHEDULE 7

GENERAL POWERS OF THE AUTHORITY

Sections 37(3)(b), 70, 88(3) and 111(1)

1. Power to require information.

- (1) The Authority may by giving written notice to any controller or processor require the person concerned to give the Authority any information the Authority considers necessary for a purpose specified in subparagraph (2).
- (2) The purposes referred to in subparagraph (1) are –
 - (a) to determine whether or not to investigate a complaint, conduct an inquiry, or exercise or perform any other function under this Law, in any particular circumstances,
 - (b) for the conduct of an investigation or inquiry,
 - (c) to make any determination under this Law,
 - (d) for the exercise or performance of any other function of the Authority under this Law.
- (3) An information notice must include –
 - (a) a statement of the purpose in subparagraph (2) for which the notice is issued,
 - (b) a description of the information required by the Authority,
 - (c) a statement of the Authority's reasons for requiring that information in relation to the purpose for which the notice is issued,
 - (d) a statement of the form and manner in which, and the period within which ("**compliance period**"), the person concerned must give that information to the Authority, and
 - (e) the issue date.
- (4) A compliance period must not be shorter than 28 days beginning the day after the issue date.

- (5) Despite subparagraph (4), the Authority may specify a compliance period shorter than 28 days but not shorter than 7 days beginning the day after the issue date, but in this case the Authority must include in the notice a statement of its reasons for specifying that shorter period.
- (6) The Authority may withdraw or amend an information notice by giving written notice to the person concerned.
- (7) Nothing in this paragraph requires the person concerned to give the Authority any privileged items.
- (8) In this paragraph –
"information notice" means the notice given under subparagraph (1), and
"issue date" means the date on which the information notice was issued.

2. Issue of warrants.

- (1) If the Bailiff is satisfied by information on oath supplied by an authorised officer that there are reasonable grounds for suspecting that –
 - (a) either –
 - (i) a controller or processor is breaching, has breached or is likely to breach an operative provision, or
 - (ii) an offence under this Law is being or was committed, and
 - (b) there is material on those premises (other than privileged items) which is likely to be of substantial value (whether by itself or together with other material) to establishing the breach, likely breach or offence in question,the Bailiff may, subject to subparagraph (2), issue a warrant under this paragraph.
- (2) The Bailiff must not issue a warrant under subparagraph (1) unless the Bailiff is satisfied –

- (a) that an authorised officer has given seven days' notice in writing to the occupier of the premises in question demanding access to the premises, and
 - (b) that either –
 - (i) access was demanded at a reasonable hour and was unreasonably refused, or
 - (ii) although entry to the premises was granted, the occupier unreasonably refused to comply with a request made by an authorised officer –
 - (a) to permit the authorised officer to do anything which the officer could have done under paragraph 4(1)(a) to (k) if that officer were executing a warrant, or
 - (b) for the occupier to do anything which the officer could have required the occupier to do under paragraph 4(1)(a) to (k) if that officer were executing a warrant, and
 - (c) that the occupier, has, after the refusal, been notified by an authorised officer of the application for the warrant and has had an opportunity of being heard by the Bailiff on the question whether or not it should be issued.
- (3) Subparagraph (2) does not apply if the Bailiff is satisfied that –
- (a) the case is one of urgency,
 - (b) compliance with that subparagraph would defeat the object of the entry, or
 - (c) compliance with that subparagraph is impracticable, for example if the premises are unoccupied or, despite reasonable efforts, the occupier cannot be identified or contacted.
- (4) A warrant must –
- (a) state the name of the authorised officer who applied for it, the date on which it is issued, and the premises to be searched,

- (b) state that it is issued under paragraph 2 of this Schedule, and
 - (c) so far as practicable, identify the things to be sought.
- (5) The court must ensure that two copies are made of each warrant, and that those copies are clearly certified as copies.

3. Procedure for obtaining a warrant.

- (1) An application for a warrant –
- (a) must be made and supported by information in writing, and
 - (b) must state –
 - (i) that the warrant would be issued under paragraph 2 of this Schedule,
 - (ii) the ground on which the authorised officer makes the application,
 - (iii) the premises which it is desired to enter and search, and
 - (iv) so far as is practicable, the things to be sought.
- (2) The authorised officer making the application must answer on oath any question that the officer is asked by the Bailiff.

4. Execution of warrants.

- (1) An authorised officer executing a warrant issued under paragraph 2 may at any time within one month of the date of the warrant enter the premises specified in the warrant and exercise all or any of the following powers –
- (a) search those premises and examine, test, open, inspect or operate anything at those premises,
 - (b) photograph, film or otherwise record anything at those premises,
 - (c) require any person at those premises to produce any processing equipment,

- (d) require any person at those premises to permit the authorised officer to observe the processing of personal data that takes place at those premises,
- (e) require any person at those premises to give the authorised officer any information, which may include (without limiting the generality of this subparagraph) –
 - (i) information relating to those premises,
 - (ii) information relating to the ownership, identity, origin or any other matter relating to any processing equipment,
 - (iii) information relating to the processing of personal data, or
 - (iv) the name and address of any controller, processor or other person involved in the processing of personal data,
- (f) take copies of or extracts from any information (including, in the case of information in a non-legible form, a copy of or an extract from that information in a legible form),
- (g) if anything at the premises cannot be conveniently removed, secure it against interference,
- (h) seize any equipment, device, information or other thing, which is at the premises and detain it for as long as the authorised officer considers necessary,
- (i) inspect any information (in whatever form they are held) relating to the business of a controller or processor,
- (j) where any such information is stored in electronic form –
 - (i) inspect and check the operation of any equipment, device or other thing which is or has been in use in connection with that information,
 - (ii) require any person having charge of, or otherwise concerned with the operation of, the equipment, device, or other thing to provide the authorised officer any facilities or assistance that

the officer considers necessary or expedient to obtain access to or make legible any information kept in or by that equipment, device or other thing, or

- (iii) require that information to be produced in a form in which that information may be taken away, and
 - (k) require any person at the premises to provide the authorised officer any facilities or assistance that the officer considers necessary or expedient in relation to the exercise of any of the officer's powers under items (a) to (j) of this subparagraph.
- (2) Nothing in subparagraph (1)(a) to (k) applies to privileged items.
 - (3) An authorised officer executing a warrant –
 - (a) must be accompanied by a police officer,
 - (b) must do so at a reasonable hour, and
 - (c) may use reasonable force if necessary.
 - (4) The authorised officer need not comply with subparagraph (3)(b) if it appears to that officer that compliance with the provision would defeat the object of the entry.

5. Safeguards for warranted entry, search, etc.

- (1) An authorised officer executing a warrant to enter any premises must, if the owner or occupier of those premises is present –
 - (a) identify himself or herself to the owner or occupier, and
 - (b) produce the warrant to the owner or occupier.
- (2) If the owner or occupier is not present at the time the authorised officer leaves those premises, the officer –
 - (a) must leave the premises as effectively secured against trespassers as the officer found them, and
 - (b) must leave in a prominent place on those premises written notice that those premises have been entered and searched under paragraph 4 of

this Schedule, including the officer's name and an address at which that officer may be contacted and a copy of the warrant.

- (3) An authorised officer who seizes anything from the premises must leave with the owner or occupier of the premises (if present) or leave on the premises (if the owner or occupier is not present), a statement stating –
 - (a) particulars of what has been seized, and
 - (b) that the officer has seized it.

6. Endorsement, return and inspection of warrants.

- (1) An authorised officer executing a warrant must, after executing it, make an endorsement on it stating –
 - (a) whether the things sought were found, and
 - (b) whether any things, other than the things which were sought, were seized.
- (2) A warrant which has been executed, or which has not been executed within the time allowed for its execution, must be returned to the court.
- (3) The court must retain a returned warrant for 12 months beginning on the date of its return.
- (4) If, during the period for which a warrant is to be retained under subparagraph (3), the owner or occupier of the premises to which it relates asks to inspect it, the court must allow that owner or occupier to do so.

7. Persons exercising powers may bring other persons and things.

- (1) An authorised officer entering any premises under paragraph 4 may bring onto the premises any person, equipment, device or other thing to assist the officer in the exercise of the officer's powers under any provision of this Schedule.
- (2) For the avoidance of doubt, a person brought onto the premises by an authorised officer under subparagraph (1) may exercise any power conferred

on an authorised officer by any provision of this Schedule under the direction and supervision of an authorised officer.

8. Detention, storage and disposal of seized property.

- (1) Seized property may be stored by the Authority in any manner and place it sees fit until disposed of in accordance with this paragraph.
- (2) Any person who appears to the Authority to be the owner of the property must be given reasonable access to that property.
- (3) Any seized property must be returned to its owner within 40 days of its seizure, except –
 - (a) where the owner of the property has consented to the continued detention or storage, or to the sale, destruction or other disposal, of the property,
 - (b) where an authorised officer believes on reasonable grounds that the property is required –
 - (i) for the conduct of any investigation or inquiry, or
 - (ii) as evidence in any proceedings for an offence under this Law,or
 - (c) where a competent court has ordered otherwise.
- (4) Unless a competent court orders otherwise, any seized property retained under subparagraph (3)(b) must be returned to its owner as soon as practicable after the latest of the following –
 - (a) the completion of the investigation, inquiry or other proceedings mentioned in that subparagraph,
 - (b) the completion of any other proceedings (including appeals) arising from those proceedings, and
 - (c) the expiry of any period for appeal arising from those proceedings.

9. Power to conduct or require data protection audits

- (1) This paragraph applies where the Authority believes on reasonable grounds that a controller or processor –
- (a) has failed to comply with a requirement made by the Authority or an authorised officer under any provision of this Schedule, or
 - (b) has otherwise failed to cooperate with the Authority in the exercise or performance of any of the Authority's functions under this Law.
- (2) Where this paragraph applies, the Authority may –
- (a) conduct a data protection audit of any part of the operations of the controller or processor, or
 - (b) require the controller or processor to appoint a person approved by the Authority to –
 - (i) conduct a data protection audit of any part of the operations of the controller or processor, at the expense of the controller or processor, and
 - (ii) report the findings of the audit to the Authority, at the expense of the controller or processor.
- (3) The Authority must specify the terms of reference of any audit to be conducted or required under subparagraph (2).

10. Interpretation of this Schedule.

In this Schedule –

"**the Bailiff**" means –

- (a) in relation to a warrant or an application for a warrant to be executed in Alderney, the Chairman of the Court of Alderney or, if the Chairman is unavailable, a Jurat of the Court of Alderney,
- (b) in relation to a warrant or an application for a warrant to be executed in Sark, the Seneschal, and

- (c) in any other case, the Bailiff, Deputy Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué,

"the court", in relation to a warrant issued by –

- (a) the Chairman of the Court of Alderney or a Jurat of the Court of Alderney, means the Court of Alderney,
- (b) the Seneschal, means the Court of the Seneschal, and
- (c) the Bailiff, Deputy Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué, means the Royal Court,

"information", for the avoidance of doubt, includes any personal data processed by a processor or in the context of a controller, and

"seized property" means any property seized or detained by an authorised officer in the exercise of a power conferred by this schedule.

SCHEDULE 8
GENERAL EXCEPTIONS AND EXEMPTIONS

Section 96

Part I

Exemptions from Part III of this Law based on nature of personal data

1. Confidential references given by the controller.

A reference given by the controller is exempt from a provision of Part III if given or proposed to be given in confidence for the purpose of –

- (a) the education, training or employment, or prospective education, training or employment, of the data subject,
- (b) the appointment, or prospective appointment, of the data subject to any office, or
- (c) the provision, or prospective provision, by the data subject of any service.

2. Judicial appointments and honours.

Personal data is exempt from a provision of Part III if processed solely for the purpose of –

- (a) assessing any person's suitability for judicial office or the office of Queen' s Counsel, or
- (b) the conferring by the Crown of any honour or dignity.

3. Examination data.

Personal data is exempt from a provision of Part III if recorded by any candidate during an examination.

4. **Marking data.**

- (1) This paragraph applies where a request under Part III of this Law is made for or in relation to marking data.
- (2) In subparagraph (1), "**marking data**" means marks or other information processed in the context of the controller –
- (a) for the purpose of determining the examination results of a candidate,
 - (b) for the purpose of enabling such a determination, or
 - (c) in consequence of such a determination.
- (3) Where this paragraph applies, in the application of section 27 to the request, section 27(5) is substituted with the following subsection –

"(5) In this section –

"the designated period", in relation to a request, means –

- (a) if the relevant day falls on or after the publication day, one month following the relevant day, but
- (b) if the relevant day falls before the publication day, the period ending on the earlier of the following dates –
 - (i) the date that is five months following the relevant day, or
 - (ii) the date that is two months following the publication day,

"the publication day", in relation to any examination and examination candidate, means the day on which the results of the examination are first published or (if not published) when they are first made available or communicated to the candidate concerned,

"the relevant day", in relation to a request, means the latest of the following days –

- (a) the day on which the controller receives the request,

- (b) the day on which the controller receives any information necessary to confirm the identity of the requestor, and
- (c) the day on which any fee or charge payable under this Law in respect of any information or action requested is paid to the controller."

5. **Privileged items.**

Privileged items are exempt from a provision of Part III.

Part II

Exemptions from designated provisions on grounds of prejudice

6. **Armed forces.**

Personal data is exempt from a designated provision to the extent that the application of the provision to the data would be likely to prejudice the combat effectiveness of any of the armed forces of the Crown.

7. **Management forecasting or planning.**

- (1) This paragraph applies to personal data processed for the purposes of management forecasting or management planning to assist the controller in the conduct of any business or other activity.
- (2) Personal data to which this paragraph applies is exempt from a designated provision to the extent that the application of the provision to the data would be likely to prejudice the conduct of the business or other activity concerned.

8. **Financial service data.**

- (1) Financial service data is exempt from a designated provision to the extent that either Condition A or Condition B is satisfied.

- (2) Condition A is that –
- (a) the application of the provision to the data would be likely to affect the price of any instrument, or
 - (b) the controller reasonably believes that to be the case.
- (3) Condition B is that -
- (a) the relevant person reasonably believes that the application of the provision to the personal data in question could affect a decision of any person –
 - (i) whether to deal in, subscribe for or issue any instrument, or
 - (ii) to act (or not to act) in a way likely to have an effect on a business activity (such as an effect on the industrial strategy of a person, the capital structure of an undertaking or the legal or beneficial ownership of a business or asset), and
 - (b) the application of the provision to that personal data would be likely to prejudice –
 - (i) the orderly functioning of financial markets or the efficient allocation of capital within the economy, or
 - (ii) any other important financial or economic interest of the Bailiwick.
- (4) In this paragraph –
- "corporate finance service"** means a service consisting of –
- (a) underwriting in respect of issues of, or the placing of issues of, any instrument,
 - (b) services relating to such underwriting, or
 - (c) advice to undertakings on capital structure, industrial strategy and related matters or advice or service relating to mergers or the purchase of undertakings,

"**financial service data**" means personal data that is processed for the purpose of, or in connection with, a corporate finance service provided by a relevant person,

"**instrument**" means any instrument listed in section C of Annex I to Directive 2004/39/EC^{gg} of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, and a reference to "**any instrument**" includes a reference to an instrument not yet in existence but which is to be or may be created,

"**price**" includes value,

"**relevant person**" means –

- (a) any person who holds a licence to carry on controlled investment business under Part I of the Protection of Investors (Bailiwick of Guernsey) Law, 1987^{hh} or is an exempted person under Part IV of that Law,
- (b) any person who, by reason of a permission under Part 4A of the Financial Services and Markets Act 2000ⁱⁱ ("**that Act**"), is able to carry on a corporate finance service without contravening the general prohibition within the meaning of section 19 of that Act ("**that general prohibition**"),
- (c) an EEA firm of the kind mentioned in paragraph 5(a) or (b) of Schedule 3 to that Act which has qualified for authorisation

^{gg} O.J. L 145 of 30.4.2004, p. 1.

^{hh} Ordres en Conseil Vol. XXX, p. 281; as amended by Ordres en Conseil Vol. XXX, p. 243; Vol. XXXV(1), p. 271; Vol. XXXVI, p. 264; Vol. XXXVII, p. 24; Order in Council No. XVII of 2002; Nos. XV and XXXII of 2003; No. XVIII of 2008; Nos. XIII and XX of 2010; Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Tome XXVIII, p. 87; Ordinance No. XXXIII of 2003; No. XXXI of 2008; No. VII of 2009; Nos. XII, XX and XXXIX of 2015; Nos. II, IX and XXIX of 2016; the Transfer of Funds (Guernsey) Ordinance, 2017; Alderney Ordinance No. III of 2017; Sark Ordinance No. X of 2017; G.S.I. No. 83 of 2010; and G.S.I. No. 50 of 2017.

ⁱⁱ An Act of Parliament (Chapter 8 of 2000).

under paragraph 12 of that schedule, and may lawfully carry on a corporate finance service,

- (d) a person who is exempt from that general prohibition in respect of any corporate finance service—
 - (i) as a result of an exemption order made under section 38(1) of that Act, or
 - (ii) by reason of section 39(1) of that Act (appointed representatives),
- (e) any person, not falling within paragraph (b), (c) or (d) who may lawfully carry on a corporate finance service in the United Kingdom,
- (f) any person who, in the course of employment, provides to their employer a service falling within paragraph (b) or (c) of the definition of “**corporate finance service**”, or
- (g) any partner who provides to other partners in the partnership a service falling within paragraph (b) or (c) of the definition of “**corporate finance service**”.

9. Negotiations.

- (1) A negotiation record is exempt from a designated provision to the extent that the application of the provision to the record would be likely to prejudice those negotiations.
- (2) In subparagraph (1), “**negotiation record**” means a record of the intentions of the controller in relation to any negotiations with the data subject.

10. Self-incrimination.

- (1) Personal data is exempt from a designated provision to the extent that the application of the provision to the data would be likely to expose the

controller to proceedings for an offence by revealing evidence of the commission of the offence.

- (2) In subparagraph (1), "**offence**" excludes –
 - (a) an offence under this Law,
 - (b) perjury, or
 - (c) perverting the course of justice.

11. Judicial independence and judicial proceedings.

Personal data is exempt from a designated provision to the extent that the application of the provision to the data would be likely to prejudice judicial independence or the conduct of judicial proceedings.

12. Public information.

- (1) Public information is exempt from a designated provision to the extent that the application of the provision to the information would be likely to prejudice the purpose of requiring that information to be published.
- (2) In subparagraph (1), "**public information**" includes –
 - (a) information which the controller is required to publish by law, and
 - (b) information held on a public register.

13. Historical or scientific information.

Personal data processed for a historical or scientific purpose is exempt from a designated provision to the extent that the application of the provision to the data would be likely to prejudice the historical or scientific purpose for which that data is processed.

14. Tax and crime information.

- (1) Tax information and crime information is exempt from a designated provision to the extent that the application of the provision to the information would be likely to prejudice the purpose for which that information is processed.
- (2) In this paragraph,
"crime information" means personal data processed for a law enforcement purpose, and
"tax information" –
- (a) means personal data processed for the purpose of the assessment or collection of any tax, duty, or other imposition of a similar nature, including any interest or penalty required to be paid as a result of late payment or non-payment of such a tax, duty or other imposition, and
 - (b) for the avoidance of doubt, includes a classification applied to the data subject as part of a system of risk assessment which is operated by a public authority for that purpose.

15. Protective functions.

- (1) Personal data processed by any person for the exercise or performance of any protective function is exempt from a designated provision to the extent to which the application of the provision to the data would be likely to prejudice the proper discharge of that function.
- (2) In subparagraph (1), "protective function" means any function conferred or imposed by law on the person for any of these purposes –
- (a) to protect the public or any section of it against –
 - (i) dishonesty, malpractice or other seriously improper conduct,
 - (ii) unfitness or incompetence,

- (iii) the conduct of a person against whom a declaration of insolvency has been or is made, or whose affairs have been, or are, in a state of désastre,
- (iv) misconduct or mismanagement in the administration of any body or association,
- (v) failure in services provided by any person,
- (b) to protect the property of non-profit organisations or charities from loss or misapplication,
- (c) to recover the property of non-profit organisations or charities,
- (d) to secure the health, safety and welfare of persons at work,
- (e) to protect persons other than persons at work against any risk to their health or safety arising out of or in connection with the actions of persons at work, or
- (f) to protect the reputation and standing of the Bailiwick.

16. Regulatory purposes.

(1) Personal data processed for a regulatory purpose is exempt from a designated provision to the extent to which the application of the provision to the data would be likely to prejudice the regulatory purpose.

(2) In this paragraph –

"**administrative offence**" means any offence (which may include a disciplinary offence) punishable by any measures under and in accordance with any enactment, other than by way of criminal proceedings, and

"**regulatory purpose**" means –

- (a) prevention, investigation, detection, determination or punishment of an administrative offence,
- (b) carrying out the measures imposed as punishment of an administrative offence, or

- (c) determination by a public authority of an application for a registration, licence, approval or any other kind of authorisation or consent, in accordance with an enactment.

Part III

Wider Exemptions in the Public Interest

17. Journalism, art, literature and academia.

- (1) Personal data processed only for the purpose of journalism or an artistic, literary or academic purpose, is exempt from a provision of Part II, III, IV, VII, IX, X, XI or XII or section 43 of this Law to the extent that –
 - (a) the processing is undertaken with a view to the publication by any person of any journalistic, artistic, literary or academic material,
 - (b) the application of the provision to the personal data would be likely to prejudice the purpose concerned in connection with the publication of that material, and
 - (c) having particular regard to the importance of freedom of expression and information, the public interest in the publication of that material outweighs the significant interests of the data subject.
- (2) For the avoidance of doubt, no power conferred by a provision of Part XI or XII of this Law may be exercised in relation to personal data which by virtue of subparagraph (1) is exempt from the provision concerned.
- (3) The States of Deliberation may by Ordinance make such further provision as they consider necessary or expedient as to the balancing of the rights of data subjects and the public interest in freedom of expression and information in relation to the processing of personal data for a purpose mentioned in subparagraph (1).
- (4) In subparagraph (1), "**freedom of expression and information**" means the right protected under article 10 of the European Convention on Human

Rights and Fundamental Freedoms as incorporated in the Human Rights (Bailiwick of Guernsey) Law, 2000.

18. Public security, etc.

- (1) Personal data is exempt from any provision of Parts II to XII or XV of this Law to the extent that the application of the provision ("**exemptable provision**") to the data would be likely to prejudice public security or the security of the British Islands.
- (2) Subject to subparagraph (4), a certificate signed by Her Majesty's Procureur certifying that exemption from one or more exemptable provisions specified in the certificate is or at any time was required for the purposes of subparagraph (1) in respect of any personal data is conclusive evidence of that fact.
- (3) A certificate under subparagraph (2) –
 - (a) may identify the personal data to which it applies by means of a general description, and
 - (b) may be expressed to have prospective effect.
- (4) Any person directly affected by the issuing of a certificate under subparagraph (2) may appeal to the Royal Court against the certificate.
- (5) If on an appeal under subparagraph (4), the Royal Court finds that, applying the principles applied by the court on an application for judicial review, Her Majesty's Procureur did not have reasonable grounds for issuing the certificate, the court may –
 - (a) allow the appeal, and
 - (b) quash the certificate.
- (6) Where in any proceedings under this Law it is claimed by a controller that a certificate under subparagraph (2) which identifies the personal data to which it applies by means of a general description applies to any personal

- data, any other party to the proceedings may appeal to the Royal Court on the ground that the certificate does not apply to the personal data in question.
- (7) But, subject to any determination under subparagraph (8), the certificate is to be conclusively presumed so to apply.
- (8) On an appeal under subparagraph (6), the Royal Court may determine that the certificate does not so apply.
- (9) A document purporting to be a certificate under subparagraph (2) must be –
- (a) received in evidence, and
 - (b) deemed to be such a certificate unless the contrary is proved.
- (10) A document which purports to be certified by or on behalf of Her Majesty's Procureur as a true copy of a certificate issued by Her Majesty's Procureur under subparagraph (2) must be regarded in any legal proceedings as evidence of the certificate.
- (11) For the avoidance of doubt, no power conferred by a provision of Part XI or XII of this Law may be exercised in relation to personal data which by virtue of this paragraph is exempt from the provision concerned.

19. Committee may make further exceptions and exemptions.

The Committee may by regulations –

- (a) provide for modifications to, and further exceptions to or exemptions from, any designated provision, and
- (b) amend this Schedule for the purpose specified in paragraph (a).

Part IV

Interpretation of this Schedule

20. Interpretation.

In this Schedule –

"a provision of Part III" means –

- (a) any provision of Part III of this Law, and

- (b) any provision of section 6 or any other section of this Law so far as the provision corresponds to a right or duty in Part III of this Law,

"designated provision" means –

- (a) any provision of Part III of this Law,
- (b) section 43, and
- (c) any other provision of this Law so far as the provision corresponds to a right or duty in Part III of this Law or in section 43, and

"examination" includes any process for determining the knowledge, intelligence, skill or ability of a candidate by reference to the candidate's performance in any test, work or other activity, for any academic, professional or other purpose.

SCHEDULE 9

EXPRESSIONS WITH SPECIAL MEANINGS

Sections 110 and 111(1)

1. Identifiable individual.

An individual is identifiable from any information where the individual can be directly or indirectly identified from the information, including –

- (a) by reference to a name or an identifier,
- (b) by reference to one or more factors specific to the person's physical, physiological, genetic, mental, economic, cultural or social identity,
- (c) where, despite pseudonymisation, that information is capable of being attributed to that individual by the use of additional information, or
- (d) by any other means reasonably likely to be used, taking into account objective factors such as technological factors and the cost and amount of time required for identification in the light of the available technology at the time of processing.

2. Processing in the context of a controller or processor.

Personal data is processed in the context of a controller or processor if the personal data is processed –

- (a) by or on behalf of the controller or processor, or
- (b) otherwise in the course of or in connection with any activity of the controller or processor.

3. Necessary for a particular purpose or aim.

Whether or not the processing of personal data is necessary for any particular purpose or aim must be determined having regard to –

- (a) whether or not processing of that personal data in the particular circumstances would be proportionate to the purpose or aim, having regard to the proportionality factors, and
- (b) whether or not it is practicable in all the circumstances to achieve that purpose or aim without so processing the personal data.

4. Proportionality factors.

- (1) The proportionality factors are –
 - (a) the nature of the personal data, including whether it is special category data,
 - (b) the data subject, including whether the data subject is a child,
 - (c) the context in which the personal data has been collected or otherwise processed, and in particular the relationship between the data subject and the controller,
 - (d) the reasonable expectations of the data subject in relation to the processing of that personal data,
 - (e) the possible consequences of the processing for data subjects,
 - (f) the interests at stake, and in particular any significant interests of the data subject or any other individual who is a third party,
 - (g) the existence of appropriate safeguards for the protection of the personal data or the protection of significant interests of data subjects,
 - (h) where disclosure of the personal data is or may be involved, the entities to which, and the purposes for which, the personal data is or may be disclosed,
 - (i) where disclosure of the personal data without consent of the data subject is or may be involved, whether the controller owes the data subject a duty of confidentiality, and
 - (j) where storage of the personal data is or may be involved, the period for which the personal data is or may be stored.

- (2) A person weighing the proportionality factors in any case involving special category data must have particular regard to the importance of protecting special category data from processing where the data subject has not given explicit consent to the processing of the special category data.

5. Processing for historical or scientific purpose.

- (1) Subject to subparagraphs (2) and (3), personal data is processed for a historical or scientific purpose, if it is processed for –
- (a) the purpose of archiving in the public interest,
 - (b) a scientific or historical research purpose, or
 - (c) a statistical purpose.
- (2) Personal data may be regarded as processed for a historical or scientific purpose even if the data is disclosed –
- (a) to any person for research purposes only,
 - (b) to the data subject or a person acting on the data subject's behalf,
 - (c) at the request, or with the consent, of the data subject or a person acting on the data subject's behalf, or
 - (d) in circumstances in which the person making the disclosure has reasonable grounds for believing that the disclosure falls within item (a), (b) or (c) of this subparagraph.
- (3) Personal data must not be regarded as processed for a historical or scientific purpose where the data is processed –
- (a) in order to make a decision, or facilitate or allow a decision to be made, with respect to a particular data subject, or
 - (b) in such a way that substantial damage is, or is likely to be, caused to any data subject.

6. High risk to significant interests of data subjects.

- (1) Subject to subparagraph (2), whether any processing of personal data is likely to pose a high risk to the significant interests of data subjects must be determined having regard to the nature, scope, context and purpose of the processing, having particular regard to whether a new technology, mechanism or procedure is used to process the personal data.
- (2) Processing of personal data is deemed to be likely to pose a high risk to the significant interests of data subjects where it involves –
 - (a) a systematic and extensive evaluation of personal aspects relating to data subjects based on automated processing, and decisions are based on the evaluation that affect the significant interests of data subjects,
 - (b) large-scale processing of special category data,
 - (c) large-scale and systematic monitoring of a public place, or
 - (d) any other prescribed kind or description of processing.

7. Breach of an operative provision or duty.

- (1) A controller or processor breaches an operative provision or a duty if –
 - (a) any processing of personal data in the context of the controller or processor fails to comply with or contravenes the operative provision, or as the case may be, the duty, or
 - (b) the controller or processor fails to comply with or contravenes the operative provision, or as the case may be, the duty.
- (2) A controller or processor is likely to breach an operative provision if –
 - (a) any processing or related act or omission is likely to fail to comply with or contravene the operative provision, or
 - (b) the controller or processor is likely to fail to comply with or contravene the operative provision in connection with any processing or related act or omission.

- (3) In subparagraph (2), "**processing or related act or omission**", in relation to any controller or processor, means –
- (a) any proposed processing in the context of the controller or processor,
or
 - (b) any intended act or intended omission of the controller or processor,
in relation to any processing or proposed processing in the context of
the controller or processor.

SCHEDULE 10

INDEX OF DEFINED EXPRESSIONS

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THE HEALTH SERVICE (BENEFIT) (AMENDMENT) ORDINANCE, 2017

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Health Service (Benefit) (Amendment) Ordinance, 2017", and to direct that the same shall have effect as an Ordinance of the States.

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

EXPLANATORY MEMORANDUM

This Ordinance amends prescription charges under the Health Service (Benefit) (Guernsey) Law, 1990 with effect from 1st January, 2018. As from that date charges will be £3.90.

The Health Service (Benefit) (Amendment) Ordinance, 2017

THE STATES, in pursuance of their Resolution of the ** **, 2017^a, and in exercise of the powers conferred upon them by sections 13 and 35 of the Health Service (Benefit) (Guernsey) Law, 1990 as amended^b and all other powers enabling them in that behalf, hereby order:-

Amendment of 1990 Ordinance.

1. For Schedule I to the Health Service (Benefit) Ordinance, 1990^c, substitute the schedule set out in the Schedule to this Ordinance.

Interpretation.

2. (1) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(2) The Interpretation (Guernsey) Law, 1948^d applies to the

^a Article ** of Billet d'État No. ** of 2017.

^b Ordres en Conseil Vol. XXXII, p. 192; amended by Ordres en Conseil Vol. XLIII(1), p. 246; Order in Council No. II of 2011; Recueil d'Ordonnances Tome XXIX, p. 196 and modified by Tome XXVI, p. 484; Tome XXVII, p. 200; Tome XXVIII, p. 1; Tome XXIX, pp. 200, 210, and 580 and Tome XXXII, p. 628; Ordinance No. IX of 2016; and No. XLIV of 2016.

^c Recueil d'Ordonnances Tome XXV, p. 191; amended by Recueil d'Ordonnances Tome XXV 310; Tome XXVII, p. 114; Tome XXIX, pp. 305 and 426; Tome XXX, p. 20; Ordinance No. VI of 2012; No. XLVI of 2014; No. XLVI of 2015; and Nos. IX and XXXVIII of 2016.

interpretation of this Ordinance throughout the Islands of Guernsey, Alderney, Herm and Jethou.

Repeal.

3. The Health Service (Benefit) (Amendment) Ordinance, 2016^e is repealed.

Citation.

4. This Ordinance may be cited as the Health Service (Benefit) (Amendment) Ordinance, 2017.

Extent.

5. This Ordinance shall have effect in the Islands of Guernsey, Alderney, Herm and Jethou.

Commencement.

6. This Ordinance shall come into force on the 1st January, 2018.

^d Ordres en Conseil Vol. XIII, p. 355.

^e Ordinance No. XXXVIII of 2016.

SCHEDULE

Section 1

"SCHEDULE I

Section 2(1)

PRESCRIPTION CHARGES

WITH EFFECT FROM:

PER ITEM OF
PHARMACEUTICAL
BENEFIT SUPPLIED
IN GUERNSEY:

PER ITEM OF
PHARMACEUTICAL
BENEFIT SUPPLIED
IN ALDERNEY:

1st January 2018

£3.90

£3.90".

**THE SOCIAL INSURANCE (RATES OF CONTRIBUTIONS AND BENEFITS, ETC.)
ORDINANCE, 2017**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Social Insurance (Rates of Contributions and Benefits, etc.) Ordinance, 2017", and to direct that the same shall have effect as an Ordinance of the States.

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

EXPLANATORY MEMORANDUM

This Ordinance amends rates of contributions, upper and lower income limits, rates and amounts of benefits and prescribes the percentages for the Guernsey Health Service Fund Allocation and the Long-term Care Insurance Fund Allocation for 2018 under the Social Insurance (Guernsey) Law, 1978. The Ordinance is effective from 1st January, 2018.

**The Social Insurance
(Rates of Contributions and Benefits, etc.) Ordinance,
2017**

THE STATES, in pursuance of their Resolution of the ** **, 2017^a, and in exercise of the powers conferred upon them by sections 5, 6, 8, 19, 48(2), 49(4), 61, 101, 101A and 116 of the Social Insurance (Guernsey) Law, 1978, as amended^b and all other powers enabling them in that behalf, hereby order:-

Percentage rates of primary and secondary Class 1 contributions.

1. For the purposes of Social Insurance (Guernsey) Law, 1978, ("the Law") -

- (a) the percentage rate of a primary Class 1 contribution shall be 6.6%, and
- (b) the percentage rate of a secondary Class 1 contribution shall be 6.6%.

^a Article ** of Billet d'État No. ** of 2017.

^b Ordres en Conseil Vol. XXVI, p. 292; amended by Ordres en Conseil Vol. XXVII, pp. 238, 307 and 392; Vol. XXIX, pp. 24, 148 and 422; Vol. XXXII, p. 59; Vol. XXXIV, p. 397 and 510; Vol. XXXV(1), p. 164; Vol. XXXVI, pp. 123 and 343; Vol. XXXIX, p. 107; Vol. XL, p. 351; Vol. XLI, p. 267; Vol. XLII(2), p. 1230; Vol. XLIII(2), p. 813; Vol. XLIV(1), p. 262; Order in Council No. XVIII of 2007; No. III of 2016; Recueil d'Ordonnances Tome XXVI, p. 177; Tome XXXII, p. 631; Tome XXXIII, p. 666; Ordinance No. XVII of 2011; No. XXXVIII of 2012; Nos. IX and XXX of 2016; No. XIII of 2017; and No. XXIII of 2017.

Upper weekly and upper monthly earnings limits for the purpose of Class 1 contributions.

2. For the purposes of the Law -
 - (a) the upper weekly earnings limit for primary and secondary Class 1 contributions shall be £2,748, and
 - (b) the upper monthly earnings limit for primary and secondary Class 1 contributions shall be £11,908.

Lower income limit.

3. For the purposes of the Law, the lower income limit for Class 3 contributions shall be £17,940.

Percentage rate and amount of Class 2 contributions.

4. For the purposes of the Law -
 - (a) the percentage rate of a Class 2 contribution shall be, in respect of any person other than a person to whom the following paragraph of this section applies, 11.0%, and
 - (b) the amount of a Class 2 contribution shall be, in respect of an overseas voluntary contributor, being a person who is not resident in Guernsey and who, satisfying prescribed conditions, is desirous of paying Class 2 contributions under the Law, £103.82 per week.

Percentage rates and amount of Class 3 contributions.

5. (1) For the purposes of the Law -

- (a) the percentage rates of a Class 3 contribution shall be -
- (i) in respect of a voluntary contributor, being a person who is not liable to pay a Class 3 contribution but, satisfying prescribed conditions, is desirous of paying contributions in accordance with section 8(4) of the Law, 5.7%,
 - (ii) in respect of a person who has attained pensionable age, 3.4%, and
 - (iii) in respect of all other persons, 10.4%, and
- (b) the amount of a Class 3 contribution shall be, in respect of an overseas voluntary contributor, being a person who is not resident in Guernsey and who, satisfying prescribed conditions, is desirous of paying Class 3 contributions under the Law, £93.91 per week.

(2) The percentage of a minimum Class 3 contribution payable in accordance with section 8(5) of the Law by a person who is normally in employed contributor's employment shall be 100%.

Amount of the Class 3 income allowance.

6. For the purposes of the Law, the amount of the Class 3 income allowance shall be £8,110.

Rates and amounts of benefits.

7. (1) For the purposes of the Law, the weekly rate of each description of benefit set out in column 1 of Part I of the first schedule to this Ordinance shall be the rate specified in relation thereto in column 2, and the amounts by which that rate may be increased in respect of an adult dependant shall be the amount specified in column 3.

(2) For the purposes of the Law, where the extent of the disablement is assessed for the period to be taken into account as amounting to 20% or more, industrial disablement benefit shall be payable for that period at the appropriate weekly rate specified in Part II of the first schedule to this Ordinance.

(3) For the purposes of the Law, the amounts of death grant, maternity grant, adoption grant and bereavement payment shall be the appropriate amounts specified in relation thereto in Part III of the first schedule to this Ordinance.

Guernsey Health Service Fund Allocation and Long-term Care Insurance Fund Allocation.

8. The percentages determined in respect of the contribution year for the purposes of sections 101 (the Guernsey Health Service Fund Allocation) and 101A (the Long-term Care Insurance Fund Allocation) of the Law are those specified in columns 2 and 3 of the second schedule to this Ordinance of the aggregate amount paid in respect of each of the classes of contribution specified in column 1 of that schedule.

Interpretation.

9. (1) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification),

extended or applied.

(2) The Interpretation (Guernsey) Law, 1948^c, applies to the interpretation of this Ordinance throughout the Islands of Guernsey, Alderney, Herm and Jethou.

Repeals and saving.

10. Sections 1 to 8 and 9 to 13 of, and the first Schedule and second Schedule to, the Social Insurance (Rates of Contributions and Benefits, etc.) Ordinance, 2016^d (the "**2016 Ordinance**") are repealed.

Citation.

11. This Ordinance may be cited as the Social Insurance (Rates of Contributions and Benefits, etc.) Ordinance, 2017.

Extent.

12. This Ordinance shall have effect in the Islands of Guernsey, Alderney, Herm and Jethou.

Commencement.

13. This Ordinance shall come into force on the 1st January, 2018.

^c Ordres en Conseil Vol. XIII, p. 355.

^d Ordinance No. XLI of 2016.

FIRST SCHEDULE

Section 7

RATES AND AMOUNTS OF BENEFITS

PART I

**Benefit, other than industrial disablement benefit, death grant,
maternity grant, adoption grant and bereavement payment**

Description of Benefit (1)	Weekly rate (2)	Increase for adult dependant (where payable) (3)
1. Industrial injury benefit	£156.17	Nil
2. Incapacity benefit	£187.74	Nil
3. Maternal health allowance	£212.66	
4. Newborn care allowance	£212.66	
5. Parental allowance	£212.66	
6. Old age pension:		
(a) payable to a woman by virtue of her husband's insurance while he is alive	£106.33	-
(b) in any other case	£212.27	£106.33
7. Sickness benefit	£156.17	Nil
8. Unemployment benefit	£156.17	Nil
9. Widowed parent's allowance	£223.22	-
10. Widow's pension/Bereavement allowance	£191.94	-

PART II

Industrial disablement benefit

Degree of disablement	Weekly rate
100%	£171.06
90%	£153.95
80%	£136.85
70%	£119.74
60%	£102.64
50%	£85.53
40%	£68.42
30%	£51.32
20%	£34.21

PART III

Death grant, maternity grant, adoption grant and bereavement payment

Description of grant	Amount
1. Death grant	£610
2. Maternity grant	£391
3. Adoption grant	£391
4. Bereavement payment	£1,928

SECOND SCHEDULE

Section 8

GUERNSEY HEALTH SERVICE FUND ALLOCATION AND LONG-TERM CARE
INSURANCE FUND ALLOCATION

<p>Class and sub-class of contribution</p> <p>(1)</p>	<p>Health Service Fund Allocation</p> <p>(2)</p>	<p>Long-term Care Insurance Fund Allocation</p> <p>(3)</p>
<p>Class 1 secondary contributions paid in respect of employed persons of pensionable age (6.6%)</p>	<p>24.24%</p>	<p>Nil</p>
<p>Class 1 primary (6.6%) and secondary (6.6%) contributions other than those referred to above</p>	<p>21.97%</p>	<p>13.64%</p>
<p>Class 2 contributions paid in respect of overseas voluntary contributors</p>	<p>Nil</p>	<p>Nil</p>
<p>Class 2 contributions other than those referred to above (11.0%)</p>	<p>24.55%</p>	<p>16.36%</p>
<p>Class 3 contributions paid in respect of voluntary contributors (5.7%)</p>	<p>Nil</p>	<p>Nil</p>
<p>Class 3 contributions paid in respect of overseas voluntary contributors</p>	<p>Nil</p>	<p>Nil</p>
<p>Class 3 contributions paid by persons over the age of 65 years (3.4%)</p>	<p>38.24%</p>	<p>61.76%</p>
<p>Class 3 contributions other than those referred to above (10.4%)</p>	<p>26.92%</p>	<p>18.27%</p>

THE LONG-TERM CARE INSURANCE (GUERNSEY) (RATES) ORDINANCE, 2017

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Long-term Care Insurance (Guernsey) (Rates) Ordinance, 2017", and to direct that the same shall have effect as an Ordinance of the States.

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

EXPLANATORY MEMORANDUM

This Ordinance amends rates of long-term benefit (and the amount of the weekly co-payment which a claimant shall make by way of a contribution towards that claimant's care) under the Long-term Care Insurance (Guernsey) Law, 2002, with effect from 1st January, 2018.

The Long-term Care Insurance (Guernsey) (Rates)

Ordinance, 2017

THE STATES, in pursuance of their Resolution of the ** ** 2017^a, and in exercise of the powers conferred on them by sections 5 and 31 of the Long-term Care Insurance (Guernsey) Law, 2002 as amended^b and all other powers enabling them in that behalf, hereby order:-

Rates of benefit.

1. (1) The maximum weekly rates of care benefit shall be -
 - (a) for persons resident in a residential home -
 - (i) £444.57, or
 - (ii) where also receiving EMI care, £585.76, and
 - (b) for persons resident in a nursing home or the Guernsey Cheshire Home, £829.99.
- (2) The maximum weekly rates of respite care benefit shall be -
 - (a) for persons receiving respite care in a residential home-

^a Article ** of Billet d'État No. ** of 2017.

^b Ordres en Conseil Vol. XLII(2), p. 1230 ; amended by Order in Council No. IV of 2014; Recueil d'Ordonnances Tome XXIX, p. 406; Ordinance No. XLII of 2007; and No. IX of 2016.

- (i) £645.19, or
 - (ii) where also receiving EMI care, £786.38, and
- (b) for persons receiving respite care in a nursing home or the Guernsey Cheshire Home, £1,030.61.

Co-payment by way of contribution.

2. The weekly co-payment which a claimant shall make by way of contribution towards or for the cost of that claimants care -

- (a) as a condition of the right to care benefit, and
- (b) which shall be taken into account for the purposes of determining the rate of care benefit,

shall be £200.62.

Interpretation.

3. (1) In this Ordinance, unless the context requires otherwise -

"EMI care" means care which, in the opinion of the Authority, is necessary to meet the needs of a person who is assessed by the Panel as having the characteristics of an elderly and mentally infirm person,

"nursing home" and "residential home" have the meanings given by section 18(1) of the Nursing Homes and Residential Homes (Guernsey) Law,

1976^c,

"the Law" means the Long-Term Care Insurance (Guernsey) Law, 2002, and

other words and expressions used in this Ordinance shall have the same meaning as in the Law.

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(3) The Interpretation (Guernsey) Law, 1948^d applies to the interpretation of this Ordinance throughout the Islands of Guernsey, Alderney, Herm and Jethou.

Repeal.

4. The Long-term Care Insurance (Guernsey) (Rates) Ordinance, 2016^e is repealed.

Citation.

5. This Ordinance may be cited as the Long-term Care Insurance (Guernsey) (Rates) Ordinance, 2017.

^c Ordres en Conseil Vol. XXVI, p. 71; amended by Ordres en Conseil Vol. XXXI, p. 278; Order in Council No. VI of 2007; Recueil d'Ordonnances Tome XXIX, p. 406 ; and Ordinance No. IX of 2016.

^d Ordres en Conseil Vol. XIII, p. 355.

^e Ordinance No. XXXIX of 2016.

Extent.

6. This Ordinance shall have effect in the Islands of Guernsey, Alderney, Herm and Jethou.

Commencement.

7. This Ordinance shall come into force on the 1st January, 2018.

THE SEVERE DISABILITY BENEFIT AND CARER'S ALLOWANCE ORDINANCE, 2017

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Severe Disability Benefit and Carer's Allowance Ordinance, 2017", and to direct that the same shall have effect as an Ordinance of the States.

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

EXPLANATORY MEMORANDUM

This Ordinance amends rates of allowances under the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984 (formerly known as the Attendance and Invalid Care Allowances (Guernsey) Law, 1984) with effect from 1st January, 2018.

The Severe Disability Benefit and Carer's Allowance Ordinance, 2017

THE STATES, in pursuance of their Resolution of the ** **, 2017^a, and in exercise of the powers conferred upon them by sections 1(4), 2(3)(b) and 3 of the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984, as amended^b and all other powers enabling them in that behalf, hereby order:-

Entitlement to severe disability benefit.

1. The amount determined for the purposes of section 1(4) of the Law is £97,000.

Entitlement to carer's allowance.

2. The amount determined for the purposes of section 2(3)(b) of the Law is £97,000.

Rates of allowances.

3. (1) The weekly rate of a severe disability benefit determined for the purposes of section 3 of the Law is £103.88.

(2) The weekly rate of a carer's allowance determined for the purposes of section 3 of the Law is £84.06.

Interpretation.

4. (1) In this Ordinance the expression "**the Law**" means the Severe

^a Article ** of Billet d'État No. ** of 2017.

^b Ordres en Conseil Vol. XXVIII p. 353; amended by Ordres en Conseil Vol. XXIX, p. 198; Vol. XXXIII, p. 238; Vol. XXXIV, p. 458; Vol. XXXIX, p. 107; Vol. XLIII(1), p. 261; Order in Council No. IV of 2014; Recueil d'Ordonnances Tome XXVI, p. 177; Ordinance No. XXXIII of 2003; No. VII of 2009; No. XXX of 2013; and No. IX of 2016.

Disability Benefit and Carer's Allowance (Guernsey) Law, 1984, and expressions used in the Law shall, when used in this Ordinance, have the same meaning as they have under the Law.

(2) Unless the context requires otherwise, references in this Ordinance to an enactment are references thereto as amended, re-enacted (with or without modification), extended or applied.

(3) The Interpretation (Guernsey) Law, 1948^c shall apply to the interpretation of this Ordinance throughout the Islands of Guernsey, Alderney, Herm and Jethou.

Repeal.

5. The Severe Disability Benefit and Carer's Allowance Ordinance, 2016^d is repealed.

Citation.

6. This Ordinance may be cited as the Severe Disability Benefit and Carer's Allowance Ordinance, 2017.

Extent.

7. This Ordinance shall have effect in the Islands of Guernsey, Alderney, Herm and Jethou.

Commencement.

8. This Ordinance shall come into force on the 1st January, 2018.

^c Ordres en Conseil Vol. XIII, p. 355.

^d Ordinance No. XL of 2016.

THE FAMILY ALLOWANCES ORDINANCE, 2017

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Family Allowances Ordinance, 2017", and to direct that the same shall have effect as an Ordinance of the States.

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

EXPLANATORY MEMORANDUM

This Ordinance amends the rate of family allowance under the Family Allowances (Guernsey) Law, 1950 with effect from 1st January, 2018. On that date the rate will be £13.90 a week.

The Family Allowances Ordinance, 2017

THE STATES, in pursuance of their Resolution of the ** **, 2017^a, and in exercise of the powers conferred upon them by sections 1 and 3 of, and paragraph 1 of the Schedule to, the Family Allowances (Guernsey) Law, 1950 as amended^b and all other powers enabling them in that behalf, hereby order:-

Amount of allowance.

1. The amount of allowance referred to in section 1(1) of the Family Allowances (Guernsey) Law, 1950, as amended ("the Law of 1950") in respect of each child in the family shall be at the rate of £13.90 a week.

Amount as to contribution to the cost of providing for a child.

2. The amount in respect of the contribution to the cost of providing for a child referred to in -

- (a) section 3(2) of the Law of 1950 shall be at the rate of £13.90 a week or more, and
- (b) the proviso to paragraph 1(1) of the Schedule to the Law of 1950 shall be at the rate of £13.90 a week.

^a Article ** of Billet d'État No. ** of 2017.

^b Ordres en Conseil Vol. XIV, p. 332; amended by Ordres en Conseil Vol. XV, p. 212 ; Vol. XVI, p. 280; Vol. XVIII, p. 367; Vol. XIX, p. 286; Vol. XX, pp. 11, 59 and 63; Vol. XXI, p. 34; Vol. XXII, p. 318; Vol XXIII, pp. 3 and 238; Vol XXVI, pp. 150 and 292; Vol XXXVIII, P. 406; Vol XXXI, p. 278; Vol. XXXIX, p. 107; Order in Council No. III of 2001; No. IV of 2014; Recueil d'Ordonnances Tome XXI, p. 460; Tome XXVI, p. 177; Ordinance No. XXXIII of 2003; No. VII of 2010; No. XLII of 2012; Nos. IX and XXXVII of 2016; No. XIII of 2017; and G.S.I. No. 7 of 1971.

Interpretation.

3. The Interpretation (Guernsey) Law, 1948^c shall apply to the interpretation of this Ordinance throughout the Islands of Guernsey, Alderney, Herm and Jethou.

Repeal.

4. The Family Allowances Ordinance, 2016^d is repealed.

Citation.

5. This Ordinance may be cited as the Family Allowances Ordinance, 2017.

Extent.

6. This Ordinance shall have effect in the Islands of Guernsey, Alderney, Herm and Jethou.

Commencement.

7. This Ordinance shall come into force on the 1st January, 2018.

^c Ordres en Conseil Vol. XIII, p. 355.

^d Ordinance No. XXXVII of 2016.

**THE SUPPLEMENTARY BENEFIT (IMPLEMENTATION) (AMENDMENT) ORDINANCE,
2017**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Supplementary Benefit (Implementation) (Amendment) Ordinance, 2017", and to direct that the same shall have effect as an Ordinance of the States.

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

EXPLANATORY MEMORANDUM

This Ordinance amends rates of supplementary benefit and short-term weekly requirements under the Supplementary Benefit (Guernsey) Law, 1971 with effect from 5th January, 2018.

The Supplementary Benefit (Implementation) (Amendment) Ordinance, 2017

THE STATES, in pursuance of their Resolution of the ** **, 2017^a, and in exercise of the powers conferred on them by sections 3(2) and 15 of the Supplementary Benefit (Guernsey) Law, 1971^b, and all other powers enabling them in that behalf, hereby order:-

Amendment of Ordinance.

1. The Supplementary Benefit (Implementation) Ordinance, 1971^c ("**the Ordinance**") is amended as follows.

2. For the numbered Tables set out in the appendix to the First Schedule to the Ordinance, substitute the numbered Tables set out in the Schedule to this Ordinance.

Interpretation.

3. (1) In this Ordinance -

"**enactment**" includes a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or

^a Article ** of Billet d'État No. ** of 2017.

^b Ordres en Conseil Vol. XXIII, p. 26; amended by Vol. XXXIX, p. 107; Ordinance No. IX of 2016; modified in relation to Alderney by Recueil d'Ordonnances Tome XVII, p. 168. There are other amendments not relevant to this Ordinance.

^c Recueil d'Ordonnances Tome XVII, p. 139; amended by Ordinance No. XLII of 2016. There are other amendments not relevant to this Ordinance.

any subordinate legislation,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance.

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Extent.

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

Citation.

5. This Ordinance may be cited as the Supplementary Benefit (Implementation) (Amendment) Ordinance, 2017.

Commencement.

6. This Ordinance shall come into force on the 5th January, 2018.

SCHEDULE

"Table 1

(Paragraph 3)

Limitation of weekly benefit payable as from the week commencing
5th January 2018

<i>Community</i>	<i>Residential home</i>	<i>Nursing Home, etc</i>	<i>Personal Allowance</i>	<i>UK Personal Allowance</i>
£670.00	£549.00	£787.00	£31.41	£52.91

Table 2

(Paragraph 5(1))

Short-term Weekly Requirements as from week commencing
5th January 2018

<i>Description</i>	<i>Amount</i>
Married couple or other persons falling within paragraph 2(1) (" Couple ")	£203.63
Person not falling within paragraph 2(1) who is directly responsible for household necessities and rent (if any) (" Single householder ")	£141.42
Person who is not a householder (" Non-householder ") -	
Aged 18 years or over:	£107.66
Aged 16 years but less than 18:	£73.26
Member of a household -	
Aged 18 years or over:	£107.66

Aged 16 years but less than 18:	£91.42
Aged 12 years but less than 16:	£56.63
Aged 5 years but less than 12:	£41.13
Aged less than 5 years:	£29.95

Table 3

(Paragraph 5(2))

Long-term Weekly Requirements as from week commencing
5th January 2018

<i>Description</i>	<i>Amount</i>
Married couple or other persons falling within paragraph 2(1) (" Couple ")	£258.28
Person not falling within paragraph 2(1) who is directly responsible for household necessities and rent (if any) (" Single householder ")	£178.69
Person who is not a householder (" Non-householder ") -	
Aged 18 years or over:	£138.71
Aged 16 years but less than 18:	£75.31
Member of a household -	
Aged 18 years or over:	£138.71
Aged 16 years but less than 18:	£117.49
Aged 12 years but less than 16:	£72.69
Aged 5 years but less than 12:	£52.70
Aged less than 5 years:	£38.84"

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

OVERSEAS AID & DEVELOPMENT COMMISSION

FUNDING ARRANGEMENTS AND FUTURE DEVELOPMENTS

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled “Overseas Aid & Development Commission – Funding Arrangements and Future Developments” dated 25th September 2017, they are of the opinion:-

1. To agree that the Overseas Aid & Development Commission’s budget allocations for Grant Aid and Disaster and Emergency Relief be treated as a single development aid budget and for the Commission to determine the proportion of its budget allocated across its core mandated functions;
2. To note the Overseas Aid & Development Commission’s decision to progress, in close consultation with the Policy & Resources Committee (as “lead partner”), the initial exploratory discussions it has had regarding the possibility and feasibility of establishing a Guernsey Development Impact Fund;
3. To delegate authority to the Policy & Resources Committee to approve the investment of between £200,000 and £250,000 per annum of the Overseas Aid & Development Commission’s budgets for 2018-2020 in the proposed Guernsey Development Impact Fund;
4. To note the Overseas Aid & Development Commission’s ongoing commitment to ensure good governance in all areas of its mandate, and especially to ensure strict monitoring of all Grant Aid awards;
5. To note the measures the Overseas Aid & Development Commission has introduced to strengthen its compliance procedures in respect of preventing misuse of funds for money laundering or the funding of terrorism; and
6. To note the Overseas Aid & Development Commission’s response to the States Resolutions of January 2012.

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.

OVERSEAS AID & DEVELOPMENT COMMISSION

FUNDING ARRANGEMENTS AND FUTURE DEVELOPMENTS

The Presiding Officer
Royal Court
St Peter Port
Guernsey

25th September 2017

Dear Sir

1. Executive Summary

- 1.1 The Overseas Aid and Development Commission (“the Commission”) distributes funding to charities working in the world’s poorest countries, on behalf of the States of Guernsey. The Overseas Aid budget is £2,715,000, with an additional £200,000 set aside for emergency disaster relief.
- 1.2 Through overseas aid, Guernsey is able to make an important contribution to assist in tackling, at source, some of the global challenges which do not respect national borders – for example, the spread of infectious diseases, which often originate in poorer countries where healthcare systems are weak; or the mass movement of people who are fleeing hunger, insecurity or war in their home country. These are issues which concern us all and, as in so many areas of government policy, preventive or early action is generally the most effective.
- 1.3 This Policy Letter has been prepared in response to the States Resolution of January 2012¹, namely:

“VI.- After consideration of the Report dated 14th November, 2011, of the Policy Council:-

1. *That the States of Guernsey maintain its current level of contribution (+RPIX) per annum.*
2. *That the States of Guernsey monitor the level of Overseas Aid expenditure with a view to reconsidering it once there is a higher*

¹ The 2012 Policy Letter was prepared in response to an earlier States Resolution of October 2010¹. In 2010 the States had directed the Policy Council to produce proposals to set a long-term funding policy for Guernsey’s contribution to overseas aid, including the feasibility of meeting the United Nations 0.7% GDP target.

degree of certainty over corporate taxation and when the fiscal position improves, or within 5 years, whichever is sooner.”²

- 1.4 This Policy Letter addresses the funding arrangements and work of the Commission for the next period. In preparing its proposals, the Commission is mindful that the budgets for all States Committees are under pressure and so are all seeking to make real cost savings wherever possible without impacting on frontline services.
- 1.5 The Commission had naturally hoped for favourable economic circumstances, which would enable it to expand its work. However, given the States’ current financial position, the Commission is simply seeking to maintain its core work: that is, the funding of sustainable development aid projects through its Grant Aid scheme, and support for the world’s poorest countries following a natural disaster or humanitarian crisis. Additionally, following discussions with the Policy & Resources Committee, the Commission has agreed that its 2018 budget be increased by RPIX minus 1% - a real-terms’ reduction which the Commission regrets, but which is in line with the reduction being considered for all States’ Committees.
- 1.6 The Commission, unlike other States Committees and bodies, does not have an operational budget from which it can make savings. The entire budget is used to support sustainable development projects which build capacity and resilience in the world’s least developed countries. Any real-terms budget reduction will impact directly on the Commission’s ability to fund life-changing development projects. Therefore the Commission has had to respond to this challenge by finding other ways of delivering development aid better – to make its budget go further.
- 1.7 Since 2012, the Commission has worked hard to identify opportunities to work with the private sector to increase the impact of the States’ contribution to development aid through matched funding and other co-funding initiatives. This Policy Letter sets out details of what the Commission believes to be exciting exploratory discussions for the creation of a Guernsey Development Impact Fund.
- 1.8 Section 5 of this Policy Letter explains the discussions the Commission is participating in with the Policy & Resources Committee and Innovest Advisory³

² Resolution VI of Billet d’État No III of 2012

³ Innovest Advisory (“IA”) is a consultancy company which works at the nexus between innovation and social impact. Founded in 2015, IA links socially minded investors with impact investment opportunities worldwide. IA's clients on the investor side include High Net Worth Individuals, Family Offices, Trust Companies, Foundations, Asset Managers, Banks, as well as on the investee side, United Nations specialised agencies, charities, social enterprises and local financial institutions.

regarding the possibility and feasibility of establishing a Guernsey Development Impact Fund. The impact fund model has the potential to offer an alternative mechanism to increase Guernsey's contribution to development aid through an investment fund with the intention to generate social and environmental benefits in developing countries together with a financial return.

- 1.9 Section 6 of this Policy Letter provides an update on how the Commission has strengthened its governance and compliance regimes to ensure that the funds it distributes reach the intended communities and people and that the projects deliver a tangible and sustainable outcome. The Commission is mindful that it is allocating monies on behalf of the people of Guernsey and that accountability and transparency about how, where and on what it uses its budget is key to maintain public confidence in how Guernsey is delivering its commitment to overseas development aid.
- 1.10 Section 6 also provides an overview of how the Commission has responded to recommendations in the 2016 Moneyval Report which assessed the effectiveness of measures in place to prevent money laundering and the financing of terrorism. Since the publication of this report, the Commission, in close consultation with the Policy & Resources Committee, has reviewed its agreements with funded charities.
- 1.11 Finally, Section 7 provides a detailed update on how the Commission has progressed a number of recommendations set out in the 2012 Policy Letter to increase its public profile, including:
 - (a) Demonstrating the lasting benefit of the projects supported for the recipient communities; and
 - (b) Working with local overseas development charities, businesses and other organisations to develop opportunities for the collection and distribution of development aid.

2. **Background**

- 2.2 The Commission is a non-statutory, non-governmental committee of the States of Guernsey which distributes funds voted by the States for aid and development overseas by making grants to charities undertaking development and humanitarian work in the world's least developed countries, and by contributing to emergency and disaster relief.
- 2.3 The Commission's mandate is:

"To distribute funds voted by the States for aid and development overseas by making contributions to ongoing programmes and to emergency and disaster relief.

To develop programmes relating to the collection and distribution of funds involving the private sector.

To carry out the duties and powers above in accordance with policies set out by the Policy & Resources Committee.

To fulfil the responsibilities set out in Annex One to the mandates of committees of the States.”

- 2.4 The role of the Commission is to administer the budget approved by the States of Guernsey for overseas aid. The Commission’s President is a member of the States of Deliberation and the six Commissioners are appointed by the States of Deliberation.
- 2.5 The Commission’s 2017 budget is £2,915,000⁴. Guernsey’s most recent GDP figure (2014) calculated the Island’s GDP at £2.275 billion. Guernsey’s current overseas aid contribution represents 0.13% of GDP.
- 2.6 The purpose of overseas aid has been expressed in successive Policy Letters over the past 35 years⁵. Guernsey gives in order to help provide for the basic needs of people in the poorest parts of the world – including health, education, clean water and food. The aim is to reduce human vulnerability and to promote sustainable change that will last beyond the lifespan of the project being funded. For the communities receiving aid from Guernsey, the benefits are both life-changing and often life-saving.

3. The Global Context of Development Aid – The World We Live and Work In

- 3.1 More than 700 million people around the world are living in extreme poverty (defined as having less than US \$1.90 a day to live on). Half of those people are children. One person in every 10 is suffering from hunger, with millions of people in situations of acute food insecurity⁶.
- 3.2 Earlier this year, famine was declared in Unity State in South Sudan – the first famine to be declared anywhere in the world in six years. The whole east

⁴ That is £2,715,000 for Grant Aid and £200,000 for Disaster and Emergency Relief

⁵ Between 1980 and April 2004, the Overseas Aid Committee was mandated to distribute funds voted by the States for aid and development overseas. In May 2004, the Guernsey Overseas Aid Commission replaced the former Committee and whilst its mandate remained largely unchanged, its membership changed. Between May 2004 and April 2016, the Commission’s membership comprised a Chairman selected from the members of Policy Council and six Islanders appointed by the States on the recommendation of the Policy Council to serve as Commissioners.

⁶ Figures from 2016 Human Development Report

African region faces a food crisis, as do conflict-torn Yemen, Afghanistan and north-east Nigeria; and several southern African countries⁷ are also vulnerable.

- 3.3 Over 600 million people around the world use an unimproved water source – that is, water which has not been made fit for human consumption.⁸ This is an ongoing problem with serious social and economic consequences. Many hours of productive work or education time are lost when children and adults have to travel to fetch water. The daily journey to fetch water can be treacherous, with women and girls, in particular, risking rape and sexual assault. The health consequences of poor water quality are widespread and devastating: nearly two-thirds of deaths from diarrhoea alone could be prevented by improving water sources and sanitation – that’s 800,000 lives a year⁹.
- 3.4 Nearly 800 million adults and 100 million young people (aged 15-24) are illiterate. Education simply does not yet reach everyone – and the challenge is more complicated than just getting children into school. Of the 250 million children worldwide who have not yet learnt “basic skills”, more than half have spent at least four years in school¹⁰. However, access to school is an important first step, and the fact that, across Africa, 90% of children with disabilities are not in school is a striking and serious injustice¹¹.
- 3.5 The world we live in today is not yet one in which every child has the opportunity to flourish, nor one in which every person has access to the resources they need to improve their situation. The global poor are enterprising – many of those who live on less than US \$1.90 a day are in work – but the barriers presented by poor or non-existent infrastructure, lack of healthcare, limited education, and inadequate food and water mean that, acting alone, they and their communities are unlikely to break the persistent cycle of poverty.
- 3.6 This is the context in which the Commission’s programme operates, and the reason why it remains so necessary today.
- 3.7 Despite these bleak statistics, there is hope. Eleven children die before their fifth birthday, every minute of every day – a heart-breaking death toll amounting to nearly 6 million infant and toddler lives lost a year. However, in 1990, that figure was twice as high at 13 million¹². The number of people living

⁷ Information from www.fews.net as at March 2017

⁸ Figures from 2015 Human Development Report

⁹ Information from http://www.who.int/water_sanitation_health/diseases-risks/en/ as at March 2017

¹⁰ Figures from 2015 Human Development Report

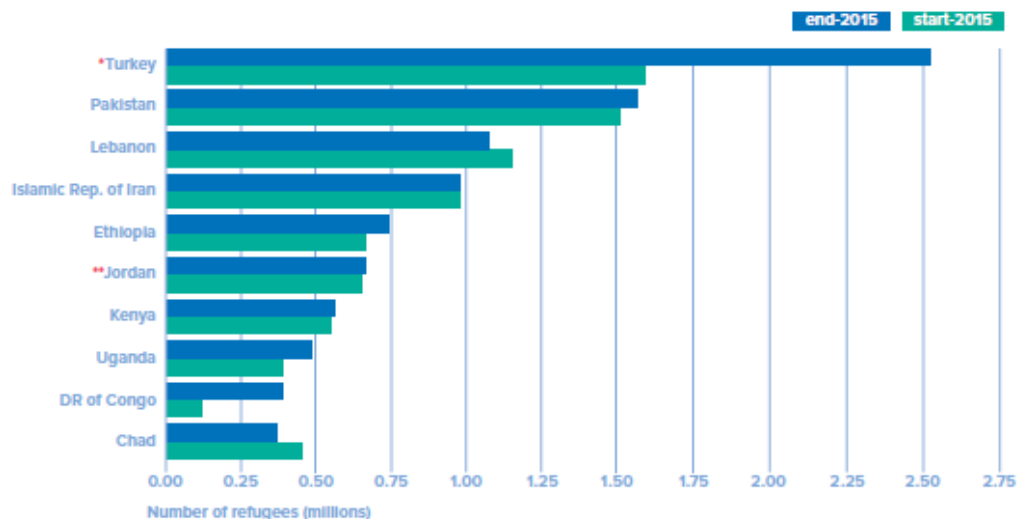
¹¹ Information from “Disability and Development” (2014) – House of Commons International Development Committee

[<https://www.publications.parliament.uk/pa/cm201314/cmselect/cmintdev/947/947.pdf>]

¹² Figures from www.childmortality.org (2015)

in extreme poverty is also falling. The death rate from HIV and tuberculosis is dropping, although millions of people are still dying.¹³ Concerted efforts at the local, national and international levels, over the last twenty-five years, have demonstrated that development and progress, that benefits everyone, is achievable.

- 3.8 Investing in development has real returns for the lives of individuals, communities and nations. The funding from Guernsey, administered through the Commission, is part of that investment and has made and continues to make a sustainable improvement for some of the world’s poorest communities.
- 3.9 There are, however, a number of important trends which are not such good news for development. Climate change is a major and on-going concern. Natural disasters and climate-related events hit the poorest communities hardest, and their effects add up – for example, three years without decent rains have left Somalia on the brink of famine¹⁴. Climate-related resilience must increasingly become a feature of international development efforts, as part of reconstruction and, more importantly, prevention.
- 3.10 The levels of conflict and insecurity around the world are another major concern, with record numbers of people being displaced by violence: 21 million refugees and 41 million internally displaced people (that is, displaced within the borders of their own country). Here again, it is the world’s poorest countries that bear the biggest share of refugees, despite having very little infrastructure to do so – five of the world’s top 10 refugee-hosting countries are in Africa¹⁵.



¹³ Information from 2016 Human Development Report

¹⁴ Information from www.fews.net as at March 2017

¹⁵ Figures from UNHCR Global Trends: Forced Displacement in 2015
[<http://www.unhcr.org/576408cd7.pdf>]

- 3.11 Rising inequality within and between countries is another trend affecting international development, as is growing urbanisation, with two-thirds of the world's population expected to live in urban areas in the next thirty years¹⁶.
- 3.12 Urban poverty remains a challenge for development, with massive deprivation in city slums; but the increased isolation of rural and remote communities, the lack of infrastructure, and the challenges countries face in incentivising teachers, health professionals and other essential workers to work in those areas is an equally significant concern.
- 3.13 The international community has drawn together a set of seventeen Sustainable Development Goals (see Appendix 1), which identify the most important areas of international development for the period leading to 2030. These replace the Millennium Development Goals, which expired in 2015.
- 3.14 These Goals have a greater emphasis on the environment, and on conflict and peace, which was less marked in the Millennium Goals, and which reflects the growing impact of conflict and climate change, as discussed above. But at the heart of the Goals are the foundations of sustainable development – challenging poverty, improving health, education, clean water and food security – which are also the pillars of the Commission's work.
- 3.15 The Commission continues to focus its work on countries in the bottom quartile of the United Nations Human Development Index¹⁷ - a ranking of countries based on life expectancy, poverty and education. Almost all countries in this region are in Africa. Average life expectancy in most is below 60 years. Among these countries, children are in school for an average of at worst 18 months and at best six years. These tend to be countries scarred by years of conflict or civil war; compounded sometimes by epidemics (e.g. Sierra Leone, Liberia, Guinea) or natural disasters (e.g. Nepal, Haiti, Bangladesh) which set their progress back. They are often also countries without strong governance, where governments are ineffective in meeting the needs of many of their citizens¹⁸.
- 3.16 The progress that has been made in tackling extreme poverty, disease and hunger worldwide demonstrates that international development can deliver real results, leading to improved survival rates, a better quality of life and far greater access to opportunity for millions of people around the world. These figures also show how much work there is still to be done.
- 3.17 In this context, Guernsey's contribution, although small on a global scale, still continues to have a vital and transformative impact on the lives of children and

¹⁶ Figures from 2016 Human Development Report

¹⁷ <http://hdr.undp.org/en/composite/HDI>

¹⁸ See Transparency International: Corruption Perceptions Index 2016

adults, families and communities, in some of the most disadvantaged and deprived situations in the world.

4. The Commission's Future Funding

4.1 *Background*

4.1.1 Guernsey's first overseas aid budget, in 1980, was worth £50,000 or 0.022% of GDP at the time. Since then, the budget has increased to over £2.5m, and 0.13% of GDP. There is an international target for countries to give 0.7% of their GDP in "Official Development Assistance". The UK is one of a small number of countries which achieve this target.

4.1.2 "Official Development Assistance" (ODA) is defined as funding which intends to promote "*the economic development and welfare of developing countries*" and which is "*concessional in character [... with] a grant element of at least 25%.*"¹⁹ ODA includes bilateral funding – that is, direct donations or loans from one country to another – and funding awarded to certain international organisations active in developing countries.

4.1.3 Guernsey's level of funding for overseas aid, which falls far short of 0.7% of GDP, has often been questioned. However, Guernsey does not make direct donations to other governments – all funding is for specific, community-level projects. Guernsey's overseas aid funding is entirely grant-based, unlike ODA, which can include loans. The character and principles of Guernsey's approach to overseas aid are clearly different to those which underpin ODA.

4.1.4 The following table shows the Commission's budget between 2010 and 2017:

Year	Grant Aid	Percentage Increase
2010	£2,340,000	0%
2011	£2,420,771	3.3%
2012	£2,492,988	2.1%
2013	£2,545,225	2.9%
2014	£2,561,377	0.6%
2015	£2,588,126	1%
2016	£2,685,000	3.6%
2017	£2,715,000	1.1%

4.1.6 During this same period the need for overseas development aid has not reduced and indeed the demands on the Commission's budgets have increased

¹⁹ OECD (2008) "Is it ODA? Factsheet" [Online] Available at: <http://www.oecd.org/dac/stats/34086975.pdf> [accessed 14.06.2016]

significantly. In the late 1990s the Commission received requests for funding that outstripped its available budget two-fold. In the 2017 Grant Aid funding round the total amount of requests for funding was £9,520,500, i.e. more than three times the available budget.

4.1.7 In 2005, the Commission’s budget was increased by £200,000. This additional funding was prioritised for making awards following natural disasters or in response to humanitarian crisis. The Commission’s Disaster and Emergency Relief funding has not been increased since that date. If the Commission’s Disaster and Emergency Relief budget had been increased by RPIX in line with its Grant Aid budget the budget allocation would now be £264,000.

4.1.8 Prior to 2005, the Commission did not have any provision for disaster and emergency relief awards following natural disasters or in response to humanitarian crisis, such as famines, in least developed countries. In response to such an event, the Commission would make a request for additional funding to the former Policy Council and a Policy Letter presented to the States.

4.1.9 Since 2005, the number of requests for disaster and emergency relief aid has increased significantly. The number and frequency of requests for emergency funding, especially in response to humanitarian emergencies, has also increased, and the Commission’s dedicated webpages allow charities to identify a possible source of funding. It also reflects the challenges charities working in the development aid field are experiencing in raising funds, especially for disaster relief work.

4.1.10 In 2016, the Commission received sixteen requests for emergency and disaster relief. The total amount request was £418,645. The Commission supported eight of these requests and made contributions amounting to £168,645:

Charity	Details	Amount
Red Cross UK	Disaster emergency relief for response to the Hurricane Matthew in Haiti	£16,500
Plan International		£16,500
ActionAid UK		£16,500
OXFAM	Disaster emergency relief for response to the ongoing drought and famine in Ethiopia	£20,000
HART-UK	Disaster emergency relief for response to the ongoing humanitarian crisis in South Sudan	£29,145
Christian Aid	Disaster emergency relief for response to the ongoing drought and famine in Ethiopia	£10,000
Christian Aid	Disaster emergency relief for response to the ongoing humanitarian crisis in South Sudan	£10,000
The DEC	Yemen humanitarian crisis	£50,000
Total Disaster and Emergency Relief awards in 2016		£168,645

4.2 Development Aid Funding in the other Crown Dependencies

- 4.2.2 By way of additional background, details of the overseas aid contributions of the other two Crown Dependencies and a number of other jurisdictions is set out at Appendix 2.
- 4.2.2 When comparing Guernsey's overseas aid giving (and that of Jersey and the Isle of Man) with other countries, it is important to recognise that the approach across the three Crown Dependencies is very different from that of most other jurisdictions. The contributions from each of the Crown Dependencies do not include any payments linked to trade or foreign policy considerations; the funding is always awarded to charities, rather than to governments; grants are attached to specific projects that will make a lasting difference at a local level; and all awards are grant-based – i.e. there are no loans or conditional awards.
- 4.2.3 The Commission is aware that, for many smaller charities, an award from one of the Crown Dependencies is not only transformative in terms of the projects the charity can support but also in terms of accessing other sources of development aid. The Commission understands that the UK Department for International Development ("DfID") considers such an award from Guernsey, Jersey and/or the Isle of Man as persuasive evidence of a charity's ability to deliver development aid.

4.3 Overseas Aid Funding Arrangements

- 4.3.1 The 2012 States Resolution directed the then Policy Council to report back to the States on the level of funding for Overseas Aid once "*...there is a higher degree of certainty over corporate taxation and when the fiscal position improves, or within 5 years, whichever is sooner.*"
- 4.3.2 At that time, the States of Deliberation confirmed their strong support for Guernsey's overseas development contribution and agreed to maintain the Commission's budget in line with inflation. The Policy Council's 2012 report stated:

*"11.1 Despite the fact that Guernsey donates a relatively low amount of Overseas Aid in comparison to similar jurisdictions, and although there will be many who will wish to see a significant increase in States expenditure towards Overseas Aid, the current fiscal uncertainties coupled with the States' policy on expenditure cannot be ignored. The Policy Council, along with all States Departments and Committees, is currently engaging as high priorities, work streams that seek to **restrain** States expenditure. It may therefore be impractical to pursue proposals that would significantly enlarge the fiscal deficit, whilst the States is trying to eliminate it. The Policy Council recommends a long-term*

funding policy that will ensure that the level of Overseas Aid will remain consistent alongside the rate of inflation, but will not commit to additional expenditure at this time.”

- 4.3.3 The five-year time period has now elapsed and the Commission is very mindful of the States Resolutions of December 2016 for the 2017 Budget Report. The Commission recognises that, alongside all other States committees and bodies, it would be inappropriate to seek an above real terms increase in its funding in the current financial climate.
- 4.3.4 Following discussion between the Commission and the Policy & Resources Committee, the 2018 Budget included a recommendation that the funds allocated to Overseas Aid & Development should be uprated by RPIX minus 1%, which reflects the savings target also imposed on other Committees of the States. While its funding allocation for future years will be set in subsequent States’ Budgets, the Commission believes that the States will wish to maintain Guernsey’s long-established commitment to supporting some of the world’s poorest and most vulnerable communities through development aid. Its starting point for future budget discussions, therefore, will be to recommend an annual uplift by RPIX (maintaining the value of the funding in real terms), with due consideration of any improvements or downturns in the island’s economic circumstances at the time, and any savings targets that may be imposed by the States.
- 4.3.5 The Commission recognises that all States Committees are under pressure and so are all seeking to make real cost savings wherever possible without impacting on frontline services. However, unlike other States Committees and bodies, the Commission does not have an operational budget from which it can make savings. The entire budget is used to support sustainable development projects which build capacity and resilience in the world’s least developed countries.
- 4.3.6 In order to maximise the States’ contribution to overseas development, the Commission has sought to identify how it can deliver development aid differently without recourse to additional public money. The Commission has recently participated in discussions with the Policy & Resources Committee following an approach from a local consultancy company, Innovest Advisory, about the feasibility of establishing a Guernsey Development Impact Fund.
- 4.3.7 The Commission believes that these recent early discussions suggest that such a fund, which invests in projects that generate social and environmental benefits alongside financial returns, could offer an opportunity to extend the reach of Guernsey’s investment in aid and development. This may, in due course, enable Guernsey to increase its overall commitment to sustainable development, without necessarily increasing the funding allocated to this area

by the States. The Commission therefore considers it an area worthy of further investigation.

4.3.8 The Commission believes that impact funding may be able to provide an alternative and complementary mechanism for delivering development aid, alongside the more established approaches of grant aid and disaster and emergency relief. Section 6 below provides a more detailed overview of how impact funds operate, and their potential to deliver development aid through a mix of public and private financial contributions. The Commission is keen to explore whether impact funding could form part of Guernsey's contribution to overseas development. Together with the Policy & Resources Committee, it has requested a detailed feasibility study of this area; and has committed, in principle, to apportioning part of its budget (in the range of 7.5% to 10% of its total budget) to support such an Impact Fund, subject to the findings of the feasibility study. In making this undertaking, the Commission will be maintaining its core activities.

4.3.9 The Commission is also proposing that, rather than specifying a ring-fenced fund for Disaster and Emergency Relief, its budget allocation for Grant Aid and Disaster and Emergency Relief be treated as a single development aid budget. It is the Commission's intention to broadly maintain the split between its different areas of work, with the majority of its emphasis on the preventive and reconstructive work funded through the annual Grant Aid round, rather than emergency relief. However, a single budget will provide greater flexibility to allocate funding in response to changing priorities for, and approaches to, the delivery of development aid.

5. Guernsey Development Impact Fund

5.1 *Background*

5.1.1 In June 2017, the Policy & Resources Committee and the Commission received an approach from Mr. Justin Sykes, the founder and managing director of Innovest Advisory, to explore the "appetite" within the States for establishing an impact investment fund as a mechanism for generating additional funds to support overseas development.

5.1.2 The Commission regards this approach as having the potential to provide an exciting and new way of delivering development aid. It is progressing these discussions in close partnership with the Policy & Resources Committee, as the "lead partner" given the expertise within that Committee through its Investment and Bond Sub-Committee. The Commission is conscious that this is an area outside its general area of knowledge and expertise, and so it would not, of itself, have the skills required to undertake the due diligence and professional assessment required if such a fund were to be established.

- 5.1.3 Impact investing is an investment model that aims to generate specific beneficial social or environmental effects alongside a financial return. Examples of this asset class include investment into commercial agriculture, social housing, healthcare, education, sustainable technologies and microfinance as well investments into outcomes-based public services. The Commission understands that this kind of investment is becoming increasingly recognised as a mainstream class with the sector having more than US \$75 billion assets under management (“AUM”) and growing at around 20% year-on-year. Estimates indicate that AUM in this area could reach US \$2 trillion, or 1% of global invested assets by 2025.
- 5.1.4 When the UN adopted the Sustainable Development Goals in September 2015, a framework for how to tackle some of the most pressing global challenges, including ending poverty and addressing climate change by 2030 it was estimated that the overall cost of delivering against the 17 SDGs would be around US \$4 trillion per annum.
- 5.1.5 In 2015, the OECD’s Development Assistance Committee (“the DAC”) estimated that some US \$132 billion was given by its 28 member countries and a further US \$9.23 billion by 10 other countries, including the United Arab Emirates, Russia and EU Member States that are not DAC members. This amounts to about 4% of the estimated annual cost of delivering the Sustainable Development Goals, indicating that new solutions and funding mechanisms are needed, beyond traditional development aid and bilateral transfers. Impact investment is one such potential route to leverage additional money to fund overseas development work, bringing in investment from philanthropic funds and other sources of private capital, in addition to the more conventional sources of development finance.
- 5.1.6 The Commission understands that, if the States of Guernsey were to invest in an appropriate impact investment fund, this could enable Guernsey to expand its support for overseas development beyond that which is currently possible through the Commission’s Grant Aid scheme. By combining government and private investment in an impact fund, which combines social and environmental goals with a financial return, the Commission believes it should be possible to provide additional, beneficial support for international development without increasing the demand on the public purse.

5.2 *Examples of Established Impact Funds*

- 5.2.1 In its initial discussions, the Commission was referred to two existing models which are made up from government funds together with private funds from businesses, corporate bodies, trusts and other investment funds, and individual investors: the DFID Impact Fund and the Luxembourg Microfinance Development Fund. The Commission believes that these case studies could

assist the States in considering the merits of impact investing, and has outlined them both below.

The DIFD Impact Fund

- 5.2.2 The Commission was advised that in 2012, the Department for International Development (“DFID”) launched an Impact Fund to draw private sector sources of capital into the impact investment market and demonstrate the viability of impact investments over the long term. The DFID Impact Fund is now a £75 million fund managed by the UK’s Development Finance Institution, CDC. CDC²⁰ is wholly owned by the UK government. CDC’s investment strategy, is set in conjunction with DFID.
- 5.2.3 The DFID Impact Fund is focused on investments in low income and lower-middle income countries in Sub-Saharan Africa and South Asia. The DFID Impact Fund supports investment in all sectors where it can be demonstrated that there is a significant unmet need for investment to achieve impact. These include, but are not limited to, businesses providing access to food, housing, energy, water, sanitation, health, education, financial services and livelihoods.
- 5.2.4 The DFID Impact Fund does not include micro-finance as DFID believes that this area of development aid has successfully attracted investment capital from other sources. The Commission understands that the Fund aims to increase capital available for development aid programmes through robust due diligence of investees’ financial returns, as well as the development impact of their work, in order to give confidence to investors. In the longer term, the fund aims to secure further capital through proving the financial viability of pro-poor business models and demonstrating the positive impact that this type of investment will deliver.

The Luxembourg Microfinance Development Fund

- 5.2.5 The Commission was advised that the Luxembourg Microfinance Development Fund (“the LMDF”) would more closely resemble the structure of any Guernsey Impact Investment Fund. The LMDF was incorporated in October 2009 and aims to contribute to the alleviation of poverty by supporting organizations that empower people and stimulate entrepreneurship, with a particular focus on the most excluded. The LMDF facilitates access to responsible finance by building sustainable links between investors, microfinance institutions and

²⁰ CDC was founded in 1948, making it the world’s oldest DFI. CDC aims to support the building of businesses throughout Africa and South Asia, to create jobs and make a lasting difference to people's lives in some of the world's poorest places. It supports businesses in developing countries which often struggle to find the investment they need to grow. At the end of 2015, CDC had portfolio of investments is valued at £3bn and including 1,293 investee businesses.

ultimate beneficiaries. It is an investment company organised as a public limited company under the laws of the Grand Duchy of Luxembourg.

- 5.2.6 The LMDF aims to support the alleviation of poverty in developing countries through permanent and adapted financial services to marginalised communities and individuals. The Fund invests in promising microfinance institutions that have a positive social impact so that these institutions reach financial autonomy. In pursuance of its objectives, the Fund may invest in individual microfinance institutions, in networks or associations of microfinance institutions, in regional funds, in microfinance investment vehicles and in other microfinance-related products.
- 5.2.7 The Commission was advised that the LMDF has two principal objectives, social and financial: to help socially-oriented microfinance institutions to become long-term viable enterprises that reach more poor people and offer better services, and to generate sufficient income to sustain its own operations and give its shareholders a financial return that at least compensates for inflation.
- 5.2.8 The LMDF's 2017 Annual Report²¹ showed the fund net assets had increased by 21% over the year, from €22.5 million to €27.3 million. This increase was largely attributed to additional contributions from shareholders of €4.6 million.
- 5.2.9 The LMDF Annual Report stated that, investments in microfinance had grown by 0.6% from €19.6 million at the last year end to €20.7 million. The headline figures showed that some 1.1 million individuals (74% of whom were women) were receiving microfinance loans through the LMDF and 60% were in Latin American, 21% in South East and Central Asia and 12 % in Sub-Saharan and North Africa with the remaining 7% being distributed in developed countries. The average loan was €1,170.

5.3 *Potential Structure for a Guernsey Development Impact Fund*

- 5.3.1 Initial discussions with the Policy & Resources Committee and Innovest Advisory have focused on the creation of a new, Guernsey-based, impact investment fund, rather than investment into an existing fund. The Commission understands that there is considerable interest from Guernsey's financial sector, and connected industries, in developing this area locally. At this early stage, it is envisaged that any such fund would include a focus on investing in pro-poor business activities in developing and emerging markets, targeting a level of financial return alongside the achievement of specified social and environmental goals.

²¹ <https://www.lmdf.lu/en/>

- 5.3.2 The Commission has taken, and will continue to take, an active part in discussions about the development of such a fund. However, the lead role (on behalf of the States) in designing such a fund and assessing its feasibility belongs to the Policy & Resources Committee. The Commission's contribution centres principally on shaping the social and environmental goals of the fund, to ensure that it reflects Guernsey's values and principles for overseas aid and development.
- 5.3.3 The Commission understands that the proposed fund would be independent of the States, and administered by experienced, professional fund administrators.
- 5.3.4 The Commission, in discussion with the Policy & Resources Committee, has been asked to consider allocating part of its annual budget as seed funding to establish a fund. It is understood that an initial tranche of government investment, in the form of seed-funding, would help to boost the confidence of potential private investors in the fund and encourage them to commit. The initial discussions have suggested that, to launch the fund, an annual investment of between £200,000 and £500,000 would be required for at least the first three years of the fund (equivalent to between 7.4% and 18.5% of the Commission's overall budget).
- 5.3.5 If this seed funding were to come from the Commission's Grant Aid budget, the Commission would not be able to support as many projects as in previous years (a reduction of around 5 to 13 projects, depending on the size of the commitment, over each of the next three years). However, the initial discussions have indicated that the fund could deliver comparable social and environmental benefits to those achieved by some of the projects which the Commission supports and, by achieving a financial return, could ensure ongoing investment in such projects, without significant additional demands on the public purse from year to year.

5.4 *Next Steps from the Commission*

- 5.4.1 The Commission has been persuaded that there is merit in exploring impact investment, as an option for expanding Guernsey's contribution towards overseas development aid. It firmly believes that the provision of grant aid by way of awards to individual charities and NGOs for specific and costed development projects must remain at the core of the Commission's work. However, mindful that its mandate also includes a provision for it "*to develop programmes relating to the collection and distribution of funds involving the private sector*" and that potential budget reductions mean it is necessary to explore other ways of increasing the impact of development aid, the Commission believes that impact investment could offer an opportunity to fulfil both these goals in a creative and constructive way.

- 5.4.2 The Commission believes a Guernsey Development Impact Fund potentially offers a new and exciting approach to how it funds development projects. It is also satisfied that impact investment falls within Part 2 of the Commission's mandate, namely, *"To develop programmes relating to the collection and distribution of funds involving the private sector"*. However, for the reasons set out above, the Commission believes this initiative must be undertaken in partnership with the Policy & Resources Committee and with that Committee acting as the "lead" partner because it has the required expertise and experience in establishing and monitoring investment funds.
- 5.4.3 Further, the Commission's view is that a Guernsey Development Impact Fund would not, and indeed should not, replace the Commission's core focus of providing development aid through the Grant Aid Scheme. The Commission is mindful that many charities, including several local charities, rely on funding through the Commission to deliver development projects that would otherwise be beyond their fundraising abilities to support. The evidence in the charities' interim and final reports underlines the sustainable and life-changing impact such small projects have for the beneficiary communities.
- 5.4.4 The Commission is firmly of the view that it should be directly involved in setting the criteria for the types of development work to be supported from any local impact investment fund which has an element of States' funding, as well as the countries in which the fund may distribute monies. The Commission also firmly believes that it must have a role to play in monitoring the performance of the fund, with specific responsibility to review the impact of projects supported through the fund.
- 5.4.5 In order to progress this new opportunity for delivering development aid, the Commission has agreed:
- a) In close consultation with the Policy & Resources Committee (as the "lead partner"), to work with Innovest Advisory, or other suitably qualified and experienced organisation(s), to undertake a full and costed feasibility study on the concept of a Guernsey Development Impact Fund; and
 - b) In principle, and subject to the findings of the above feasibility study, to allocate between £200,000 and £250,000 from its 2018 budget, and in 2019 and 2020 to invest a further similar amount from its forecast budgets for both year, in the proposed Guernsey Development Impact Fund.
- 5.4.6 The Commission envisages that, within two years of its launch, a full review of the Fund, including how it supports the delivery of overseas aid beyond the Commission's own investment, will be undertaken. The outcomes from the review will inform any decision, again in close partnership with the Policy & Resources Committee, as to whether the Commission should continue to

provide seed or other capital investment into the Fund and, if so, the level of such investment and the investment period.

- 5.4.7 In conclusion, the Commission believes that the creation of a Guernsey Development Impact Fund offers an exciting opportunity to increase the value of the States contribution to overseas development. The proportion of its 2018 and future budgets which, subject to confirmation from the Policy & Resources Committee that the proposed Impact Fund provides a prudent fund in which public money should be invested, the Commission proposes to allocate will be held back from the Commission's 2018 Grant Aid programme but will be returned to this part of the Commission's budget for future allocation should, for whatever reason, a Guernsey Development Impact Fund not be established.

6. Strengthening the Commission's Internal Governance

- 6.1 In 2013, following an internal audit review of the Commission, the policies and procedures for the making of both Grant Aid and Disaster and Emergency Relief awards were amended in response to recommendations in the internal audit report, to ensure that the transfers of awards satisfied best accounting practices and to ensure that the Commission complied with the international anti-money laundering and terrorist financing standards for charities and NGOs transferring money overseas.
- 6.2 As a result of these reviews, the Commission formalised the terms and conditions for each award it made to a charity and strengthened the agreement each charity must sign before any money is released. It also introduced a clear policy setting out its compliance requirements and the sanctions which may be imposed in the event of a breach of compliance (see Appendix 3).
- 6.3 Further, all Grant Aid payments for 2014 were issued as two or more staged payments. The first payment is made on receipt of a signed agreement from the charity confirming that the project is to proceed on the basis of the approved application and confirmation of a start date for the project. The first payment is made about four to six weeks before the commencement date.
- 6.4 The second payment is now generally released half-way through the delivery of the project following receipt of an interim report explaining how delivery of the project is progressing and including a budget which shows the proportion of the grant spent to date against the work undertaken.
- 6.5 The Commission is mindful that it would be impossible (and certainly not cost-effective) to visit every project it supports, and so works hard to establish a good and open working partnership with the charities it funds. It also understands that the impact of in-country events such as elections, climatic changes, including freak weather events, epidemics and natural disasters, can

have a very significant impact on the delivery of the approved project. Therefore, the Commission requires charities to advise it of such delays in a timely manner, so that it can work with the charity to agree a revised reporting timetable, to ensure that the project can continue as soon as the in-country disruption has settled.

6.6 In 2016, following a review of the recommendations in the Moneyval report which assessed the effectiveness of measures in place to prevent money laundering and the financing of terrorism, the Commission, in close consultation with the Policy & Resources Committee, reviewed its agreements with funded charities. As a result of this review, a more detailed charity registration form must be satisfactorily completed before any award is made. The registration form addresses the mechanism the charity has in place to ensure that all funds received and transferred to overseas development aid is properly accounted for and that the charity has appropriate measures in place to mitigate the risk of its funds (from any source) being used unlawfully, including through for the payments of bribes, for financing terrorism or for money laundering purposes.

6.7 The Commission is pleased to report that all the charities it supports have embraced these changes and the level of compliance has been very high, in excess of 99%. Most compliance issues relate to a charity failing to notify the Commission in a timely manner that their interim or final report will not be submitted within the prescribed timeframe because of operational challenges in country. The Commission recognises that events such as general elections and extreme weather are likely to have a more significant impact on the infrastructure and delivery of services in developing countries than is the case in a developed country. For this reason, the Commission always adopts the approach that there is rarely any issue for a charity submitting a progress report late, so long as the Commission has been advised as soon as possible of the delay, the reasons for it and provided with a revised timetable for submitting the report

6.8 Since the Commission published clear compliance guidelines in 2010, there have been no instances of a charity altering how an approved grant is used without prior approval from the Commission.

7. **The Commission's response to the other recommendations in the 2012 Policy Letter**

7.1 The 2012 Policy Letter said that should the States agree to substantially increase the level of Guernsey's overseas aid contributions any such increase would need to be fully explained in order to rebut any potential public negativity. It recommended that the Commission:

- Raise its media exposure
- Develop a “Guernsey Overseas Aid” website to inform the public of the facts and figures involved with Overseas Aid worldwide.
- Investigate the possibility of linking private philanthropy and local charities to governmental Overseas Aid contributions through funding schemes.

The progress which the Commission has made against each of these three areas is outlined in brief below.

7.1 *Raising the Commission’s media exposure*

7.1.1 Since 2012, the Commission has endeavoured to be more proactive in publicising its work through the local media. The Commission recognises that its work reflects positively on Guernsey in the wider international community and also raises islanders’ awareness and understanding of overseas development and humanitarian issues.

7.1.2 In 2013, the Commission redesigned the format and content of its Annual Reports. The new style reports now include both an overview of the Commission’s work in the previous year and an update on the delivery of a number of the projects the Commission has supported. The reports include photographs provided by recipient charities and case studies from those who are direct beneficiaries of funding from the Commission. The aim is to show how the Commission’s grants have made a sustainable improvement to the lives of some of the world’s poorest communities. The Annual Reports are now published as standalone reports (in electronic form), in an endeavour to reach a wider readership. The reports are sent to all the charities on the Commission’s contact list and published on its website.

7.1.3 Further, the Commission has sought to be proactive in issuing media releases about its work. These have primarily related to the various awards it makes each year to assist communities in the least developed countries in the immediate aftermath of natural disasters and other emergencies. The Commission now issues media releases whenever it makes an award from its Disaster and Emergency Relief budget. The Commission continues to work closely with the States Corporate Communications Team to identify opportunities for promoting the Commission’s work.

7.2 *Commission website*

7.2.1 Since 2012, the Commission has updated and enhanced its website. The website provides information about the Commission’s work, its funding policies and detailed guidance notes, details of how charities may apply for funding and information about funded projects. The website also allows charities to register for updates from the Commission.

7.2.2 The greater web presence has resulted in a significant increase in the number of charities that have registered an interest with and applying for funding from the Commission. Prior to 2012, the Commission was receiving applications from about 45 charities. The 2017 Grant Aid funding round attracted some 274 applications from over 200 charities, of which 52 were applying for funding for the first time. In addition, over 500 charities and individuals have registered via the Commission's the website for updates on its work.

7.3 *Working with overseas development charities*

7.3.1 In addition to the updated website, the Commission has also worked to strengthen its relationships with the many charities applying for funding. The Commission sends out regular email updates, for example advising charities of dates for making funding applications, updates on the progress of reviewing the funding applications, feedback on the most common reasons for applications not being supported for funding, etc.

7.3.2 Good governance of the funding distributed by the Commission is central to its work. The Commission undertakes initial compliance checks on all charities applying for funding, including making checks with the Charity Commission with which the charity is registered. It is for this reason that the Commission only considers applications from charities registered in the British Isles.

7.3.3 When an award is agreed, further checks are made, including requiring the recipient charity to provide details of in-country partners and, where an award is for a project in a country which is subject of international sanctions, confirmation that the charity has undertaken the requisite checks to ensure that neither the in-country partner or other individuals or bodies involved in the delivery of the project are subject to the sanctions. There is also strong governance around the application process, and a focus on impact: the potential impact of the project forms a central part of the Commission's initial evaluation, and follow-up reports show how this has developed in practice. However, this is an area where the Commission is keen to continuously improve, in order to better communicate with the public, and to demonstrate that Guernsey is making a positive difference among communities around the world.

7.3.4 The Commission continues to meet with individual charities on request. These meetings provide an opportunity for the charities to update the Commissioners on their work generally and, in particular, the progress of projects funded by the Commission. In addition, they enable the Commissioners to ask questions and so develop and deepen their understanding of the charities' work, the impact of and difference the funding from the Commission makes and the

wider challenges faced in delivering development aid to remote and often unstable communities and regions.

7.4 Working with private philanthropy and local charities

7.4.1 Since 2012, the Commission has worked closely with the Association of Guernsey Charities to support Guernsey-based overseas development charities in their work. The Commission now offers an annual Grant Aid application workshop for these charities to help them understand the process including what information will assist the Commissioners when reviewing applications so that they can maximise their chances of securing a successful outcome. These workshops have been well received by the participants and have had positive results for the charities attending.

7.4.2 In 2015, the Commissioners attended a presentation from Greg Valerio of CRED Foundation who spoke about Fairtrade gold²². As a result of the presentation, the Commission forged a partnership with local jeweller, Ray and Scott, KPMG and Fairtrade Guernsey to provide support for Ugandan artisanal gold miners to reduce their dependence on mercury and cyanide in gold extraction through the purchase of a centrifuge and smelting unit. The total cost of project was £7,689 and the funding is being shared between the Commission and the partners as follows:

Contribution from Ray and Scott Jewellers	£1,900
Contribution from KPMG	£ 300
Private individual donations	£ 270
Contribution for the Commission	£5,489

7.4.3 In 2016, the Commission entered into two match funding initiatives with local organisations – the World Aid Walk Committee and the Guernsey Rotary Clubs.

The World Aid Walk

7.4.4 In 2016 and 2017, the Commission agreed to match, pound for pound, the money raised by the walkers participating in the World Aid Walk. In reaching its decision to offer this match funding, the Commission recognised how much part of Island life the World Aid Walk has become since its inception in 1970 and the huge difference that the money raised by countless walkers in that time – amounting to over half a million pounds – has made to the lives of some of the poorest people in the world.

²² The Fairtrade Gold standard has established tangible developmental opportunities for the small-scale miners, their communities and traceable supplies of gold for jewellers. Key objectives are traceability of supply, social and environmental improvements, labour standards including eradicating child labour, minimum prices and trading standards and removing economic exploitation from the supply chain.

- 7.4.5 The Commissioners wished to support and recognise the efforts of those walking and those sponsoring walkers, as well as amplifying the World Aid Walk’s message to Islanders: to better understand the huge difference their efforts and generosity have made and to show that a few pounds and blisters and aching muscles can change lives and indeed save lives.
- 7.4.6 The Commission invited each of the charities supported by the 2016 World Aid Walk – ActionAid, Christian Aid, Oxfam, Save the Children, the Tumaini Fund, the Eleanor Foundation, and Seeing Is Believing – to identify a specific project which the World Aid Walk sponsorship and the Commission’s match funding would be used to fund. The projects identified, which were consistent with the Commission’s funding principles, include providing shallow wells and protected springs in Tanzania, mosquito nets to families in Tanzania, rebuilding a school in Nepal that was destroyed by the 2015 earthquake, supporting a school feeding programme in Ethiopia and building a raised platform to accommodate a small cluster village in the Ganga-Brahmaputra delta region of Bangladesh.
- 7.4.7 The Commission will work with the World Aid Walk team and the local representatives from each of the recipient charities to publicise the impact of these projects. It hopes that seeing how the money raised in Guernsey impacts on people’s lives will encourage more Islanders to sign up for future World Aid Walks and persuade those sponsoring them to “dig a little deeper”.
- 7.4.8 The Commission agreed to extend this match funding commitment for the 2017 World Aid Walk on a similar basis to the 2016 agreement. The Commission’s agreement reflected the positive engagement of all those involved in arranging the Walk, the commitment and drive of the recipient charities to maximise the impact that this funding has for some of the world’s poorest communities and all those who participated in the walk, either by walking themselves or sponsoring somebody who is walking.

The Guernsey Rotary Clubs

- 7.4.9 The two Guernsey Rotary Clubs have supported the undertaking made by Rotary International in 1985 that it would free the world of the terrible disease of polio²³. In 1985, there were more than 1,000 cases daily across 125 countries. The latest figures for 2016 show just 12 cases in two countries (Afghanistan and Pakistan) diagnosed in the last six months of 2016. The

²³ Since 1985, Rotary International has raised more than £8 billion which has resulted in over 2.5 billion children being vaccinated. The estimated net benefit of the polio eradication programme, including supplemental vitamins, is estimated to have saved £90 billion in health and social care costs and prevented 5.4 million child deaths.

Guernsey Rotary Clubs had raised £66,000 towards this appeal prior to the offer of match funding from the Commission.

- 7.4.10 When it agreed to provide match funding (up to a ceiling of £40,000) to the Clubs' fundraising efforts for the ongoing immunisation programme, the Commission recognised the significant contribution Islanders had already made. The Commission noted the objective of the campaign, "End Polio Now", was now tantalisingly close and so a final concerted effort was urgently needed. The Commission was also conscious that, for many Islanders, polio is a disease they know little about as the last case in Guernsey was recorded in 1956. However, polio remains a highly infectious, crippling and life-threatening virus that mainly affects children under five years of age. There is no cure but it can be prevented by a simple vaccine costing just 20 pence.
- 7.4.11 In addition, the Commission noted that Rotary had secured further matched funding for the campaign from the Bill and Melinda Gates Foundation which had undertaken to donate £2 for every £1 raised in Guernsey. This meant that the £40,000 pledged by the Commission could result in a further £240,000 being made available for the vaccination programme, providing some 12 million further doses of the vaccine.
- 7.4.12 Looking forward, the Commission continues to work to identify other partnership opportunities. It believes that the match funding projects supported in 2016 have helped to ensure that the Commission's work becomes better known to a broad cross-section of Islanders. For 2017, it has had some initial and tentative discussions with the Eleanor Foundation (a Guernsey-based charity working in northern Tanzania) about the possibility of a partnership in 2017/2018 with the Guernsey Rotary Clubs and other Guernsey sponsors to progress a water and sanitation project.

8. Consultation with the Policy & Resources Committee

- 8.1 The Commission has prepared this Policy Letter in close consultation with the Policy & Resources Committee, especially in respect of the proposal relating to the potential development of an impact investment fund.

9. Conclusions

- 9.1 Since 2012, the Commission has used its best endeavours to fulfil the recommendations of the States regarding how it delivers and monitors its responsibilities and so ensures that the awards it makes reach the intended recipients. The Commission is mindful that when allocating its funds it is allocating public money and that public confidence in the Commission's work relies on its ability to show how the funds have been used and that a tangible

and lasting improvement to the basic needs of some of the world's poorest communities has been achieved.

- 9.2 The Commission remains mindful that, unlike many other States Committees and bodies, it has few, if any, opportunities to make operational savings. The Commissioners do not receive any financial remuneration for the many hours of work they put into reading and assessing each application for funding, meeting with charities, reviewing project reports and generally promoting and progressing the Commission's work. The Commission has one member of staff who is employed on a 0.3FTE basis. For this reason, the Commission believes it is incumbent on it to identify different models for delivering development aid with particular emphasis on approaches which can deliver a multiplier effect, i.e. how to maximise the impact of every £ of the Commission's budget through matched funding and other initiatives. The Commission believes that alternative funding models such as those referred to in this Policy Letter provide exciting and powerful opportunities for doing more with the same amount of States' funding.
- 9.3 The Commission sincerely hopes that the promising initial discussions it has had with the Policy & Resources Committee and Innovest Advisory will be fruitful and a Guernsey Development Impact Fund be established which might add to the Commission's portfolio of approaches for delivering sustainable development aid on behalf of the States of Guernsey. Indeed, the Commission believes that there may be other opportunities for States Committees to consider the impact funding approach to finance public services, e.g. where services are being delivered by the Third Sector but funded by the States.

10. Propositions

- 10.1 The States are asked to decide

Whether, after consideration of the Policy Letter entitled "Overseas Aid & Development Commission – Funding Arrangements and Future Developments" dated 25th September 2017, they are of the opinion:-

- (i) To agree that the Overseas Aid & Development Commission's budget allocations for Grant Aid and Disaster and Emergency Relief be treated as a single development aid budget and for the Commission to determine the proportion of its budget allocated across its core mandated functions;
- (ii) To note the Overseas Aid & Development Commission's decision to progress, in close consultation with the Policy & Resources Committee (as "lead partner"), the initial exploratory discussions it has had

regarding the possibility and feasibility of establishing a Guernsey Development Impact Fund;

- (iii) To delegate authority to the Policy & Resources Committee to approve the investment of between £200,000 and £250,000 per annum of the Overseas Aid & Development Commission's budgets for 2018-2020 in the proposed Guernsey Development Impact Fund;
- (iv) To note the Overseas Aid & Development Commission's ongoing commitment to ensure good governance in all areas of its mandate, and especially to ensure strict monitoring of all Grant Aid awards;
- (v) To note the measures the Overseas Aid & Development Commission has introduced to strengthen its compliance procedures in respect of preventing misuse of funds for money laundering or the funding of terrorism; and
- (vi) To note the Overseas Aid & Development Commission's response to the States Resolutions of January 2012.

Yours faithfully

Deputy Emilie Yerby
President
Overseas Aid & Development Commission

Mr. T Peet, M.B.E, Commissioner
Dr. N Paluch, Commissioner
Mr. P Bodman, Commissioner

Mr. S Mauger, Commissioner
Miss J Moore, Commissioner
Ms. T de Nobrega, Commissioner

APPENDIX 1 – UN Sustainable Development Goals



SUSTAINABLE DEVELOPMENT GOALS



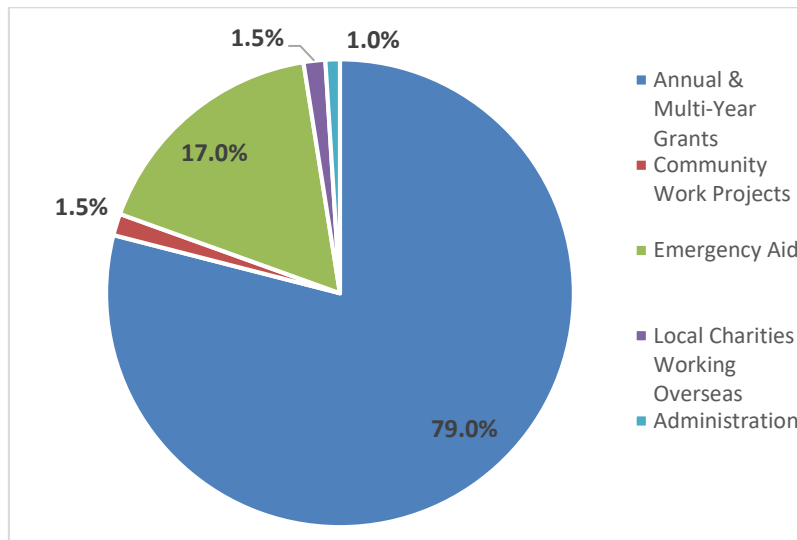
Sustainable Development Goals

- Goal 1* End poverty in all its forms everywhere
- Goal 2* End hunger, achieve food security and improved nutrition and promote sustainable agriculture
- Goal 3* Ensure healthy lives and promote well-being for all at all ages
- Goal 4* Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all
- Goal 5* Achieve gender equality and empower all women and girls
- Goal 6* Ensure availability and sustainable management of water and sanitation for all
- Goal 7* Ensure access to affordable, reliable, sustainable and modern energy for all
- Goal 8* Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all
- Goal 9* Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation
- Goal 10* Reduce inequality within and among countries
- Goal 11* Make cities and human settlements inclusive, safe, resilient and sustainable
- Goal 12* Ensure sustainable consumption and production patterns
- Goal 13* Take urgent action to combat climate change and its impacts
- Goal 14* Conserve and sustainably use the oceans, seas and marine resources for sustainable development
- Goal 15* Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss
- Goal 16* Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels
- Goal 17* Strengthen the means of implementation and revitalize the global partnership for sustainable development

APPENDIX 2 - Overseas Aid Contributions in the Crown Dependencies and other Jurisdictions

Jersey Overseas Aid Committee

The Jersey Overseas Aid Committee's (JOAC) 2016 budget is £10,337,000. The following chart from the 2014 JOAC Annual Report provides a breakdown of how the budget is split between JOAC's funding priorities. Jersey's GDP figure for 2014 (the most recent calculation available) was £3.88 billion. Jersey's overseas aid spending represents 0.27% of its GDP.



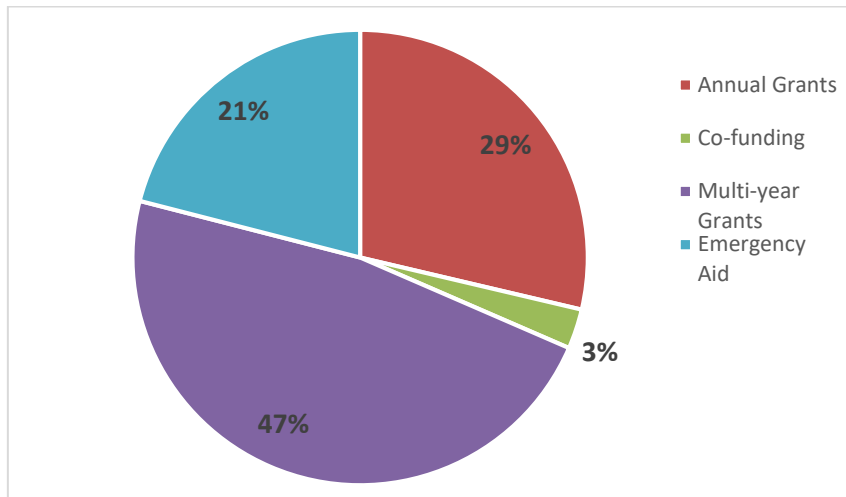
Unlike the Commission, the Jersey Overseas Aid Committee ("JOAC") only considers applications from charities on a limited list of some 30 approved charities. In addition, JOAC also only considers applications for projects in the following countries:

- **Africa:** Ethiopia, Ghana, Lesotho, Liberia, Malawi, Mozambique, Rwanda, Sierra Leone, Tanzania, and Zambia
- **Asia:** Bhutan, Nepal, and Myanmar
- **South America:** Bolivia, Colombia, and Guatemala

Isle of Man International Development Committee

The 2016/2017 budget for the Isle of Man's International Development Committee is £2,400,000.

The Isle of Man's International Development Committee only considers applications from charities registered in the Isle of Man. This limitation has seen many of the larger development aid charities registering a "sister charity" in the Isle of Man to be eligible to apply for funding from the International Development Committee.



The above chart provides an overview of how this money was distributed. The Isle of Man's GDP figure for 2013/2014 (the most recent calculation available) was £4.32 billion. The Isle of Man's overseas aid spending represents just under 0.05% of its GDP.

Overseas Aid contributions in other Jurisdictions

The table below provides a snapshot of spending on overseas aid and development by a number of other jurisdictions as a percentage of the country's GDP. When comparing these figures with Guernsey, it should be noted that Guernsey's (and indeed Jersey's and the Isle of Man's) annual overseas aid and development contributions provide direct development project aid through charitable bodies. In other words, 100% of the Crown Dependencies overseas aid contributions is issued in least developed countries for specific development projects. The UK's contribution included "aid for trade" payments as well as awareness raising projects in the UK, etc.

Specifically, the UK aims to achieve the international target of spending 0.7% of its Gross National Income on Official Development Assistance (ODA). ODA, as defined by the OECD, entails funding flows to developing countries by governments or their agencies, which are intended to promote "the economic development and welfare" of such countries as their main objective, and which are "concessional in character" with "a grant element of at least 25%."²⁴

In September 2015, the United Nation reviewed the MDGs as part of the 2030 Agenda for Sustainable Development. As a result of this review, the MGDs were replaced with 17 Sustainable Development Goals (SDGs) to end poverty, fight inequality and injustice, and tackle climate change by 2030.

The SDGs build on the MDGs, eight anti-poverty targets that the world committed to achieving by 2015. The MDGs, adopted in 2000, aimed to eradicate poverty, hunger, disease, gender inequality, and access to water and sanitation. Enormous progress has

²⁴ OECD (2008) "Is it ODA? Factsheet" [Online] Available at: <http://www.oecd.org/dac/stats/34086975.pdf> [accessed 14.06.2016]

been made but despite this success, the indignity of poverty has not been ended for all. They are part of a broader sustainable development agenda and seek to go further than the MDGs, by addressing the root causes of poverty and the universal need for development that works for all people. The MDGs established measurable, universally-agreed objectives for eradicating extreme poverty and hunger, preventing deadly but treatable disease, and expanding educational opportunities to all children, among other development imperatives, including:

- Reducing income poverty
- Increasing access to improved sources of water
- Raising primary school enrollment
- Reducing child mortality.

The move from the MDGs to the SDGs seeks to continue and extend the work started in 2000. The Commission fully supports this changes and believes it accords with its objectives to complete the work begun through the introduction of the MDGs through:

- (a) Promoting peaceful and inclusive societies
- (b) Creating better jobs
- (c) Tackling environmental challenges, especially climate change.

The table below shows the proportion of GDP which various countries spend on ODA:

Norway	1.07	New Zealand	0.26
Sweden	1.02	Iceland	0.26
Luxembourg	1.00	Japan	0.23
Denmark	0.85	Portugal	0.23
United Kingdom	0.72	USA	0.19
Netherlands	0.67	Spain	0.16
Finland	0.55	Italy	0.16
Switzerland	0.47	South Korea	0.13
Belgium	0.45	Slovenia	0.13
Ireland	0.45	Greece	0.13
France	0.41	Czech Republic	0.11
Germany	0.38	Poland	0.10
Australia	0.34	Slovak Republic	0.09
Austria	0.28		
Canada	0.27		

By comparison, Jersey spends 0.27% of its GDP on overseas aid (equivalent to Canada's contribution); Guernsey 0.12% (somewhere between Greece and the Czech Republic) and the Isle of Man 0.05%.

APPENDIX 3 - Impact of Overseas Aid and Development Funding

The Commission's current budget enables Guernsey to support about 80 of the world's least developed countries²⁵ to help them achieve sustainable lives and livelihoods that are no longer dependent on overseas development aid. The Commission's key objective is to provide a hand up and out of poverty through sustainable projects which make both life changing and life-saving differences to the day-to-day lives of those living in poverty in the developing world. The Commission makes a maximum grant per project of £40,000, although lesser awards may also be made. The majority of funding applications are within this envelope. This approach enables the States to fund a diverse range of projects across different countries, making an impact at the level of a village or community.

The projects, though generally small in scale, have a significant and sustainable impact on the beneficiaries. The following examples of projects the Commission has funded in recent years underline the difference a grant of £40,000 can make.

Project 1 – Oxfam Water and Sanitation Project in Malawi

In 2015, the Commission made a grant of £39,984 to Oxfam for a project which aimed to reduce the risk of waterborne diseases such as cholera amongst 4,000 households in Mlolo and Tengani in Malawi by increasing access to clean water and improving sanitation and hygiene practices by:

- enhancing cholera risk reduction and preparedness through support to improved access to safe drinking water; and
- improving personal and household sanitation and hygiene practices (such as stopping open defecation and encouraging the use of household pit latrines).

The end of project report set out the following key achievements:

- 30 latrines built for 5 schools and the Masenjere health centre servicing 1,052 people;
- 10 boreholes have been rehabilitated providing clean water to 2,871 people
- 5 new boreholes sunk providing clean water for 4,502 people;
- 120 members from the 15 villages trained to oversee the drilling operations and management and maintenance of the 15 boreholes; and
- 30 local people have been trained as Community Based Health Animators and provided with a bicycle to conduct house to house hygiene promotion.

Prior to the construction of the boreholes the women of these communities had to travel an average of 2km to access water and spent three hours in search of water in a day and cases of water borne diseases such as cholera and bilharzias were rampant. The newly constructed boreholes have reduced the time and distance burden of

²⁵ The least developed countries are defined as those falling within the UN's Human Development Index (HDI)

women in collecting water. In addition, the school children can now concentrate on attending classes rather than fetching water. The project also included training members of the two communities to manage and maintain the boreholes and to deliver health promotion training will ensure that the project is sustainable.

These elements of the project are as important as providing access to clean water. Without the communities taking ownership of their new water sources and sanitation facilities, the boreholes and latrines would very quickly fall into disrepair and the communities would revert to their previous unsafe hygiene practices and the incidence of cholera and other waterborne disease would rise.

The only water source in Mlolo before the project



One of the five new boreholes constructed in Mlolo



Project 2 – Ellen Jane Rihoy Food Security Project in Kenya

In 2014, the Ellen Jane Rihoy Trust²⁶ applied for a three year grant of £100,000 to implement a conservation and livelihoods enhancement project in Segera, Kenya in particular and Laikipia County in general. The core objective of the project is to conserve the environment and improve the livelihoods of some 14,770 people in the area through enhanced food security, sustainable rangeland management and income generation for youths who will initiate and manage cottage industries.

In recent years, the rainy season for this region of Kenya has become less reliable and has resulted in prolonged periods without rain and has led to the farmers, who are pastoralists by tradition, struggling to find grazing for their cattle and their traditional lifestyle has become threatened as their sources of income and food security have

²⁶ Local building company Rihoy & Son's established the Ellen Jane Rihoy Trust to provide support for development projects in sub-Saharan Africa. Since 2000, the Ellen Jane Rihoy Trust has been providing financial support to improve the livelihoods and opportunities of some of the world's most impoverished and marginalised communities. Support is targeted at institutions that have dedicated and talented leadership drawn from within local communities who have demonstrated that, with a small amount of initial seed funding and external support, they have the energy, commitment and dedication to address the problems facing their own communities.

dropped significant. Further, the available grazing has quickly become overgrazed and so failed to regrow when the rains have come. The Ellen Jane Trust in partnership with the Zeitz Foundation presented this project to assist the community of Segera adapt their traditional pastoralist farming lifestyle to the changing rainfall patterns and to ensure that the available grazing is managed in a sustainable manner. In the Year 2 Project Report, the Trust indicated the following objectives:

To rehabilitate the Segera environment through rangeland management by developing a participatory holistic grazing management model that incorporates wildlife use of the range as well as optimal return from cattle. This will be through establishing collaborative approach with commercial farmers using the scheme and adapting it across different land tenure regime.

The report also demonstrated that, after two grazing seasons, the project team and community elders had observed that the condition of cattle is evidently better than similar period in 2015. Whilst this was in part due to a higher rainfall in the period, the improved condition of the area where community grazes cattle demonstrated the positive impact of the project approach. For example, in areas, where cattle were grazed in the first six months of 2016, an observation of wildlife inhabitation in the area demonstrated the premises on which the model is based that livestock and wildlife can co-exist as complimentary land uses.



Gates regulate the movement of cattle into the grazing areas

In addition, this project has attracted the attention of leaders at local county and nationally. In early 2016, Kenya's Cabinet Minister for the Environment and Natural Resources, Prof Judi Wakhungu has visited the project twice. The Laikipia County Governor, Hon. Joshua Irungu and Local MP. Hon Mathew Lempurkel also visited in early April 2016 and publicly endorsed the approach the project have taken in regard to grazing and creating collaborative frameworks for land owners to address land degradation resulting from unplanned grazing.

Project 3 – The Leprosy Mission Healthcare Project in Nepal

In 2014, the Commission made a grant of £39,972 to the Leprosy Mission for England and Wales to support improved healthcare for women in Tikabhairav in Nepal by building new in-patient care for women affected by leprosy at the Anandaban Hospital. This hospital is the leprosy referral centre for the whole of Nepal, as well as parts of northern India. It is a pioneer in leprosy work and is the prime centre for leprosy relapse diagnosis, as well as tertiary level medical and surgical care for leprosy patients in Nepal. Via its out-patient department, it also caters for the general medical services of the population of south Lalitpur who do not have easy access to other good quality health facilities nearby.

The grant from the Commission allowed the charity to build an additional wing, including a female leprosy ward and a maternity ward. These additional facilities, afford female patients access to quality leprosy and maternity care. The maternity section is greatly needed as such services are not easily available for the women of southern and rural Lalitpur, where Anandaban is located.



Exterior of new block



One of the wards in the new block

The following case study was included in the charity's end of project report and underline the difference the funding from the Commission has already made and will continue to make to the lives of the people of southern Lalipur.

Case Study - Jamuma's Story

Jamuma is 26 years old and from Dhoti, a remote region in the West of Nepal. She started to experience symptoms of leprosy when she was 12 years old but no one in her community was aware of leprosy and so her symptoms were not identified. Jamuma's looked after the family's goats and collected firewood. This led to her sustaining injuries in her feet, but she did not notice the wounds because she could not feel them and they became infected. When first seen by the Leprosy Mission, Jamuma had been unable to walk for six years. She was admitted to the new ward at the Anandaban Hospital. Her damaged feet were treated and she was provided with specialist footwear and gradually learnt how to walk again. Whilst in hospital she was also taught to knit and began education classes and can now read and write a little.

Jamuma says she feels very blessed for all the love and care that is being shown to her and for all that is being done to help her. Since returning to her village, Jamuma continues to receive support from the Leprosy Mission and hopes to set up a little business. Jamuna, says *“This is my life. I don’t want to be a burden to anyone. I want to help myself.”*

Project 4 – CAFOD Improving access to HIV Prevention, Care and Treatment in Uganda

In 2014, the Commission made a grant of £40,000 to CAFOD to support a project to enhance the capacity of Kitovu Mobile (an agency supporting those affected by HIV or AIDS in the Masaka region of southern Uganda) to increase access to quality HIV prevention, treatment and care services to the targeted beneficiaries. This area of Uganda is traversed by the main highway between the Mombasa and Nairobi and northern Tanzania, Rwanda and Burundi and for this reason has had some of the highest HIV infection rates in sub-Saharan Africa.

The project had the following objectives:

- To improve service delivery through provision of comprehensive HIV treatment and care for 2,000 people living with HIV/AIDS (PLHA) and cancer by linking with existing mission and government health facilities, within 7 districts of Masaka Diocese.
- To increase demand and access to HIV prevention services in the communities by 50% in the 7 targeted districts.
- To strengthen programme staff capacity and collaborating structures to improve service delivery and provision of quality services.
- To enhance the capacity of Kitovu Mobile to support PLHA.

CAFOD’s final project report concluded that the funding from Commission had enhanced the capacity of Kitovu Mobile through the Comprehensive Care & Treatment Program (CCTP) to increase access to quality HIV prevention, treatment and care services to the targeted beneficiaries.

During the project, 30% of medical care for 2,389 people of which 18.6% (439) had cancer was supported by the Commission’s funding and for the first time in Kitovu Mobile, 96 HIV+ mothers were adequately followed up. The Commission’s grant has increased Kitovu Mobile’s personnel capacity to managing clients’ data for evidence based patient care and program development. The project enabled Kitovu Mobile to initiate the adaptation of the “system strengthening approach” through the establishment of three satellite clinic at the Mbirizi, Ssunga and Lwebitakuli Health Centres. This has meant that care for those living with HIV and AIDS is directly linked to and integrated with all aspects of theirs and their families’ health care.

Finally the grant has increased the capacity of community volunteers in responding effectively to HIV prevention strategies. Currently a total of 177 (44 male and 133

female) Expert Clients have attained adequate skills in basic HIV care, treatment and support and act as ambassadors for positive living and HIV prevention in their communities. The improving feedback mechanism has also promoted comprehensive quality service delivery with Kitovu Mobile stakeholders.

In October 2016, the Commission's Secretary, whilst on an unpaid sabbatical in Uganda, took the opportunity to visit Kitovu Mobile and learn first-hand how the project had made a sustainable improvement to the people of Masaka living with HIV and AIDS. The Secretary learnt that through the success of this project and the skills gained by all staff, including the Expert Clients trained with funding from the Commission, had enabled Kitovu Mobile to secure additional funding from the Ugandan Ministry of Health and so it was no longer reliant on overseas development aid for these core aspects of its work.

During the visit the Secretary saw the facilities at the Mbirizi Health Clinic and met with several of the Expert Clients based at the clinic as well as other health care staff and patients. The impact of this comprehensive approach to the care of people living with HIV and AIDS has resulted in a significant drop in the number of people becoming HIV positive. Personal testimonies from those the Secretary spoke with showed that what had been a terminal illness was now being managed through health education and access to retro-viral drugs and so enabling people to continue to live productive lives and support themselves and their families. The Secretary saw at first hand that not only was this project sustainable but it had given back to the people of Masaka hope for their futures and those of their children and grandchildren.

APPENDIX 4 - Procedures for Monitoring Grant Aid Awards and Addressing Non-compliance

This document sets out the Overseas Aid & Development Commission's ("the Commission") procedures for the following areas:

- Releasing Grant Aid awards
- Monitoring charities' compliance with the mandatory reporting requirements
- Recovering unspent balances.

1. Procedure prior to making a Grant Aid Award

- (a) Compliance and probity checks made on all applicant charities via the Charity Commission with which they are registered.
- (b) Where a charity has previously be awarded a Grant, compliance checks with the Commission's mandatory reporting requirements and the delivery of the project against the approved proposal. Annotated schedule of all Grant Aid applications prepared for the Commissioners prior to the commencement of the funding round, including a list of charities were possible compliance concerns have been identified from the probity checks

2. Procedure prior to the release of an approved Grant Aid Award

- (a) When notifying a charity that an application has been approved for funding an agreement is sent which sets out the amount of the grant, the approved project and the reporting requirements.
- (b) Funding is only released on receipt of the return of the signed agreement subject to confirmation that any co-funding for the project is in place.
- (c) Funding is paid 2 to 4 weeks before the start date for the project.
- (d) Funding will be released on a staged payment basis.
- (e) For most awards, two-stage payments will be made:
 - First payment – 2 to 4 weeks before the commencement of the project and on receipt of the signed agreement
 - Second payment - on receipt of a satisfactory interim progress report, including a budget showing spending to date against the approved budget.

3. Procedure following release of Grant Aid funding

- (a) Compliance with reporting requirements is pro-actively monitored.
- (b) A charity may request an extended reporting period without risk of any non-reporting sanctions being applied, subject to the following:
 - The request is made prior to the reporting deadline; and
 - It includes a clear explanation of why the standard reporting deadlines cannot be achieved.
- (c) First chaser email sent if a report is more than 2 to 4 weeks overdue.
- (d) Second email is sent if the report remains outstanding and no satisfactory response has been received from the charity after a further 2 weeks have elapsed; this email outlines the sanctions which the Commission may impose for non-compliance²⁷.
- (e) Third email is sent after a further 7 days if the matter remains unresolved; this email advises the charity that the Secretary will be recommending the Commissioners impose sanctions on the charity.
- (f) If there is no response within 7 days of the third email, a letter is sent to the charity requesting that the funding be returned within 28 days and advising them of the terms of their suspension from applying for future funding.

Where a charity is prevented from applying for an award in the following year, the Commissioners will also consider whether to:

- Require the charity to return the funding for the project linked to the breach of the terms and conditions of the award; and/or
- Report the non-compliance to the charity's regulatory body.

4. Procedure for recovery of Grant Aid awards following non-compliance

- (a) Where the Commission does not receive any response to the letter outlined in 3(f) above, it will take legal advice regarding proceedings to recover the money.

²⁷ The Commission non-compliance sanctions include:

- Agreeing a revised reporting deadline with the charity where it is satisfied that non-compliance was due to factors outside the reasonable control of the charity
- Issuing a warning notice to a charity, advising that a breach has occurred and may be taken into consideration when considering future applications over a specified period
- Requiring the charity to return some or all of the Grant Aid award
- Automatically rejecting future applications from the charity for a specified period
- Reporting the charity's non-compliance to the relevant Charity Commission with a request for the Commission to investigate the charity.

- (b) The Commission will also submit a report to the Policy & Resources Committee; the report will include an assessment of the likelihood of recovering the money and the cost of civil proceedings.
- (c) The Policy & Resources Committee will decide whether civil proceedings to recover the money are in the public interest, the Policy & Resources Committee will a final letter to the charity confirming the intention to issue civil proceedings.
- (d) At the same time the Policy & Resources Committee will report the matter to the Charity Commission with which the charity is registered and ask for the Charity Commission to investigate the charity's operations.

5. Procedure for return of unspent balances

- (a) All Final Reports must include a closing budget showing how the Grant Aid award was spent. The budget should also explain any variances from the approved budget which accompanied the application.
- (b) The Commission's general policy is to require all unspent balances to be returned.
- (c) The Commission may allow a charity to retain an unspent balance where:
 - The amount is less than 1% of the Grant or £2,000 whichever is the lesser amount; and
 - The proposed use is directly related to the original project; and
 - The proposed use would either directly benefit the originally beneficiaries or increase the number; and
 - The charity has fully complied with the Commission's reporting requirements in respect of all Grant Aid awards made within the preceding two years; and
 - The proposed use of the unspent balance accords with the Commission's underlying aims and objectives.
- (d) Where the Commission does not agree such a request, the money must be returned to the Commission within 28 days of notification of the decision.
- (e) In the event that an unspent balance was not returned the procedure set out in 4 above would be followed.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY

AMENDMENTS TO STATUTORY MINIMUM WAGE ARRANGEMENTS
TO COME INTO FORCE ON 1ST JANUARY 2018

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled "Amendments to statutory minimum wage arrangements to come into force on 1st January 2018", dated 14th September 2017, they are of the opinion:-

To approve, pursuant to section 31(3) of the Minimum Wage (Guernsey) Law, 2009 ("the Law"), the Minimum Wage (Prescribed Rates and Qualifications) (Guernsey) Regulations, 2017 (as set out in Appendix 2 to this Report), which pursuant to sections 1(3) and 3(1) of the Law prescribe the hourly minimum wage rates set out below with effect from 1 January 2018:-

- adult minimum wage rate: £7.75 per hour (for workers aged 18 and over), and
- young person's minimum wage rate: £7.05 per hour (for workers aged 16 and 17).

The above 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.

The COMMITTEE *for* EMPLOYMENT & SOCIAL SECURITY

**AMENDMENTS TO STATUTORY MINIMUM WAGE ARRANGEMENTS
TO COME INTO FORCE ON 1 JANUARY 2018**

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

14th September, 2017

Dear Sir

1. Executive Summary

- 1.1 In accordance with the provisions of the Minimum Wage (Guernsey) Law, 2009, (“the Law”) the Committee *for* Employment & Social Security (“the Committee”) is seeking States’ agreement to its proposals to increase the Statutory Minimum Wage Rate.
- 1.2 Section 31(3) of the Law provides that Regulations made by the Committee that set the hourly minimum wage rates shall not have effect unless and until approved by Resolution of the States.

Prior to consultation, the Committee was minded to recommend that the Adult Minimum Wage Rate increase from the current £7.20 per hour to £7.50 per hour from 2018. Similarly, it was minded to increase the Young Persons’ Minimum Wage Rate from £6.50 per hour to £7.00 per hour.

- 1.3 Following the consultation undertaken in accordance with section 5 of the Law and the consideration of the requirements of section 6 of the Law, the Committee recommends the setting of the following minimum wage rates:-

Adult Minimum Wage Rate at **£7.75** per hour (currently £7.20 for workers aged 18 and over)

The Young Persons’ Minimum Wage Rate at **£7.05** per hour (currently £6.50 for workers aged 16 and 17)

- 1.4 The Committee proposes that the States approves 1st January 2018 as the date for the introduction of these revised Minimum Wage Rates.

- 1.5 The Minimum Wage (Prescribed Rates and Qualifications) (Guernsey) (Amendment) Regulations, 2017 have been drawn up to give effect to the change in rates.
- 1.6 For information, it is the Committee's intention to increase the associated rates (accommodation and food offsets). These changes do not require the approval of the States.

Accommodation & Food Offset: **£105** per week (currently £95)
Accommodation only offset: **£75** per week (currently £66)

2. Introduction

- 2.1 Section 5 of the Law requires that the Committee carry out a public consultation prior to making regulations setting minimum wage rates. A consultation was undertaken in May 2017, and the results are presented as Appendix I to this Policy Letter.
- 2.2 Section 31 (3) of The Minimum Wage (Guernsey) Law, 2009 requires the States, on recommendation from the Committee, to approve the Regulations that set the hourly minimum wage rates, prior to them coming into effect.
- 2.3 The 2007 States' decision to implement a statutory minimum wage established the fundamental principle that it is unacceptable in the current social and economic climate in Guernsey for employees and workers to be paid low wages to the point of exploitation.
- 2.4 In 2010, the States approved an amendment which was worded as follows:-

"To direct the Commerce & Employment Department, whilst having regard to the requirements of the Minimum Wage (Guernsey) Law, 2009, to take fully into account when reviewing minimum wage rates that it is a policy objective of the States of Deliberation that the Young Persons' Minimum Wage Rate and the Adult Minimum Wage Rate should be equalised as soon as possible". This view of the States has become a relevant factor to be taken into account by the Committee in arriving at its recommendation (see section 3.3 (ii) below).
- 2.5 Following the introduction of the Statutory Minimum Wage in October 2010, there have been numerous enquiries from employers and employees regarding the Minimum Wage provisions. To date, four complaints have been determined by the Employment & Discrimination Tribunal and none by Civil (Magistrate's) Court.

3. Considerations regarding the Minimum Wage & Associated Rates

3.1 Matters to be taken into account by the Committee

The Minimum Wage Law requires the Committee to consider and take into account the following before making Regulations setting the minimum wage rates:-

a) The current rate of minimum wage in the United Kingdom, the Isle of Man and Jersey

Table 1 – Current Minimum Wage Rates – UK, the Isle of Man and Jersey

Minimum Wage (Hourly) Rates			
	Young Persons' Rate	Adult Rate	Date effective from
Guernsey	£6.50 (aged 16-17)	£7.20 (aged 18 & over)	1 st January 2017
UK	£4.05 (aged 16-17) £5.60 (aged 18-20)	£7.05 (aged 21 to 24) £7.50 per hour (aged 25 & over). ¹	1 st April 2017
IOM	£5.70 (aged 16 but under 18)	£6.85 (aged 18 and over) £7.50 (aged 25 and over) £7.20 (aged 21 and over)	1 st June 2017
Jersey	Year 1 £5.39 Year 2 £6.28 ²	£7.18 (above compulsory school age, 16)	1 st April 2017

The Committee anticipates that the minimum wage rates in the other jurisdictions shown in table 1 will be increased in 2018. The UK is expected to announce the new rates in October, 2017 and an increase is anticipated given the UK Government's aspiration to move to the National Living Wage rate of £9.00 per hour by 2020. The States of Jersey Employment Forum's Minimum

¹ The National Living Wage Rate is the name the UK Government has given to a new rate of the National Minimum Wage (NMW) for those 25 and over. This is not the same as the Living Wage.

² Trainee Rate for a maximum period of 2 years for those on Social Security accredited training programmes.

Wage Recommendations are due to be released in September, 2017 and the Committee expects an increase to be recommended.³

b) The current economic and trading conditions prevailing in Guernsey

The Guernsey Gross Domestic Product Bulletin for 2015, issued 25th August, 2016 by the Data & Analysis Unit, estimated total GDP in Guernsey at £2,355m which was 0.4% higher than 2014 in real terms. Finance sector output declined by an estimated 1% and now contributes 33.4% of all output assigned by sector. Non-finance output is estimated to have increased by 0.7%. Total wages (less pensions) fell by an estimated 0.3% in real terms. Total profits increased by an estimated 0.1% with particularly strong growth in the legal industry.⁴

An overview of the Guernsey Economy was set out in the Guernsey Economic Overview Bulletin, issued on 19th May, 2017 representing quarter four of 2016. In the bulletin, economic conditions continued to be relatively strong, with employment and real earnings growth continuing to the end of the year. Statistics available for the first quarter of 2017 show a slight decrease in unemployment. Employment and real earnings growth in the Finance sector continued at a steady rate. Construction employment in particular continues a sustained downward trend.

In terms of looking to the future, the bulletin states the UK's strong growth at the end of 2016 appears to have lost momentum during the first quarter of 2017, with consumer spending and services slowing in reaction to the higher levels of inflation. The bulletin indicates that the slower rates of UK growth may be reflected in Guernsey but overall Guernsey's short term outlook is positive.

The President of the Policy and Resources Committee, gave a speech to the States Assembly on the 6th September, 2017 detailing the States of Guernsey's financial position as at July, 2017. The President of the Policy and Resources Committee reported that the States of Guernsey's financial position had improved, supported by a modest increase in population numbers and those economically active; increases in the numbers of employed and self-employed, and a significant increase in the number of local market property transactions. The President of the Policy and Resources Committee considered these as being indicative of a stronger economy. The President of the Policy and Resources Committee continued to report that the level of receipts of ETIs was encouraging. On a 'like-for-like' basis, ETI receipts in the first seven months show

³ . The States of Jersey Minimum Wage recommendations were not available at the time of drafting the Policy Letter.

⁴ The Guernsey Gross Domestic Product Bulletin for 2016 had not been issued by the Data and Analysis department at the time of writing the Policy Letter. The report was due to be issued in August, 2017 but has been delayed.

a 4.2% year-on-year increase. The President of the Policy and Resources Committee considered that the strong returns in ETIs in both the first and second quarter of 2017 strengthens confidence that this growth in employment-related income tax will continue throughout the year.

c) The annual rate of inflation in Guernsey

Year	Month	RPI	RPIX
2016	June	0.4%	0.6%
	September	0.9%	1.1%
	December	1.2%	1.6%
2017	March	2.4%	2.9%
	June	2.3%	2.8%

According to the Guernsey Economic Overview Bulletin, issued on 19th May, 2017, inflation in Guernsey rose sharply in the first quarter of 2017 which was in the upper end of the forecast range anticipated by the Data & Analysis Unit. Higher employment levels and earnings in sectors providing domestic goods and services may also have contributed to higher levels of inflation in Guernsey. The increase is mirrored by similar increases in the UK and Jersey.

d) The rate of unemployment in Guernsey

The level of unemployment in Guernsey remains low compared to the UK. Figures provided by the Committee stated that there were 256 people unemployed at the end of August, 2017, a decrease of 28 on the July 2017 figure, representing less than 1% of the working population in Guernsey. The figures released by the Committee are set out in the table below and show the highest unemployment rate to be those in the 20 to 29 age range.

Number of people available for employment at the end of August 2017		
Age Group	Number of Registered Unemployed	Percentage of total registered unemployed
16 - 19	35	13.67%
20 - 29	76	29.68%
30 - 39	45	17.57%
40 - 49	35	13.67%
50 - 59	47	18.35%
60 - 65	18	7.03%
Total	256	100%

Figure 1 overleaf provides a trend analysis between the number of people unemployed and the minimum wage rates from November, 2010 to date. The

graph shows that there is no direct correlation between the minimum wage being increased and the levels of unemployment. The fluctuations in the levels of unemployment are more likely to be due to economic factors such as the financial crisis and the resultant low interest rate environment.



Figure 1. Trend analysis between the number of people unemployed and the minimum wage rates from November, 2010 to date

e) Current rates of pay in Guernsey

Currently the States of Guernsey does not collate job-related pay data therefore there is little precision in any information on the market rates for specific jobs. However, information is available on median earnings per sector in the Guernsey Population, Employment and Earnings Bulletin (see section f below).

f) The increase or decrease in rates of pay in Guernsey over the previous twelve months

The Guernsey Population, Employment and Earnings Bulletin, published 4th August, 2017 shows median earnings for Guernsey employees as at the end of quarter one 2017. The figures are based on data collected from the Rolling Electronic Census IT system and reflects Guernsey only.

- The median of all employees’ earnings was £31,773 compared to £31,215 in March 2016 an increase, in real terms of 1.8%.
- Nominal lower quartile earnings was £21,905 as at the end of quarter one 2017 increased by 2.4% in real terms between 31st March, 2016 and 31st March, 2017

- Upper quartile earnings (£46,688) increased by 1.6% in the same period.
- Finance sector employees had the highest four quarter average median earnings (£44,142) as at 31st March, 2017. This was 38.9% higher than the overall median.
- The Hostelry sector had the lowest average earnings of £18,614.

While considering the level of median earning by sector, it is worth noting that based upon a 40 hour week, the 2017 Adult Minimum Wage Rate of £7.20 per hour results in a gross annual wage of £14,976. This equates to around 47% of the median of all employees earnings as at 31 March, 2017. This Policy Letter is proposing that the Adult Minimum Wage Rate be £7.75 in 2018, which for a 40 hour week would result in a gross annual wage of £16,120. This would equate to around 50% of the median of all employees earnings as at 31st March, 2017. The Committee believes its recommendation to increase the Adult Minimum Wage is appropriate, given the UK's aspiration to raise the minimum wage level to 60% of median earnings by 2020. It is the Committees' expectation that the median earnings figure will rise in 2018, which will impact the percentage figure above.

g) Such other factors that appear to the Committee to be relevant

The following were identified as relevant when considering the statutory minimum wage rates:-

- i. Public and political expectations
- ii. Equalising the Minimum Wage Rates for all ages
- iii. Ensuring Guernsey remains competitive with the UK, Jersey and the Isle of Man
- iv. The impact on businesses

3.2 The Committee's comments on the other relevant factors

i. Public and political expectations

The introduction of a statutory minimum wage aimed to ensure that the '... worst cases of financial exploitation in employment were eliminated'. Given that only four complaints have been determined by the Employment and Discrimination Tribunal, the Committee considers that the rate is respected by most employers. In line with the requirements of The Minimum Wage (Guernsey) Law 2009, the Committee conducted a public consultation surveying

the views of the Guernsey community, employers and employees with regards to the minimum wage rates due to come into force on 1st January, 2018. Within the consultation documentation, the Committee indicated that it was minded to recommend a rate of £7.50 per hour. The majority of respondents opted for the £8.00 per hour option, detailed within the consultation questionnaire, for the Adult Minimum Wage Rate. The current public opinion as expressed through the consultation is in favour of an increase in the rates. The Committee has taken these views into consideration when determining the increased rates proposed within this Policy Letter and deemed an intermediate increase, to £7.75 per hour, to be appropriate at this time, taking into account the needs of employees and of employers. Further details regarding the consultation are detailed in section 4 and Appendix I.

ii. Equalising the Minimum Wage Rates for all ages

The UK government introduced the “National Living Wage” of £7.20 per hour for employees over the age of 25 on 1st April, 2016 and have seen fit to maintain 4 other age related rates (see information under 3.2(a) above).

The Low Pay Commission Report (Autumn, 2016) recommended that from 1st April, 2017 the Adult Rate (25 and over) rise to £7.50 per hour and that the other Adult Rate (21-24 years and over) should rise by 5.2% (since October, 2016) to £7.05 per hour . The rate for 18-20 year olds is £5.60 (5.7%) and for 16-17 year olds the rate is £4.05 (an increase of 4.7% since October, 2015, equivalent to an annual rate of 2.8%). Apprentices’ rate is recommended at £3.50 per hour (an annual increase of 4.5%). The accommodation offset is set at £6.40 per day (an increase of 40 pence to help the horticulture sector in particular).

In addition, the Committee is required to take into account the aspiration expressed in a States’ Resolution from 2010: “To direct the Commerce & Employment Department, whilst having regard to the requirements of the Minimum Wage (Guernsey) Law, 2009, to take fully into account when reviewing minimum wage rates that it is a policy objective of the States of Deliberation that the Young Persons’ Minimum Wage Rate and the Adult Minimum Wage Rate should be equalised as soon as possible”.

The Committee has taken into account the aspiration expressed in the 2010 States’ Resolution regarding the youth rate and recommends an increase in this rate to £7.05 per hour for 16-17 year olds.

iii. Ensuring Guernsey remains competitive with the UK, Jersey and the Isle of Man

As many sectors in Guernsey rely on short term workers, the Committee believes that the minimum wage rates must strike a balance between setting rates that

are affordable to all or most employers operating in Guernsey, yet not fuel the perception that Guernsey “pays low wages”. To date, the approach has been to set a rate that bears comparison with the UK, but which recognises the slightly higher cost of living in Guernsey. The Committee recognised the need for employers to attract and retain quality staff. The Committee acknowledge that to do so, Guernsey must remain competitive with other comparable jurisdictions.

The Committee’s decision on the Adult Minimum Wage Rate means that the rates in Guernsey would be £7.75 per hour for the Adult Rate and £7.05 per hour for the Young Persons’ Rate. This would be £0.25 higher than the UK National Living Wage Rate of £7.50 per hour (for those aged 25 and over). The UK National Living Wage Rate is due for review in October, 2017 and the Committee is anticipating an increase in the rate.

It should be noted that the qualifying age for the UK Adult Minimum Wage is 21 years. In Jersey, it is above the school leaving age of 16 compared to 18 years and over in Guernsey. In the UK, the Adult rates (there will now be 2 Adult rates) apply to those over 21 and to those aged 25 and over.

iv. The Impact on Businesses

The Committee gave consideration to businesses where the rate of pay is fundamental to their financial viability and which would be required to increase pay rates to at least match the statutory minimum wage. The Committee believes that the contribution these businesses make to the economy, and their employment of local labour, has to be balanced by the reality that the States may be subsidising these businesses because employees on low pay may still need to rely on financial assistance from the Committee *for* Employment & Social Security. Data on the wage rates of working families receiving benefit top-ups is not captured at present.

4. Consultation

- 4.1 Between 5th June, 2017 and 10th July, 2017, the Committee carried out a public consultation on minimum wage rates. Consultation papers were sent out to all employers and to targeted groups including hospitality, care and residential homes, agriculture and horticulture, trade unions and staff associations and groups representative of employers in Guernsey. Business associations, including the Chamber of Commerce, were invited to comment.
- 4.2 Members of the public were also invited to contribute as individuals through the States of Guernsey website. The consultation was supported by a communication strategy which included issuing media releases and utilising a strong social media presence to reach a wider audience and encourage engagement.

- 4.3 On this occasion, the Committee decided that the consultation questionnaire should indicate the level of minimum wage which it was minded to recommend i.e. a rate of £7.50 per hour for adults and £7.00 per hour for the young persons.
- 4.4 Engagement with the consultation was particularly high when compared to previous years, with 179 respondents. The majority of the respondents were in favour of increasing both the Adult and Young Persons' Minimum Wage Rates and the associated offsets. 71.3% of the respondents were in favour of increasing the minimum wage rate to £8.00 while 58.4% were in favour of increasing the young persons' minimum wage rate to £7.00. Having carefully considered the responses and all the results of the consultation, the Committee decided to recommend an Adult Minimum Wage Rate of £7.75 per hour.
- 4.5 A full summary of the responses to the public consultation are set out in Appendix I.

5. Conclusions

- 5.1 Having considered the criteria and relevant factors as set out in the Law, the Committee has concluded that there is a case to increase the statutory minimum wage rate with effect from 1st January, 2018.
- 5.2 It is the view of the Committee that the Adult Minimum Wage Rate should be increased from the current £7.20 per hour to £7.75 per hour. This will help support the lower paid and those vulnerable to exploitation in the community.
- 5.3 The Committee considers the UK Government's aspiration to move to the "National Living Wage" rate of £9.00 per hour by 2020 needs to be borne in mind when setting the adult rate for 2018. It believes that if Guernsey does not keep pace with the UK rate, this could have serious implications for the Island's competitiveness and reputation.
- 5.4 Furthermore, as explained in section 3.2 (f), employees working a 40 hour week on £7.75 per hour would be paid 50% of the median earnings figure for 2017. This being said the Committee expects the median earnings figure to increase in 2018. Given the UK aspiration to raise the minimum wage level to 60% of median earnings by 2020, the Committee believes that its recommended increase in the Adult Minimum Wage Rate is appropriate.
- 5.5 As stated in section 3.2 (ii), the Committee supports the aspiration expressed in the 2010 States' Resolution, but believes that full equalisation of the Young Persons' Rate with the Adult Rate is not achievable at this time. Therefore, the differential between these rates in 2018 will remain as it is now at 70 pence per hour.

- 5.6 The Committee has decided to offer higher than normal offset rates and the following will apply:-

Accommodation and Food	£105 per week
Accommodation only	£75 per week.

The Committee has deemed it prudent to provide a higher than recommended increase in the offsets, in order to mitigate the impact of the increased minimum wage rates on the hospitality sector, which tends to provide their workers with accommodation and food.

- 5.7 Increasing the Adult Minimum Wage Rate to the proposed level strikes a balance between setting rates that are affordable to responsible employers operating in Guernsey and reduces the risk of exploitation of workers. The Committee believes that its proposals align with its purpose which is “To foster a compassionate, cohesive and aspirational society in which responsibility is encouraged and individuals and families are supported through a scheme of social protection relating to pensions, other contributory and non-contributory benefits, social housing, employment, re-employment and labour market legislation”.

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

- 6.1 The Committee has carried out the consultation required by section 5 of the Law, as set out in section 4 of this Policy Letter.
- 6.2 The Law Officers of the Crown have been consulted on the drafting of the necessary regulations to give effect to the recommendations in this report.
- 6.3 The propositions contained within this Policy Letter relate to the Committee’s mandated responsibilities for social inclusion and labour market legislation and practices. The propositions are also in line with the visionary themes of the Policy & Resource Plan, approved by the States in November 2016 (Billet d’État XXVIII of 2016, Article 1), which are to be inclusive and equal, and to foster a mature international identity.
- 6.4 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the attached proposition has the unanimous support of the Committee.

Yours faithfully

M K Le Clerc
President

S L Langlois
Vice-President

M J Fallaize
J A B Gollop
E A Yerby

M J Brown
Non-States Member

A R Le Lièvre
Non-States Member

Appendix I

Summary of Responses to Consultation

1 Response Count

- 1.1 The responses to the Minimum Wage Consultation 2017 have surpassed all previous response levels reaching 179 respondents. This represents a 371% increase year on year, from the response levels of 2016 (38 respondents).
- 1.2 Of the 179 respondents, the results were skewed toward employees, 107 respondents, representing 59.78% of the total responses, against 51 employer responses or 28.49%. Of the 21 remaining respondents, 1 was from a Trade Union, 1 was from an Employers Association and 4 were from the third sector. The remaining respondents fell within the 'Other' category, which ranged from a deputy to self-employed people, students and an employment forum representative.

Respondent Capacity	Number	Percentage of Total Responses
Employee	107	59.78%
Trade Union	1	0.56%
Employer	51	28.49%
Employer's Association	1	0.56%
Third Sector	4	2.23%
Other	18	10.06%

2 Combination of the Adult Minimum Wage and the Young Persons' Minimum Wage

- 2.1 The questionnaire requested an indication from the respondents whether the Adult Rate and the Young Person's Rate should be combined. 126 respondents (representing 72.83% of the overall responses for this question) did not want the rates to be combined, against 47 respondents (27.17%) who were in favour of the rates being combined. 2 of the respondents did not answer this question.

3 Rates and Offsets responses - Increase or maintain the current rates

- 3.1 152 of 179 respondents, representing 84.92% of the total responses, indicated that the adult minimum wage should increase, while 128 of 179 respondents, representing 71.51% of the total responses, were in favour of increasing the Young Person's Rate.

- 3.2 In relation to the Accommodation Offset and the Accommodation and Food Offset, 109 of 179 respondents were in favour of both being increased, representing 60.89% of the total responses.

Rate / Offset	Remain the same		Increase		Total
Adult Minimum Wage Rate	27	15.08%	152	84.92%	179
Young Persons' Minimum Wage Rate	51	28.49%	128	71.51%	179
Maximum Accommodation Offset	70	39.11%	109	60.89%	179
Maximum Accommodation and Food Offset	70	39.11%	109	60.89%	179

4 Rates and Offset Responses – Increase Rate Options

- 4.1 Of the respondents in favour of increasing the rates and offsets, the minimum wage consultation requested an indication from the range of figures provided, which one they wished to propose for the Committee's consideration for each Rate/Offset.

4.2 The Adult Rate (18 and Over)

Of the 143 responses to this question, 102 respondents opted for the Adult Minimum Wage Rate to be increased to £8.00, 50 pence above that recommended by the Committee. 35 respondents agreed with the Committee's recommended rate of £7.50 with 6 respondents in favour of increasing the rate to £7.40.

The Adult Minimum Wage Rate							
Minimum Wage Rates	£7.40		£7.50		£8.00		Total
	6	4.20%	35	24.48%	102	71.33%	143

4.3 The Young Person's Rate

73 of 125 respondents (58.40%) favoured the increased rate recommended by the Committee of £7.00 for the Young Person's Rate. The second highest chosen was the £8.00 option at 32 responses (25.60%) while the least favoured was £6.85.

The Young Person's Minimum Wage Rate							
Minimum Wage Rates	£6.85		£7.00		£8.00		Total
	20	16%	73	58.40%	32	25.60%	

4.4 The Maximum Accommodation Offset

The questionnaire offered two options from which the respondents could choose - £68.90 or £70. Of the 109 respondent whom answered this question, 79 chose the higher increased Rate of £70 with 30 choosing the £68.90 option.

The Maximum Accommodation Offset					
Maximum Accommodation Offset Options	£68.90		£70.00		Total
	30	27.52%	79	72.48%	

4.5 The Maximum Accommodation and Food Offset

The questionnaire offered two options from which the respondents could choose - £97.75 and £100. 65 of 89 responses chose the higher amount of £100 with 24 responses choosing the £68.90 option.

The Maximum Accommodation and Food Offset					
Maximum Accommodation and Food Offset Options	£97.75		£100.00		Total
	24	26.97%	65	73.03%	

5 **Comments provided by the Respondents**

- 5.1 Of the 179 respondents, 109 provided their comments and views in support of the options and Rates that they had chosen. The comments provided have been categorised within six categories to facilitate quantitative analysis. The six categories identified were Business Viability; Cost of Living; The Economy; Equality and Inclusion; a Living Wage and Young Persons. Some of the comments referred to more than one of the above categories. For the purposes of quantitative analysis and to ensure that all category comments are captured, the figures below represent the number of times the particular

category was mentioned as some comments spanned a number of categories.

5.2 A summary of the responses per category is as follows.

Comment Category	Number of Category Referrals	Percentage of Total Category Referrals
Business Viability	16	14.67%
Cost of Living	53	48.62%
The Economy	32	29.35%
Equality & Inclusion	14	12.84%
A Living Wage	9	8.25%
Young Persons	20	18.34%

5.3 The Cost of Living

The high cost of living in Guernsey received the most comment referrals, with comments received regarding the implications of Brexit on the costs of importing goods to the island. Some cost of living comments also eluded to social inequality as a consequence, with a number of comments specifically referring to the fact that people are living in poverty in an affluent island. One respondent in this category noted that the matter is not as clear cut with the requirement for balance needed between improving social inclusion and ensuring businesses are not financially impacted upon.

5.4 Business Viability and the Economy

Comments relating to business viability and the economy remarked upon the challenging economic environment and the difficulty in absorbing further operating costs without passing these onto the public. Reduced employment opportunities resulting in less revenue generation through taxation and a greater dependency on welfare were also noted. A combination, of views were received regarding the economy ranging from keeping the minimum wage rates to a level that will not hinder the service and hospitality industries to increasing the rates to encourage guest workers, innovation and training while creating a more competitive employment market across all sectors.

5.5 A Living Wage

Comments regarding the living wage focused upon increasing the minimum wage to reflect and work towards a Living Wage. One respondent recognised

that a living wage is fundamentally a different concept to the minimum wage but it was felt that it would reduce benefit dependency and encourage social inclusion.

5.6 Young Persons

Young persons received a high number of comments ranging from keeping the Young Persons' Rate low to encourage a focus on education and due to young people typically having less responsibilities, to raising the Young Persons' Rate to ensure younger workers were not exploited.

5.7 Equality and Inclusion

Comments regarding this category principally related to alleviating poverty, which goes beyond the primary purpose of minimum wage – the prevention of exploitation of those in employment. One respondent highlighted that we as an island, have a moral and social responsibility to ensure that all those in employment are given a reasonable reward to enable them to actively contribute to the island's economy.

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

THE COMMITTEE *for* EMPLOYMENT & SOCIAL SECURITY

**AMENDMENTS TO STATUTORY MINIMUM WAGE ARRANGEMENTS
TO COME INTO FORCE ON 1 JANUARY 2018**

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

2nd October 2017

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, it is requested that the Policy Letter entitled 'Amendments to Statutory Minimum Wage Arrangement to come into force on 1 January 2018' be considered by the States of Deliberation at its meeting on Wednesday 29th November 2017.

The request is made because the Committee wishes its annual Uprating Report and this Policy Letter to be considered at separate meetings. In view of the effects of these proposals on employees and employers, it should also be noted that early publication of this Policy Letter maximises the time between the proposals being known and the debate in the States.

Yours faithfully



Michelle Le Clerc
President

Shane Langlois
Vice President
Matthew Fallaize, John Gollop, Emilie Yerby

Mike Brown, Andrew Le Lievre
Non-States Members

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR HOME AFFAIRS

AMENDMENTS TO POPULATION MANAGEMENT LAW

The States are asked to decide:-

Whether, after consideration of the Policy Letter of the Committee *for* Home Affairs entitled “Amendments to Population Management Law”, dated 23rd October 2017, they are of the opinion:-

1. To approve the removal of the requirement in the population management legislation that the Administrator of Population Management be satisfied, when granting an Open Market Employment Permit (Part B) or an Open Market Employment Permit (Part C) to a person who has previously been resident that –
 - a) The applicant took a recognised break in residence following the cessation of validity of the last Permit previously granted to him (if any), or in any other case,
 - b) The Permit will not permit the applicant to be resident for a continuous period (including residence before the grant of the Permit) exceeding five years.
2. To approve the giving of rights to holders of Short-Term Employment Permits (STEPS) under the population management legislation, who had an established 9 month on/three month off residence pattern as at 3rd April, 2017, to continue that pattern of residence as set out in paragraphs 1.6 and 4.17 of the policy letter.
3. To direct the preparation of such legislation as is necessary to give effect to their 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 HOME AFFAIRS

AMENDMENTS TO POPULATION MANAGEMENT LAW

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

23rd October 2017

Dear Sir

1 Executive Summary

- 1.1 On 3rd April 2017 the Population Management (Guernsey) Law, 2016 (“the Law”) came into force to replace the Housing Control Law which had existed in various forms since 1948.
- 1.2 The Law has now been in place for a little over six months, which means that employers, individuals and government all have experience of what works well and what may need adjustment in the short-term. Any far-reaching changes will be picked up by the ongoing review being led by the Policy & Resources Committee and Committee *for* Home Affairs, as directed by the States in March 2017¹.
- 1.3 The new Law was designed to be more flexible and responsive than its predecessor, the Housing (Control of Occupation) (Guernsey) Law, 1994 (“the Housing Control Law”). In support of these aims the independent Population Employment Advisory Panel (PEAP) was set up for the purpose of providing feedback and advice to the Committee *for* Home Affairs (“the Committee”) on employment-related policies and permits.
- 1.4 Whilst the majority of employers have had a positive experience of the new regime and are generally supportive of it, early feedback from the PEAP has

¹ Billet d’État VII, 2017

highlighted that the new Law is one of a number of factors contributing to current recruitment and retention difficulties in some industries.

- 1.5 Having listened to the concerns raised by the PEAP and the Committee *for* Economic Development, and having considered the solutions proposed by the independent Panel, the Committee has already made changes to existing policies to assist the hospitality industry in the interim ahead of the wider legislative review. For example, it has agreed that those with “grandfather rights” living in properties inscribed in Parts B, C and D of the Open Market Housing Register may circulate around those Open Market dwellings, rather than having to remain resident in properties inscribed in only one Part of the Register.
- 1.6 In addition, the Committee is recommending the States make several amendments to the Law in order to support industries that are experiencing difficulties. Those amendments are as follows:
 - To remove the 5-year limit on residence in live-in staff accommodation inscribed in Parts B and C of the Open Market Housing Register (hotels and care homes)
 - To confer “grandfather rights” on short-term licence holders who had already commenced a residence pattern of 9 months here/3 months away prior to the commencement of the Law, so that they can continue to reside in Guernsey on that basis

2 **Background**

- 2.1 Controls on the occupation of housing in Guernsey were first introduced in 1948 in response to a shortage of suitable properties available for occupation by islanders returning after absences necessitated by the War, either on active service or because they had been evacuated.
- 2.2 Between 1948 and 2017 the Housing Control Law was subject to various reviews and amendments. In latter years, it was used as a tool to manage the population in accordance with the strategic objectives set by the States, although it was generally accepted that it was something of a “blunt instrument” when used for this purpose.
- 2.3 Consequently, when the 1994 Law was due for renewal (the Law had a life-span of ten years, renewable by Ordinance) it was agreed that a fundamental review should be carried out.
- 2.4 Following extensive consultation, in January 2012² the States approved the principles of a new regime primarily based not on housing control but on

² Billet d’État I, 2012

population management. It was explained that *“the proposals are aimed at influencing the size of the Island’s population over the medium to long term and are designed to be effective whether the States strategic population policy at any point in the future is for the population to rise, fall or to remain static.”*

2.5 Given that the Law is simply a tool that responds to the strategic policy direction, it is helpful to understand what that policy direction is at present.

2.6 In December 2015³ the States agreed that *“... instead of absolute population numbers or migration levels, States Policies should be focused on ensuring that the Island’s population is of a size and make-up consistent with achieving the States’ strategic economic, social and environmental objectives.”*

2.7 In support of this, they also agreed a new Population Objective in the following terms:

“That, as far as practicable, Guernsey’s population should, in the long-term, be kept to the lowest level possible to achieve ‘The Statement of Aims’ in this plan.”

2.8 The “plan” referred to above was the States’ Strategic Plan (SSP), which has since been superseded by the Policy & Resource Plan⁴. Notwithstanding this, the Population Objective itself is clear and remains unchanged: long-term population growth should be modest and any long-term increase should be in support of achieving strategic outcomes.

3 Introduction

3.1 On 3rd April 2017 the Population Management (Guernsey) Law, 2016 (“the Law”) came into force to replace the Housing Control Law which had existed in various forms since 1948. The main difference between the systems is their primary drivers. The Housing Control Law focused on the occupation of local market housing in Guernsey, whereas the new Law is focused on managing the size and make-up of the population in accordance with the strategic direction of the States. Housing is a secondary, but nevertheless important, consideration.

3.2 During the development of the new Law, it was made clear that one of the objectives of the new regime had to be that both the Law and the supporting policies that sit beneath it were sufficiently flexible to be able to respond to changing economic, social and environmental demands at relatively short notice if required.

³ Billet d’État XXIV, 2015

⁴ Billet d’État XII, 2017

- 3.3 Recognising that any changes to the regime would need to be supported by evidence from various sources, including industry representatives, a new independent consultative body, the Population Employment Advisory Panel (PEAP) was established to advise the Committee in respect of the policies that should apply to Employment Permits.
- 3.4 Prior to the commencement of the Law, for the first time industry representatives were involved, through the PEAP, in determining the type of Employment Permits that would be granted for different roles. This resulted in a number of posts in areas that traditionally experience recruitment difficulties – for example, but not limited to, care staff and some grades of nursing staff – being given access to Long Term Employment Permits (LTEPs) whereas previously they would have warranted only short-term housing licences.
- 3.5 The relationship with the PEAP has worked well during the early months of the new regime. Feedback has been received recently about recruitment and retention issues in some sectors, most notably the hospitality sector, which relies heavily on guest workers.
- 3.6 All parties accept that the new Law is only one of a number of factors influencing the recruitment and retention of guest workers. Other relevant issues include the UK’s decision to exit the EU, which has caused uncertainty for EU citizens already in the UK and, by extension, Guernsey, as well as acting as a deterrent to those seeking work outside their home countries.
- 3.7 The devaluation of the pound against the Euro, also linked to Brexit, is a further significant factor, and the cost of travelling to and from the Island is also cited as a reason why EU job seekers are no longer keen to work in Guernsey.
- 3.8 Whilst some of these issues are largely beyond the control of the States, changes to the Law and to policies that sit beneath it are within the gift of the States.
- 3.9 It is reported that the new rules around Parts B and D of the Open Market (hotels and Houses in Multiple Occupation respectively) and Short-Term Employment Permits (STEPs) are exacerbating recruitment and retention difficulties in the hospitality sector. In particular, the need for existing employees to leave the Island after five years is reportedly problematic, as it is becoming increasingly difficult in current circumstances to replace them.
- 3.10 Some businesses are struggling to fill posts, to the extent that they are considering closure or curtailing services offered, which will have ramifications for the economy both directly and indirectly, as well as impacting on the quality of recreational facilities available to the community.

3.11 Perhaps unsurprisingly, there is a degree of tension between the States' desire to manage the population in the long-term and the need for businesses to be able to recruit and retain sufficient staff to ensure that the business remains viable and, in turn, supports the local economy. At present, credible feedback from industry suggests that the balance is not yet quite right. This is not unexpected in the early days of any new regime and, given that one of the advantages of the Population Management regime is its inherent flexibility, the Committee is pleased that it is now possible to demonstrate such flexibility to address the problems that have been reported.

4 Specific issues

4.1 The PEAP has reported the following issues with the new regime, as set out in its letter to the Committee *for* Home affairs, which is appended to this policy letter:

- The need for live-in staff in hotels and care homes to break residence after five years
- The need for residents in Part D Open Market accommodation to break residence after 5 years
- The maximum period of residence under a short-term permit being limited to 5 years

4.2 The Committee recognises the important contribution made by the hospitality sector to Guernsey's economy and believes it is appropriate to respond to these concerns in a meaningful way without compromising the underlying purpose of the Law. Therefore it has responded to each of these concerns as set out below.

The need for live-in staff in hotels and care homes to break residence after five years

4.3 There were concerns that the Housing Control Law allowed guest workers to accrue long periods of residence, to the extent that, despite the fact such residence was not qualifying residence (i.e. did not lead to permanent residence rights) they could end up making application to remain in Guernsey on human rights grounds.

4.4 Whilst not all such cases would succeed, the result of any successful applications on these grounds would be that people could end up staying in Guernsey, and thereby increasing long-term population numbers, without any consideration having been given to their contribution to the Island in economic and other ways, and also without any criminal records checks having been carried out at any point pre- or post-arrival.

- 4.5 Generally speaking, any claims of this nature tended to arise after lengthy periods of residence in a variety of circumstances – e.g. staff accommodation, lodging houses, co-habitation, etc. In reality, there are few individuals who have ended up staying in Guernsey permanently **solely** on the basis of residence in live-in staff accommodation. However, at the time of developing the new Law the perceived risks around the ability to accrue long periods of residence in the absence of any checks or assessments were sufficient to bring about the inclusion of provisions in the Law to force breaks in residence for various groups of people including live-in staff in hotels and care homes.
- 4.6 The new Law includes several mechanisms to address some of the perceived risks around long-term residence in staff accommodation. Guest workers seeking to live in such accommodation now undergo criminal records checks. The introduction of restrictions on the length of residence in Houses in Multiple Occupation (HMO's) on Part D of the Register also means that, unlike previously, there are limited options for persons wishing to leave staff accommodation who have no access to local market accommodation in their own right. This means that the ability for people to move around and accrue lengthy residence in a variety of circumstances is curtailed.
- 4.7 Owing to the other changes that have been made, removing the five-year limit on live-in staff in properties inscribed in Parts B and C of the Open Market Housing Register is not considered to pose significant risks in terms of the accrual of rights to access local market housing in the long-term, partly because few people wish to live in such circumstances for long periods. This change would enable live-in staff to remain within the relevant part of the Open Market, either B or C, without restriction on the length of residence.

The need for residents in Part D Open Market to break residence after five years

- 4.8 Under the Housing Control Law only the owner or principal tenant and his/her family could occupy a property inscribed on Part D of the Housing Register without needing a housing licence. All other occupants required licences and the period of residence was therefore dictated by the period of validity of their licences.
- 4.9 As there was no requirement for a householder, it was common for Part D properties – lodging houses, as they were then known – to be occupied by people on short-term housing licences. The maximum consecutive period of residence allowed under a short-term licence was three years. Therefore, long-term residence in a Part D property was not something generally permitted under the Housing Control Law, and so the situation has not changed materially.

- 4.10 However, there were many instances of groups of unrelated people taking advantage of a loophole in the Law to live together in a Part a Open Market property without affecting its Open Market inscription. The result was that they could remain in the property indefinitely if they so wished. It is really this latter group that is under discussion.
- 4.11 Between December 2011 and December 2014 the number of people living in such circumstances rose from 781 to 1,033, which prompted the States to take action to curtail the proliferation of long-term residents who were undergoing few, if any, assessments or checks and, unlike those in staff accommodation, were not necessarily in employment – and therefore economically active – at all.
- 4.12 This loophole was closed following the commencement of the new Law. All properties that remained occupied under such arrangements were transferred to Part D of the Housing Register. Groups of unrelated people can continue to reside in these properties without the need to be employed, but their residence is capped at five years.
- 4.13 In light of the decision to keep long-term population numbers no higher than needed to support the strategic aims of the Policy & Resource Plan, coupled with the need to focus on maintaining an appropriately-sized working population, the Committee is adamant that it would be wrong to reopen a route whereby individuals can live on the Island long-term without necessarily contributing anything in economic or other ways.
- 4.14 Consequently, it does not recommend that the five-year limit on residence in a Part D property is lifted, particularly as the new Law has not yet had time to bed in properly. Nevertheless, it hopes that if the States agree the relaxation of restrictions on residence in live-in staff accommodation, this will help to alleviate the recruitment and retention difficulties reported by hoteliers.

The maximum period of residence under a short-term permit being limited to five years

- 4.15 The maximum consecutive period of residence allowed under a short-term housing licence under the Housing Control Law was three years. Therefore, on the face of it, this was a change for the better. However, this is most likely a concern about residence under the 9m/3m pattern being capped at five years in total.
- 4.16 It was recognised at the time of creating the new Law and the transition provisions that the changes in the Law around STEPs would disrupt established residence patterns for some. This was a reaction to the perceived risk that the repeated pattern of 9m/3m in Guernsey and off-Island respectively ran the risk

of some guest workers building up cases to stay on human rights grounds, as the breaks in residence were not sufficient, particularly as in many cases breaks were treated almost as long vacations, with belongings being left in Guernsey and accommodation retained.

- 4.17 The Committee considers that it would not be desirable at this stage to reinstate the old system, particularly as the new Law is still in its infancy. Nevertheless, the Committee is sympathetic to employers who are experiencing difficulties and suggests a compromise in order to help them in the current situation. Therefore, it is recommended that those who had already established a 9m/3m residence pattern prior to 3rd April 2017 should be allowed to continue it with no cut-off point imposed, although it may be that there comes a time when the employer is no longer able to make a case for a Permit or decides that the 9m/3m residence pattern no longer suits the business. For the avoidance of doubt, the Committee considers that a “pattern” of such residence should be at least three repetitions of the 9m/3m sequence.
- 4.18 This concession would not apply to new residents, who would be able to repeat the pattern five times before reaching a break point. This allows a period of at least five years before the next cohort of short-term Permit holders need to break residence, during which time the wider review of the Law and policies will have been completed and any relevant changes implemented.

5 Conclusion

- 5.1 There was a significant period of time between the new Law being first conceived in 2011 and its coming into force in 2017. In the interim period, unforeseeable events have occurred – most notably Brexit – that have changed the context within which the Law is operating. It is therefore not surprising that some fine-tuning would be helpful at this early stage.
- 5.2 It should, however, be borne in mind that many of the difficulties being experienced by employers in Guernsey are also being experienced in the UK by employers who are recruiting from the same European labour supply. Therefore the Law is not the sole cause of the situation and amendments will not necessarily provide the solution, although it is hoped they will help. Other actions, such as liaison with Skills Guernsey, will also need to take place to ensure that any problems are being addressed from as many angles as possible.
- 5.3 The uncertainties brought about by Brexit will ease as negotiations continue. In this respect the Prime Minister has pledged to confirm to EU citizens already in the UK that “... EU citizens living lawfully in the UK today will be able to stay.”

5.4 Given the fluid nature of the situation, the Committee is of the opinion that it would be unwise to make fundamental, far-reaching changes to the Law at this time. Rather, it considers that some smaller changes have the potential to help employers through current difficulties whilst simultaneously providing breathing space to allow a more detailed review of the Law and policies to be undertaken.

6 Propositions

6.1 The States are asked to decide whether, after consideration of this policy letter, they are of the opinion:

1. To approve the removal of the requirement in the population management legislation that the Administrator of Population Management be satisfied, when granting an Open Market Employment Permit (Part B) or an Open Market Employment Permit (Part C) to a person who has previously been resident that –
 - c) The applicant took a recognised break in residence following the cessation of validity of the last Permit previously granted to him (if any), or in any other case,
 - d) The Permit will not permit the applicant to be resident for a continuous period (including residence before the grant of the Permit) exceeding five years.
2. To approve the giving of rights to holders of Short-Term Employment Permits (STEPS) under the population management legislation, who had an established 9 month on/three month off residence pattern as at 3rd April, 2017, to continue that pattern of residence as set out in paragraphs 1.6 and 4.17 of the policy letter.
3. To direct the preparation of such legislation as is necessary to give effect to their above decisions.

6.2 These 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.

7 Committee support for Propositions

7.1 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.

Yours faithfully

M M Lowe
President

R H Graham
Vice-President
M P Leadbeater
V S Oliver
R G Prow

**Population
Employment
Advisory Panel**

APPENDIX 1

Population Employment Advisory Panel
Population Management Office
Sir Charles Frossard House
+44 (0) 1481 715790
population@gov.gg
www.gov.gg/populationmanagement

Deputy Mary Lowe
President
The Committee for Home Affairs
Sir Charles Frossard House
La Charroterie
St Peter Port
GY1 1FH

29th September 2017

Dear Deputy Lowe

Although we are scheduled to meet on a six-monthly basis your committee kindly met with myself and Kenrick Brooks, the representative of the Hospitality Sector early in July. The reason for our request to meet with you and the Committee was to provide early notice of the growing difficulties the hospitality and service sectors were experiencing in recruiting off-Island staff at all levels, not the least those who fall into the STEP category of permit.

During the meeting you requested evidence of the difficulties to help inform any actions you may take.

Since that meeting, Kenrick has liaised extensively with the Industry which has resulting the enclosed signed on behalf of 88 hospitality businesses in Guernsey.

I will not repeat in this letter the contents of their letter, but the fact that 72% of the businesses are operating under capacity due to the staffing shortages is a very sobering statistic. I am sure you will appreciate that for reasons of business confidentiality the letter does not include specific details of the extent to which individual businesses are operating under capacity. For that reason, I suggest that Kenrick accompanies me to our next meeting so he can elaborate on some of the particular cases.

I appreciate that we are due to meet towards the end of October, but I thought it worth providing you with a copy of the letter at this stage to allow time should your Committee or staff wish to contact any of the businesses to discuss further their individual experiences.

Additionally, if the letter does raise questions please revert so that we may be able to address them in time for our October meeting.

Finally, at the request of some of the signatories, a copy will be provided to the Committee for Economic Development.

Yours sincerely



Peter L Gillson
Chairman, Population Employment Advisory Panel

Cc President of the Committee for Economic Development.

The 88 Hospitality Sector Businesses Operated by the Signatories (Letter to PEAP dated 25th September 2017)

Albion Tavern	Auberge Restaurant	Auberge Du Val Country Inn
Barbados Nightclub	Beaucette Marina Restaurant	Beetons Chip Shop
Bella Luce Hotel	Captain's Hotel	Cabriz Restaurant
China Red Restaurant	Christies Restaurant	Cobo Bay Hotel
Coco Mini Brasserie	Crabby Jacques Restaurant	Crow's Nest Brasserie
Da Nello Restaurant	Deerhound Inn	Dix Neuf Brasserie
Doghouse	Dower Cottage	Duke of Normandie Hotel
Duke of Richmond Hotel	Fermain Tavern	Fermain Valley Hotel
Fleur Du Jardin Hotel	Foresters Arms	Golden Lion Craft Ale Pub
Guernsey Pearl	Hampshire Lodge	Harbour Lights
Hotel De Havelet	Hotel Jerbourg	Houmet Tavern
Imperial Hotel	Int'l Bartending School	Island Coachways
La Barbarie Hotel	La Fontain Inn	La Fregate Hotel
La Grande Mare Hotel	La Villette Hotel	Laska Cocktail Bar
Le Friquet Hotel	Le Gouffre Café & Restaurant	Le Nautique Restaurant
L'Eree Bay Hotel	Le Petit Bistro	Les Douvres Hotel
Mirror Bar	London House Pub	Longfrie Inn
Moores Hotel	Mora Restaurant & Grill	Octopus Restaurant & Bar
Old Government House Hotel	Pelican's Café @ Kings	Petit Bot Tearooms
Pier 17 Restaurant	Prince of Wales Pub	Queens Hotel
Red Restaurant	Red Onion Bar & Eaterie	Rockmount Restaurant & Bar
Rocquettes Hotel	Rosso Restaurant	Ship & Crown Pub
Slaney Restaurant	Slaughterhouse Bar & Eaterie	St Jacques Tavern
St Pierre Park Hotel	Suco Catering	Tinto Restaurant
The Boathouse Brasserie	The Farmhouse Hotel	The Jamaica Inn
The Last Post Pub	The Mariners Inn	The Pony Inn
The Red Lion Pub	The Swan Inn	Thomas De La Rue Pub
Urban Kitchen Eaterie & Lounge	Venture Inn	Villa Restaurant
Wayside Cheer Hotel	White D'Or Restaurant	White Hart Pub
Yacht Hotel		

25th September 2017

Mr Kenrick Brooks
PEAP Tourism & Hospitality Representative
Sir Charles Frossard House
La Charroterie
St Peter Port
Guernsey
GY1 1FH

Dear Kenrick

Re Population Management Regime (PMR)

The tourism and hospitality sector in Guernsey is currently facing significant and unprecedented challenges with regard to the recruitment and retention of staff, a situation which if left unchecked will have a significant long term negative effect on the sector:

- 52 hospitality establishments operated by the signatories of this letter, (that's 72% of respondents who provided data), have confirmed that they have been unable to run their business at full capacity over the summer due to an absence of staff and have therefore had to turn business away and or close for longer periods than is normal. This position is not economically viable particularly when you consider the "peak tourist season" is already relatively short and this situation will likely lead to business closures in the sector.
- At the end of August the total number of staff vacancies that the signatories to this letter had was 248, (data provided by 68 of the 88 businesses operated by the signatories to this letter). We cannot recall a time when the number of vacancies was at this level.
- Due to the deteriorating levels of staff continuity service standards are beginning to deteriorate. It is probable that as the situation worsens, which it will as current long serving employees are asked to leave Guernsey as they reach the "five year rule", the reputation of the hospitality sector will be irreparably damaged having a lasting negative effect on both the Tourism and Business Sectors of Guernsey PLC. You only need to look at the recent history of Condor Shipping to see the effects that a relatively short period of poor service can have in terms of long term reputational damage.
- A lack of availability of quality staff is having a further negative impact on the sector, with hospitality businesses seeing increased levels of both staff "poaching" and rapid staff movement between businesses for additional pay. Often employers are having to take the staff that are available, however confidentially it should be noted that a significant proportion of these staff would not have been employed in the tourism and hospitality sector in Guernsey two or three years ago, this is notably impacting on the overall product offering of the sector.

Whilst the industry acknowledges that Brexit and the FX rate are playing a part, there is no question in the opinion of the signatories to this letter that the recently introduced PMR in Guernsey is playing a significantly negative part and some early changes are required to the workings of the PMR. This belief is re-enforced when you compare the recruitment situation in Guernsey with that of our sister island Jersey, where recruitment whilst not without some difficulty is most definitely easier with a much better supply of migrant workers wishing to fill vacancies in that jurisdiction, when compared to Guernsey.

Prior to the introduction of the PMR a period of deep uncertainty was created, which triggered many migrant workers to make the decision to leave Guernsey. This was long before the more recent Brexit events, whilst not necessarily leaving at the point of decision, but rather when their current "Right to Work" expired or for that matter when a suitable vacancy arose in another jurisdiction.

Sector operators have lost the count of how many migrant workers have stated that they are leaving because "Guernsey don't want foreign workers anymore". The introduction of the five year cap, which up until a few days before the PMR came into force, affected 9\3 Permit Workers was a significant factor, whilst corrected at the eleventh hour it is clear the damage had already been done.

All of the above has served to send a clear message to our main Eastern European labour sources, that Guernsey is closed for business and obtaining work permits is too difficult, frankly why would someone fight to get into Guernsey when there are plenty of other jurisdictions welcoming migrant workers with open arms.

Industry's view is that we need to react swiftly to mitigate this problem and the undersigned request that the following actions are implemented by the States of Guernsey as a matter of urgency:

- The "five year rule" is abolished giving migrant workers the opportunity to work in Guernsey for as long as they and their respective employer wish, subject to their position remaining an "in permit" job role. The PMR permit system is we believe fit for purpose and jobs and permit lengths should be controlled based on the needs of Guernsey PLC to maintain a workforce which is commensurate with business needs. So for example bar and waiting staff are current STEP permits and this would likely remain the case, but without the five times one year permit cap per individual employee. We believe that basic economics will suffice to control the length of stay for migrant workers, if there are jobs they will stay and work, if jobs diminish incumbents will move on to other jurisdictions seeking alternative employment. There is little evidence over the past 20 years that the Guernsey population has grown due to migrant workers remaining indefinitely and it is our view that the status quo will continue should the "five year rule" be abolished. This action will provide a significant opportunity for the tourism and hospitality sector to retain exemplary staff for the long term, establish continuity and properly address the issues outlined at the beginning of this letter.
- Implement a speeding up of the immigration process for non EU nationals, as it is clear to industry that we will need to recruit some additional labour from territories such as South Africa and the Philippines. Currently it can take anything from three to six months from a day one application to the new employee arriving in Guernsey. It isn't practical for a vacancy to remain open for that length of time, particularly in a transient industry, when outgoing incumbent notice periods are normally short by nature of the job role.
- At present there are issues with employees with grandfather rights not being able to transfer employment from Open Market D to Open Market B accommodation and they are effectively unable to move from one employer to another. The industry believe that if an employee has accrued grandfather rights, then it is reasonable that they are allowed to move employers should they wish to do so, presently if they cannot move and no longer want to work with their current employer then they have no alternative but to leave Guernsey and seek employment in an alternative jurisdiction. At a time when we are struggling to recruit new staff this current situation is most unhelpful to the hospitality industry and easy movement between Open Market B and D category accommodation should be introduced.

- A number of industry operators are reporting that the 3 day window to make applications for STEP permits is too short, particularly as this includes weekend days. We believe a calendar week (or five working days) would be a more appropriate time limit for STEP applications prior to surcharges being levied.
- The current PMR system does not allow for a simple employee change of address, from one staff house to another owned by the same company. Surely it follows that if the permit is granted for an individual to work for an employer's business, the employer can move them from one staff accommodation to another, just as they can move them to work in any premises that the company owns. The sector request that a simple change of address process under the above circumstances be introduced into the PMR system.

We have grave concerns that if the above issues are not corrected swiftly then the Hospitality sector is likely to contract over the short term, investment will be curtailed and Guernsey faces the real possibility of seeing some of its favourite hospitality venues closing for good. As an industry we are not only an important part of the tourism proposition of Guernsey, but the quality of the pubs, bars, restaurants and hotels significantly helps to underpin the finance sector, the relocation of both high net worth's and new businesses to Guernsey and local people have an enviable portfolio of places in which to eat and drink, probably second to none, all of which is currently at risk.

As a final point the industry did consider requesting the following:

- The re-introduction of the nine month on, three month off permit system with no five year cap, effectively re-instating what went before.
- The abolishment of the "five year rule" with regard to Open Market B hotel accommodation, again effectively re-instating what went before.

Whilst these requests if re-introduced would help some segments of the hospitality sector, they would by no means help all and it is important that government understands that a number of sector operators believe it is essential that a "level playing field" is maintained for all within the sector. Further the industry believe that had we included these points in our primary requests they would be "easy options" for Government to grant, rather than fully embracing the primary issues we have presented above.

Yours sincerely

Name	Position	Premises\Company	Signature
A. GANDREA	GENERAL MANAGER	The Olet	[Signature]
A. Delane	Propriete	Captaini	[Signature]
A. COLEMAN	M.D.	LA BAKERIE	[Signature]
J.A. WRIGHT	Propriete	LE FRIANET HOTEL	[Signature]
Mark [unclear]	President Chamber of Commerce	Chamber Office	[Signature]
W.D. [unclear]	Propriete	OSWALD COLLEGE	[Signature]

Name	Position	Premises\Company	Signature
C. LE MOORE	OPS DIRECTOR	SARINA HOTELS	
C. FESTIVO	G.M.	HOTEL DE HAUGER	
HANNAN BOGDOM	MANAGING DIRECTOR	KIATO GARAGES	
ALAN SILLET	G.M.	DUKE OF NORMANBY	
LUKE WHEADON	M.D.	BELLA LUCE LTD	
Korna Fulton	G.M. SGT	Liberation Group	
IAN WALKER	M.D.	KINGS MILLS LTD	
RANDY ISAAC	M.D.	GURNSBY FORE	
SHAWN MCGACHAN	GM	St Paul Park	
Paula Scambler	Proprietor	HOTEL DE PAULA	
Norbert Stump	G.M.	Duke of Richmond	
BERTRAND DOUGY	GM.	COCO	
KIM ASHLANT	MANAGER OWNER	BEEYONS OHP SHOP	
Simon Valverde	M.D.	La Grande Mar	
ANTHONY GREEN	owner	Longfrie Inn	
IAN ROBERTS	M.D.	R.W. RANDALL LTD	
Karina Hawkins	owner	Foresters Arms	
David Matheson	owner	Lesso / Mts / Kuro	
Hannel Teixeira	Director	Daniella Rest	
P. Cowley	Director.	Laska	
R. CHANDLER	Director	The Chichas Goro	
P.S. PURTILL	GM	Mooras Hotel	
André FERREIRA	M.D.	MORA RESTAURANT	
Cyril DOWNS	DIRECTOR	ALSION	



Wayside Cheer Hotel

Grandes Rocques, Castel, Guernsey, GY5 7FX Fax: 253074 Tel: 257290

FAO: Kenrick Brooks

Dear Kenrick

This is to confirm I am in agreement with the second draft of the proposed letter Re Population Management Regime.

It has certainly been a problem especially in the early part of the season to get to a full staff situation due to the reasons outlined in the letter and we had to run on reduced hours during May to July.

We had no vacancies at the end of August but were under staffed until the end of July.

There was a noticeable difference this year in EU staff looking for work here compared with previous years and I do think this was due to the new population Management Regulations and feel this will be worse next year if changes are not made.

If you need other information please do not hesitate to contact me.

My Mobile no is 07781 153295.

Yours faithfully,

Ken Smith

Proprietor (Wayside Cheer Hotel)

- A number of industry **operators** are reporting that the 3 day window to make applications for STEP permits is too short, particularly as this includes weekend days. We believe a calendar **week** (or five working days) would be a more appropriate time limit for STEP applications prior to surcharges being levied.
- The current PMR system does not allow for a simple employee change of address, from one staff house to another owned by the same company. Surely it follows that if the permit is granted for an individual to work for an employer's business, the employer can move them from one staff accommodation to another, just as they can move them to work in any premises that the company owns. The sector request that a simple change of address process under the **above** circumstances be introduced into the PMR system.

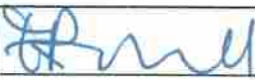
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Whilst these requests if re-introduced would help some segments of the hospitality sector, they would by no means help all and it is important that government understands that a number of sector operators believe it is essential that a "level playing field" is maintained for all within the sector. Further the industry believe that had we included these points in our primary requests they would be "easy options" for **Government** to grant, rather than fully embracing the primary issues we have presented above.

Yours sincerely

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R. Mansell	Director	Peter St Merlin Alice Ltd	
Name	Position	Premises\Company	Signature

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SAMES SPEERS	GENERAL MANAGER	LE FRIQUET HOTEL	<i>Sames Speers</i>

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Yours sincerely

Name	Position	Premises\Company	Signature
Carl Jones	Manager	La Villette Hotel	Carl Jones

EMAIL AVAILABLE TO SUPPORT
THIS SIGNATURE

 REAP.

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Yours sincerely

Name	Position	Premises\Company	Signature
Seamus Duggan	Owner	Pier 17 \ Slaney	Seamus Duggan

EMAIL AVAILABLE TO SUPPORT
THIS SIGNATURE
 PEAP.

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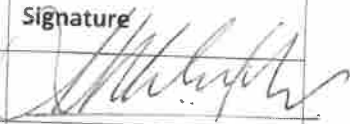
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Name	Position	Premises\Company	Signature
SIMON JURY	GENERAL MANAGER	LA FREGATE	

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR ECONOMIC DEVELOPMENT

PROPOSALS FOR REVISIONS TO THE POPULATION MANAGEMENT LAW

Propositions

The States are asked to decide whether, after consideration of the attached policy letter, dated 19th October 2017 they are of the opinion:

1. To direct the preparation of legislation to amend the Population Management (Guernsey) Law, 2016 ("the Law") to –
 - (a) remove the prohibition on reissuing a Short Term Employment Permit in circumstances which would result in the holder's aggregate residence (both before and after commencement of the Law) exceeding five years,
 - (b) remove the requirement that the Administrator of Population Management be satisfied, when granting an Open Market Employment Permit (Part B) or an Open Market Employment Permit (Part C) to a person who has previously been resident, that –
 - (i) the applicant took a recognised break in residence following the cessation of validity of the last Permit previously granted to him (if any), or in any other case,
 - (ii) the Permit will not permit the applicant to be resident for a continuous period (including residence before the grant of the Permit) exceeding five years, and
 - (c) amend the requirement that it be a condition of an Open Market Employment Permit (Part B) and an Open Market Employment Permit (Part C) that the holder is accommodated at a particular property inscribed in Part B or Part C (as the case may be) specified on the face of the Permit, to a requirement that the holder is accommodated in any property inscribed in Part B or Part C (as the case may be).

These 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* ECONOMIC DEVELOPMENT

PROPOSALS FOR REVISIONS TO THE POPULATION MANAGEMENT LAW

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

19th October, 2017

Dear Sir

1. Executive Summary

- 1.1 The Committee *for* Economic Development has been approached by a number of representatives acting on behalf of the hospitality sector expressing their concerns with certain aspects of the recently enacted Population Management (Guernsey) Law, 2016 and the Island's ability to attract and retain a suitably skilled workforce. The availability of labour for the hospitality sector is now directly affecting Guernsey's economic competitiveness forcing businesses to close on certain days of the week as a result of staff shortages. This is not good for those businesses, the economy and those residents and visitors for whom these businesses play a significant role in enhancing the Island experience.
- 1.2 The Propositions within this policy letter request States approval to amend the Population Management (Guernsey) Law, 2016. Firstly, it seeks the removal of the prohibition on reissuing a Short Term Employment Permit in circumstances which would result in the holder's aggregate residence exceeding five years. It also seeks to remove the need for Open Market Employment Permit holders (Parts B and C) to take a recognised break in residence after 5 years as well as enabling that permit holder to be resident in perpetuity and not for a maximum of 5 years. These changes will provide a more continuous and predictable supply of staff.
- 1.3 The policy letter also seeks the agreement of the States to remove the requirement for Open Market Employment Permit holders (Parts B and C) to be accommodated at a particular property that is currently inscribed on the face of the Permit. This will provide for more flexible and efficient use of staff accommodation across the Island and will remove the requirement to change accommodation when moving within the industry.

2. Introduction

- 2.1 The mandates of each of the six Principal Committees of the States include a 'purpose' which essentially sets out the reason for the Committee's existence. The purpose of the Committee *for Economic Development* is *"to secure prosperity through the generation of wealth and the creation of the greatest number and widest range of employment opportunities possible by promoting and developing business, commerce and industry in all sectors of the economy"*.
- 2.2 Furthermore the Committee's mandate requires it *"to advise the States...on matters relating to its purpose, including: the promotion and development of all sectors of business... [and] the labour skills necessary to sustain economic prosperity"*.
- 2.3 Enacting, amending and repealing Projets de Loi and Ordinances are ultimately matters not for any single committee or group of committees but for the legislature, the States of Deliberation. A Principal Committee has a duty to bring to the attention of the States any changes to legislation which it considers necessary in pursuit of its purpose and mandated responsibilities. The Committee *for Economic Development* has submitted this policy letter for the consideration of the States as it believes, following consultation with industry, that changes need to be made to certain aspects of the Population Management (Guernsey) Law, 2016 which at present are unreasonably constraining multiple businesses from attracting and retaining a suitably-skilled workforce, which in turn is unnecessarily detrimental to Guernsey's economy.
- 2.4 In particular the Committee is persuaded of the merit of representations made to it on behalf of the hospitality sector (mainly hotels and restaurants). It is the Committee's view that the Population Management (Guernsey) Law, 2016 is unable, in its present form, to allow for the recruitment and retention of the labour necessary to maintain a thriving hospitality sector. Ultimately this is having a negative effect on the diversity and competitiveness of Guernsey's economy. As a result of staff shortages a number of local restaurants and other businesses in the hospitality sector are unable to open on seven or even six days a week, which is harmful to those businesses, the wider economy and those residents and visitors for whom such businesses play a significant role in enhancing the Island experience. The Committee believes that certain aspects of the Population Management (Guernsey) Law, 2016 are substantially responsible for this problem. The Committee further believes that this problem can be rectified through legislative amendments without seriously inhibiting the ability of the States to exercise proper long-term control over the size and make-up of the population.
- 2.5 The Committee respects that other Committees of the States may hold other or even contrary views, but is aware that the Committee would be failing in its responsibilities to the States if it did not set out its advice on this important subject in a way which enables the Assembly to take on its own view on the matters set out in the policy letter.

- 2.6 The Propositions put forward seek to bring about changes as a matter of urgency to the extant legislation and the policy framework adopted by the Committee for Home Affairs regarding two specific matters:
- 1) The ability to retain employees holding either a Short Term Employment Permit, an Open Market Employment Permit (Part B) or an Open Market Employment Permit (Part C) indefinitely.
 - 2) The ability for employees holding Open Market Employment Permits who are resident in Open Market Part B and Part C properties to live in any staff accommodation (regardless of where on the Island they are employed).
- 2.7 The Committee *for* Economic Development has approached the Committee *for* Home Affairs to discuss a joint approach to this matter. However, the Committee *for* Home Affairs was not available to meet within the timeframe available.

3. Background

- 3.1 Following criticism of the previous legislation, the Population Management Law was enacted by the States on the 29th March 2017. At the time, the Committee *for* Economic Development signalled its concern for certain aspects of the new legislation and the processes that would be established to enforce it. The Committee's primary concern at that time, in accordance with its mandate, was that the legislation and associated processes would need to be designed and operated such that it would enable all parts of the Island's economy to function adequately through the ability to quickly and easily recruit and retain staff from off the Island.
- 3.2 Access to labour is an essential element for economic growth in Guernsey. While the same is true for other jurisdictions, in a small island economy with full employment, it is particularly important that any system which seeks to manage the flow of labour from off-island, is suitably flexible and responsive to employers' needs.
- 3.3 Through its population management regime, the States of Guernsey exerts control over the flow of both low and high-skilled labour, with short-term permits generally being allocated to the former and medium to long-term employment permits being allocated to the latter.

4. The impact of the legislation on hospitality sector staff

- 4.1 The Medium Term Employment Permits (MTEP) and Long Term Employment Permits (LTEP) have been generally well received by employers looking to recruit the right talent to enable Guernsey's economy to prosper. However, in contrast to the focus on high-skilled workers, comparatively little attention has been paid to the challenges facing employers in terms of entrenched labour shortages for low-skilled roles. The Committee is concerned about the immediate economic harm caused to the hospitality industry by restrictions on the movement of labour for these lower-skilled

positions. It should be noted, however, that whilst the term 'low skilled' is used, this term does not adequately convey the importance of these roles for the ability of Guernsey's businesses to operate. Neither does it adequately reflect the difficulties reported by employers in appointing for these roles from within the Island's resident workforce.

- 4.2 The Committee is of the view that the restrictions in place that control the length of time low-skilled workers are able to reside on Island, together with the restrictions placed on the location of their accommodation, are having a direct negative impact on the performance of the hospitality sector.
- 4.3 It is clear that the position that the hospitality sector finds itself in is not economically sustainable and if maintained will almost certainly lead to business closures in the sector. This could have lasting negative effects on Guernsey's tourism and business sectors, as well as the resident population that benefits from hospitality establishments. In addition, a corresponding decline in tourist numbers as a result of a decline in the hospitality sectors will adversely affect the Island's strategic transport links and the viability of travel providers.
- 4.4 Evidence provided to the Committee of the comparison of Guernsey's recruitment situation with that of Jersey's indicates that, while both islands are to some extent experiencing the negative impacts of external influences, Jersey's population management system appears to be enabling the provision of a much better supply of migrant workers wishing to fill vacancies. This could be the result of no limit being applied to the length of time an employee (licenced or registered) can remain on the island while holding 'entitled' status alongside an assumption that there will be a net migration of 325 people per year (on average).
- 4.5 In essence, there is concern that the new system in Guernsey has given, and continues to send out a message to our main labour sources that Guernsey is closed for business, i.e. that working in the hospitality sector on a short term but sustained contract is very difficult. This creates significant disadvantages for Guernsey due to the perception that many other jurisdictions are willing to welcome such migrant workers.

5. Consultation and Engagement

- 5.1 Consultation with representatives of 88 firms within the tourism and hospitality sector, including all the sectors major employers, has revealed the unanimous opinion that the industry is currently facing significant and unprecedented challenges with regard to the recruitment and retention of staff. This consultation, run by the Population Employment Advisory Panel (PEAP) advising the Committee *for* Home Affairs and annexed to this letter, has identified a situation which those firms consider will have a significant long term negative effect on the sector if left unchecked.

- 5.2 A total of 52 hospitality establishments have confirmed that they have been unable to run their business at full capacity over the summer due to an absence of staff and have therefore had to turn business away and/or close for longer periods than normal.
- 5.3 Consultation with the sector by the Population Employment Advisory Panel has also revealed that at the end of August 2017 the total number of staff vacancies experienced by 68 establishments amounted to 248, a number that appears to be unprecedented within the sector.
- 5.4 Those consulted also expressed concerns over the potential long-term damage to the reputation of the sector, as staff shortages will inevitably lead to a deterioration in the level of service standards.
- 5.5 Those businesses consulted generally acknowledge that Brexit and the currency exchange rates are contributing to this situation to some extent. However, they are of the view that the recently introduced system for short term employees is having a significant negative impact and that the need for consideration of some early changes is urgently required.

6. The Proposals

- 6.1 The Committee is of the opinion that the Population Management Law should be amended with immediate effect, in two specific ways. Firstly, it should provide the ability to retain short term staff indefinitely. This should apply to both Short Term Employment Permit holders and Open Market Employment Permit holders. The Committee notes that a Short Term Employment Permit (STEP) enables a person to live in Local Market or Open Market accommodation for a maximum period of one year. The rules governing the reissue of STEPs are set out in section 25 of the Law and provide, inter alia, that a person can be reissued with a STEP only up to a maximum of an aggregate period of residence of 5 years (including time before the Law came into force). In this respect, the Committee proposes that the Law be amended to remove this restriction on reissuing a STEP so that a person may be reissued STEPs indefinitely.
- 6.2 Similarly, Open Market Employment Permits (Part B or Part C) are available for employees working and living in hotels and care homes. There is a requirement for the holder to be resident in the hotel/care home in which he or she is working, and they can be granted for a period of up to 5 years. It is noted that these Permits can only be reissued if a person takes a recognised break in residence or if the reissue would not result in the holder having a continuous period of residence (including residence before the grant of the Permit) exceeding 5 years. The Committee wishes to see the legislation revised to remove these restrictions on granting an Open Market Employment Permit (Part B or Part C).
- 6.3 The second revision proposed is to remove the requirement in the Law that the holder of an Open Market Employment Permit (Part B) or (Part C) must be accommodated at a particular property inscribed in Part B or Part C (as the case may be) specified on the

face of the permit, which in practice will be the hotel (or in the case of Part C, care home) at which the holder is working. The legal requirement for employees to move out from designated staff housing at one establishment when taking a job at another, regardless of whether or not they have legitimate employment within the hospitality sector, is stifling business and adding barriers to the recruitment and retention of staff in this sector. The Committee considers that an Open Market Employment Permit (Part B) holder, for example, should be able to live in staff accommodation at any hotel, not just staff accommodation at the hotel where he or she works.

- 6.4 The Committee is of the opinion that such revisions would enable migrant workers the opportunity to work in Guernsey for as long as they and their respective employer chooses, subject to their position remaining an “in permit” position, as recognised by the Population Employment Advisory Panel and adopted by the Committee *for* Home Affairs. This would enable employers to continue to employ staff on a one-year basis, but without those members of staff building up any rights under the Law to remain (though see paragraph [6.7] regarding human rights). The performance of the local economy will serve to control the length of stay for migrant workers. If there are jobs they will stay and work, if jobs diminish incumbents will move on to other jurisdictions seeking alternative employment. Through consultation with the sector there is no evidence to suggest that Guernsey’s population has grown over the past 20 years as a result of migrant workers remaining indefinitely, therefore there is no incompatibility issue with the States of Guernsey’s population policy. Such an approach will enable the tourism and hospitality sectors to retain exemplary staff and deliver continuity of service.
- 6.5 The Committee considers that the objectives set out within this policy letter would not lead to wider impacts on the operation and function of the legislation. Long Term Employment Permits and Medium Term Employment Permits will not be affected as a result of these proposals.
- 6.6 The revisions to legislation and policy would provide security to employees and employers who would know that there is no external pressures affecting the ability to renew the license. It would improve the overall standard of service in the industry and permit the continued use of purpose-built staff accommodation, which is not likely to be fit for any other use. Importantly, it would also reinstate confidence in Guernsey as a good place to work, thereby aiding staff recruitment.
- 6.7 The Committee is aware that such amendments may raise issues regarding Human Rights. However, notwithstanding this it considers that these changes should be made to the legislation. If an employee has been continually resident under an Open Market Employment Permit for a significant period of time it is accepted that it may be difficult to require them to leave the Island if their role is no longer recognised and to stop them moving from Open Market to Local Market if that’s the only way that they can stay resident. However, it is the Committee’s opinion that workers in the hospitality sector are generally transient and are not looking to remain resident in Guernsey in perpetuity, therefore the overall impact of such a change would be negligible. Notwithstanding this, however, the Committee accepts that the amended legislation

should be monitored and if the impacts are considered to be unacceptable, the legislation can be amended again to resolve any significant problems identified.

- 6.8 The current requirement for Open Market Part B 'live-in' staff to be accommodated within the hotel at which they are working, or within on-site staff accommodation, means that business have to accommodate staff in hotel rooms which could otherwise be let to visitors. This means that multiple rooms within hotels are used by staff, when they could be let to paying guests.

7. The Open Market

- 7.1 The Committee is of the opinion that the proposed changes to the legislation would not have a significant impact on the Open Market, which will be largely unaffected. The Committee is aware that there are wider issues of concern impacting upon market confidence in the Open Market and that revisions are required to enable this important housing sector to work in an efficient and positive way for the good of the local economy, not forgetting those that have chosen to live in this sector. A system is required that will allow the more efficient operation and development of the Open Market in a manner that is consistent with the development of the economy and the attraction of high net worth individuals to the Island. However, the Committee is of the opinion that these issues are best dealt with by the forthcoming population management review in a coherent manner and are therefore not addressed in this policy letter.

8. Resource implications

- 8.1 It is envisaged that the Propositions will most significantly impact St James Chambers, which will be required to amend the legislation. However, the amendment is relatively minor. There is likely to be little impact on the Committee *for* Home Affairs which will be responsible for overseeing the redrafting of the legislation.

9. Conclusions

- 9.1 It is the view of the Committee *for* Economic Development that there is robust and extensive evidence to suggest that immediate action is required to amend the Population Management legislation in such a way as to enable hospitality sector to function without undue restriction. As the UK struggles to identify appropriate immigration processes following its withdrawal from the European Union, Guernsey can position itself favourably when competing for labour within a global market. There is evidence to indicate that the extent legislation is already having a negative impact on how Guernsey is seen as a place to work and potentially to establish businesses in this sector. Consequently, the current system should be revised immediately in order to indicate the States of Guernsey's strong support for this important sector and allow these parts of the economy to ensure their recruitment for next summer. This revision

cannot wait for the main review of the legislation that the Committee *for* Home Affairs is now seeking to conduct but which is not likely to be reported until 2019.

10 Propositions

The States are asked to decide whether, after consideration of the attached policy letter, dated 19th October 2017 they are of the opinion:

1. To direct the preparation of legislation to amend the Population Management (Guernsey) Law, 2016 ("the Law") to –
 - (a) remove the prohibition on reissuing a Short Term Employment Permit in circumstances which would result in the holder's aggregate residence (both before and after commencement of the Law) exceeding five years,
 - (b) remove the requirement that the Administrator of Population Management be satisfied, when granting an Open Market Employment Permit (Part B) or an Open Market Employment Permit (Part C) to a person who has previously been resident, that –
 - (i) the applicant took a recognised break in residence following the cessation of validity of the last Permit previously granted to him (if any), or in any other case,
 - (ii) the Permit will not permit the applicant to be resident for a continuous period (including residence before the grant of the Permit) exceeding five years, and
 - (c) amend the requirement that it be a condition of an Open Market Employment Permit (Part B) and an Open Market Employment Permit (Part C) that the holder is accommodated at a particular property inscribed in Part B or Part C (as the case may be) specified on the face of the Permit, to a requirement that the holder is accommodated in any property inscribed in Part B or Part C (as the case may be).

These 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.

11 Committee Support for Propositions

- 11.1 In accordance with Rule 4(4) of the Rules of the Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Committee.

Yours faithfully,

PTR Ferbrache
President

J Kuttelwascher
Vice President

A Dudley Owen
J Merrett
J Mooney

**Annex 1: Letter from the Population Employment Advisory Panel to the Committee
for Home Affairs**



Population Employment Advisory Panel
Population Management Office
Sir Charles Frossard House
+44 (0) 1481 715790
population@gov.gg
www.gov.gg/populationmanagement

Deputy Mary Lowe
President
The Committee for Home Affairs
Sir Charles Frossard House
La Charroterie
St Peter Port
GY1 1FH

29th September 2017

Dear Deputy Lowe

Although we are scheduled to meet on a six-monthly basis your committee kindly met with myself and Kenrick Brooks, the representative of the Hospitality Sector early in July. The reason for our request to meet with you and the Committee was to provide early notice of the growing difficulties the hospitality and service sectors were experiencing in recruiting off-Island staff at all levels, not the least those who fall into the STEP category of permit.

During the meeting you requested evidence of the difficulties to help inform any actions you may take.

Since that meeting, Kenrick has liaised extensively with the Industry which has resulting the enclosed signed on behalf of 88 hospitality businesses in Guernsey.

I will not repeat in this letter the contents of their letter, but the fact that 72% of the businesses are operating under capacity due to the staffing shortages is a very sobering statistic. I am sure you will appreciate that for reasons of business confidentiality the letter does not include specific details of the extent to which individual businesses are operating under capacity. For that reason, I suggest that Kenrick accompanies me to our next meeting so he can elaborate on some of the particular cases.

I appreciate that we are due to meet towards the end of October, but I thought it worth providing you with a copy of the letter at this stage to allow time should your Committee or staff wish to contact any of the businesses to discuss further their individual experiences.

Additionally, if the letter does raise questions please revert so that we may be able to address them in time for our October meeting.

Finally, at the request of some of the signatories, a copy will be provided to the Committee for Economic Development.

Yours sincerely



Peter L. Gillson
Chairman, Population Employment Advisory Panel

 Cc President of the Committee for Economic Development.

The 88 Hospitality Sector Businesses Operated by the Signatories (Letter to PEAP dated 25th September 2017)

Albion Tavern	Auberge Restaurant	Auberge Du Val Country Inn
Barbados Nightclub	Beaucette Marina Restaurant	Beetons Chip Shop
Bella Luce Hotel	Captain's Hotel	Cabriz Restaurant
China Red Restaurant	Christies Restaurant	Cobo Bay Hotel
Coco Mini Brasserie	Crabby Jacques Restaurant	Crow's Nest Brasserie
Da Nello Restaurant	Deerhound Inn	Dix Neuf Brasserie
Doghhouse	Dower Cottage	Duke of Normandie Hotel
Duke of Richmond Hotel	Fermain Tavern	Fermain Valley Hotel
Fleur Du Jardin Hotel	Foresters Arms	Golden Lion Craft Ale Pub
Guernsey Pearl	Hampshire Lodge	Harbour Lights
Hotel De Havelet	Hotel Jerbourg	Houmet Tavern
Imperial Hotel	Int'l Bartending School	Island Coachways
La Barbarie Hotel	La Fontain Inn	La Fregate Hotel
La Grande Mare Hotel	La Villette Hotel	Laska Cocktail Bar
Le Friquet Hotel	Le Gouffre Café & Restaurant	Le Nautique Restaurant
L'Eree Bay Hotel	Le Petit Bistro	Les Douvres Hotel
Mirror Bar	London House Pub	Longfrie Inn
Moores Hotel	Mora Restaurant & Grill	Octopus Restaurant & Bar
Old Government House Hotel	Pelican's Café @ Kings	Petit Bot Tearooms
Pier 17 Restaurant	Prince of Wales Pub	Queens Hotel
Red Restaurant	Red Onion Bar & Eaterie	Rockmount Restaurant & Bar
Rocquettes Hotel	Rosso Restaurant	Ship & Crown Pub
Slaney Restaurant	Slaughterhouse Bar & Eaterie	St Jacques Tavern
St Pierre Park Hotel	Suco Catering	Tinto Restaurant
The Boathouse Brasserie	The Farmhouse Hotel	The Jamaica Inn
The Last Post Pub	The Mariners Inn	The Pony Inn
The Red Lion Pub	The Swan Inn	Thomas De La Rue Pub
Urban Kitchen Eaterie & Lounge	Venture Inn	Villa Restaurant
Wayside Cheer Hotel	White D'Or Restaurant	White Hart Pub
Yacht Hotel		



 Overseas Aid &
Development Commission

2016 Annual Report



***“Helping the world’s
least developed
countries through a
hand up rather than a
hand-out”***

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PHASE – spreading fertilizer in Hyangula, Nepal	Seed Madagascar – demonstrating use of tippy-tape in Fort Dauphin, South East Madagascar
Emmanuel – irrigation of maize crop with treadle pump, Zomba, Malawi	New Ways – construction of an earth dam in Turkana, Northern Kenya

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President's Introduction

I was honoured to be elected President of the Guernsey Overseas Aid & Development Commission in May 2016, and I am delighted to present my first Annual Report, looking back on the work of the Commission during 2016.

The role of the Overseas Aid & Development Commission is to distribute funds to projects that support sustainable and life-changing development among the world's poorest communities, on behalf of the people of Guernsey. The Commission focuses on fundamental issues, including hygiene and safe water, access to education and healthcare, food security and microfinance. We are also quick to respond to natural disasters and humanitarian crises, working closely with DEC to provide urgent funding where it is most needed.

The Commission makes grants of up to £40,000 per project, distributing a total budget of around £2.9million a year. We focus on countries in the bottom quarter of the worldwide Human Development Index – that is, countries where poverty is widespread, where access to education is limited, and where life expectancy is among the lowest in the world. The case studies in this report show how our efforts, on behalf of islanders, make a massive difference to the lives of those who have the least. Guernsey people can rightly be proud of their commitment to Overseas Aid.

Although Guernsey's public contribution, at just 0.13% of GDP, falls a long way short of the 0.7% pledged by other countries, we know that our funds go straight to the front line – to projects that make an important difference to people's daily lives. Our work keeps children and families healthy; it educates young people and gives them access to opportunities; it offers men and women new livelihoods and a route to financial security and hope for the future. This is vital international work, and Guernsey is making a positive difference in some of the world's most under-served communities.

The Commission has seen no real-terms increase in its budget since at least 2012, and is highly dependent on the goodwill of its Commissioners, who, for five months every year, put in hundreds of hours reviewing the 200-plus funding applications we receive, and applying their insight and specialist knowledge to evaluate them. Without their generous *pro bono* commitment, together with the hard work of the highly-capable Commission Secretary, the States would have no chance of delivering its commitment to international development.

My sincere thanks go to the Commissioners and the Commission Secretary for their work, as well as for their knowledge, patience and support, which has made my first year as President such an enjoyable one.

I commend this Annual Report as a record of the vital work which Guernsey is doing to promote sustainable development among the world's poorest communities, and hope it will challenge and inspire us to keep making a difference.

Deputy Emilie Yerby
President
Overseas Aid & Development Commission

1. The Commission and the Commissioners

In May 2016, following the General Election of People’s Deputies and a restructuring of the States of Guernsey Machinery of Government, the Guernsey Overseas Aid Commission was renamed the Overseas Aid & Development Commission. The change of name was to reflect, more closely, the Commission’s work and highlight that as part of its role in the provision of overseas aid there was a key focus on the aid supporting sustainable development for the beneficiary communities.

The Overseas Aid & Development Commission’s duties and powers are to:

- Distribute funds voted by the States for aid and development overseas by making contributions to ongoing programmes and to emergency and disaster relief;
- Develop programmes relating to the collection and distribution of funds involving the private sector; and
- Carry out the duties and powers above in accordance with policies set out by the Policy & Resources Committee.

The Commission’s operational function will be to deliver or oversee the delivery of, and to be accountable to the States for, any operational functions conferred on the Commission by way of extant legislation or resolutions of the States or which may be allocated to the Commission by the States.

In May 2016, Deputy Emilie Yerby was elected as the Commission’s President. Emilie is a People’s Deputy for the Western Parishes (St. Saviour, St. Pierre du Bois, Torteval and the Forest). Emilie studied languages at Cambridge and since graduating has worked in the private, public and voluntary sectors. Prior to standing for election as a People’s Deputy, Emilie was the Research Manager for the Guernsey Community Foundation.

In addition to her presidency of the Commission, Emilie is also a member of the Committee *for* Health & Social Services, the Committee *for* Employment & Social Security and the Transport Licensing Authority.

In April 2016, the States of Deliberation confirmed the re-appointment of the Commissioners for a further two year term. The Commissioners are:

Mr. Tim Peet
Mr. Steve Mauger
Mr. Philip Bodman

Miss Judy Moore
Dr. Nick Paluch
Ms. Teresa de Nobrega

In addition to reviewing and assessing all applications for funding from the Commission’s Grant Aid and Disaster Emergency Relief Funds several of the Commissioners undertook a number of fact finding visits in their own time and at their own expense.

In February 2016, Dr. Nick Paluch and his wife, Claudine, visited the Eastern Shan State in Burma (now known as Myanmar) and saw at first hand a project funded by a grant from the Commission to The Leprosy Mission.

The grant of £39,815 had helped more than 2,000 people in thirteen leprosy affected villages and had facilitated the building of four village primary schools as well as two mini hydro-electric energy plants, two gravity flow clean water systems and 220 household latrines.

Following his visit, Nick reflected:

“When this application was originally approved by the Commissioners we all felt it represented excellent value for money but it was only when I saw it at first hand that I fully realized how much of a difference it will make to the lives of these very isolated and impoverished people. A large proportion of Shan State in eastern Burma is a restricted area for foreigners so we were privileged to be allowed access as guests of the National Director for The Leprosy Mission in Myanmar, Dr Zaw Moe Aung, and the local implementing team from CLMES (which stands for the Christian Leprosy Mission Eastern Shan State).

From our base in the town of Tachileik on the Thai/Burmese border it took us up to seven hours to reach each village both because of their remoteness and the extremely poor quality of the mountain tracks which become completely impassable in the rainy season. We had been warned that we might need to travel up by motorbike but in the end we were taken up on the back of a ‘trawlargyi’ (a very basic tractor engine with a trailer attached). The diesel fumes, the searing heat and the fact that you had to hold onto a rope to avoid being thrown off made it quite a tough journey but we were rewarded with a fantastically warm welcome from the villagers when we arrived.



The first village we visited was Nam Loht which is inhabited by an ethnic Lahu hill tribe of nearly 200 people. There had previously been no school in the village and the children had been receiving no formal education. Indeed most of the children had never seen westerners!

Dr. Nick Outside the Nam Loht Primary School

The grant from Guernsey had provided the materials for a Primary School building which the villagers had built themselves and when we walked in the 50 school children recited the alphabet and sang a song for us. Translation had to be three way from English into Burmese and then into Lahu.

The name 'leprosy villages' derives from the fact that they still contain people suffering from the effects of leprosy mainly in the form of facial and limb deformities and active leg ulcers. There are 3,000 new cases of leprosy diagnosed in Burma each year which are now amenable to treatment but in the past those cases went undiagnosed until the infection had caused permanent damage to the nervous system resulting in numb hands and feet susceptible to trauma and infection.

In the village of Wan Sar we joined the team for an impromptu leprosy clinic and we were amazed to see elderly patients with severe joint deformities and extensive skin ulcers still working in the fields and getting on with life when they arguably warranted admission to hospital. The Leprosy Mission keeps a register of these cases and regularly checks on them.



On another day we visited the village of Mae Gyan where Guernsey had provided a gravity flow water system designed to bring clean filtered water down from a mountain source into each one of the 59 households in the village. This in turn facilitated the installation of sanitary latrines and provided a year round water supply for their crops.

Dr Nick in Mae Gyan village with a mother and son both affected by leprosy

It was impressive to see how a relatively small investment of less than £5,000 had considerably enhanced the lives and prospects of more than 300 villagers.



Our final visit was to the village of Taung Po where we were again shown around the Primary school and saw the children at work in their classrooms. We were then taken about a kilometre out into the forest to see their mini hydro-electric plant in operation.

Dr Nick being shown the mini hydro-electric power plant which supplies lighting to all the households in Taung Po village

At a cost of just £750 water from a mountain stream diverted to flow through a culvert supplies sufficient sustainable power to light up all the homes in the village. One of the many benefits being that the children can read and do their schoolwork after dark.

Having visited several other projects supported by the Commission around the world in the past few years I was particularly struck by the resourcefulness and hard work of the Lahu people in this part of Burma. By contributing their own skills and labour to the project they had been able to make the money go much further than it would otherwise have done and they epitomized the Commission's philosophy of supporting developing communities by giving them a hand up rather than just a hand out."

Claudine who is a qualified nurse and midwife also reflected:

"My abiding memories from the trip are of the children's smiling faces and their eagerness to learn. Everywhere we went we were made very welcome and the people were extremely appreciative of the help Guernsey had given them. It was incredible to see just how remote these villages are and sobering to realize how little access they have to the type of medical care that we take for granted. All the women for instance give birth at home without a trained attendant. Maternal and neonatal mortality rates are still therefore much higher than they need be. One can only hope that it won't be too long before the provision of healthcare improves across the whole of Myanmar."

In 2016, representatives of several charities met with the Commissioners. These meetings provided an opportunity for the charities to update the Commissioners on their work generally and, in particular, the progress of projects funded by the Commission, as well as their future plans.

In addition, these visits enabled the Commissioners to ask questions and so develop and deepen their understanding of the charities' work, the positive impact that the funding from the Commission makes and the wider challenges faced in delivering development aid to remote and often unstable communities and regions.

During 2016, the Commission's Secretary, Elizabeth Dene, took a three month unpaid sabbatical to undertake a volunteer placement with the Volunteer Missionary Movement in the Diocese of Nebbi and a Ugandan charity, Caritas Nebbi, in the far north-west of Uganda. During her time in Uganda, Elizabeth assisted Caritas Nebbi with capacity building, including advising on the identification of possible funding partners and donors, the preparation of grant aid applications and reporting on the delivery of funded projects. Elizabeth also took the opportunity of visiting many development projects Caritas Nebbi is delivering, as well as several projects funded by the Commission.

The Commission is grateful to the Policy & Resources Committee for providing officers to support the Commission's work during Elizabeth's sabbatical. It wishes to record its grateful appreciation to David Way and Julie Every for their hard work in ensuring that the Commission's work continued to be undertaken efficiently during Elizabeth's absence.

2. Commission Budget

In January 2012, the States of Deliberation resolved,

- "1. That the States of Guernsey maintain its current level of contribution (+RPIX) per annum.*
- 2. That the States of Guernsey monitor the level of Overseas Aid expenditure with a view to reconsidering it once there is a higher degree of certainty over corporate taxation and when the fiscal position improves, or within 5 years, whichever is sooner."*

The Commission's Grant Aid Budget for 2016 was £2,715,000 and its Disaster Emergency Relief budget was £200,000. The Commission will be submitting a Policy Letter during 2017, setting out its proposals for the future funding arrangements for the Commission.

3. The Commission's New Logo

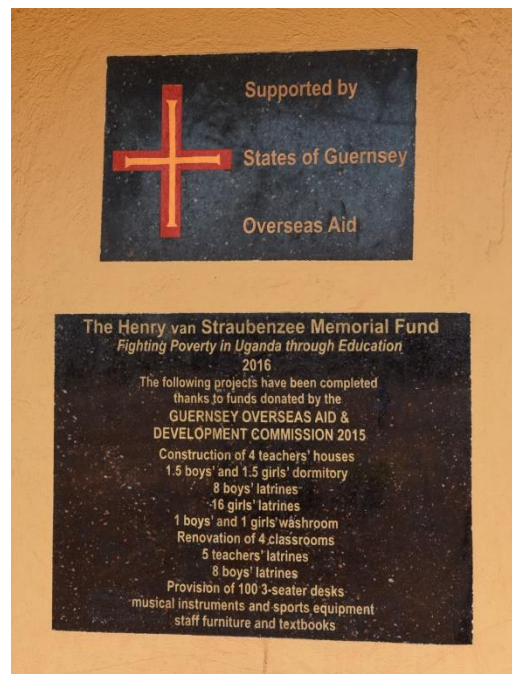
As part of the Review of the Machinery of Government, the States of Guernsey undertook a full rebranding for all States Committees and bodies. As part of this review, the Commission asked that a logo be designed for the Commission to share with any of the charities receiving funding to use on any plaques, banners or other publicity linked to a project.

The Commission asked that the logo be kept simple whilst underlying that the funding had come from Guernsey. The Commission was mindful that in many cases, the logo would be replicated by hand by the local partners delivering a project in-country.

The new logo (shown below), has been shared with all the charities who have received funding over the last two or three years. The Commission is hopeful that the logo will be well used and has already received a number of positive comments from charities regarding the design and the ease with which it can be replicated.



The picture below shows the logo as used by the Henry van Straubenzee Memorial Fund on the successful completion of a project in the Namayingo District of Uganda for the erection of additional buildings at the Kifuyo Primary School. The Commission provided funding of £39,800. The school accommodates 1,320 pupils aged between 5 and 13 years old.



The Commission has also received the following picture from Sense International which shows the Commission's logo being displayed at the Centre for Disability in Development the charity supports in Dhaka in Bangladesh. The picture is from a

training course on inclusive education for children with disabilities, focusing on deaf-blindness and multi-sensory impairment and how to integrate children with disabilities into mainstream education.



4. 2016 Grant Aid Awards

In 2016, the Commission received 268 applications from over 185 different charities and humanitarian agencies. Full details of all the successful funding applications are set out in Appendix 1.

As in previous years, the over-subscription of applications for Grant Aid funding meant that the Commission again faced with some very hard decisions as its budget did not allow it to fund many projects which would have merited support had more funds been available.

The total amount of funding requested was £7,821,196. This represented a small decrease when compared with the amount requested in 2015. The Commission noted that in 2016, applications were received from 16 more charities compared with the 2015 applications, whilst the total number of applications had increased by 28 compared with 2015.

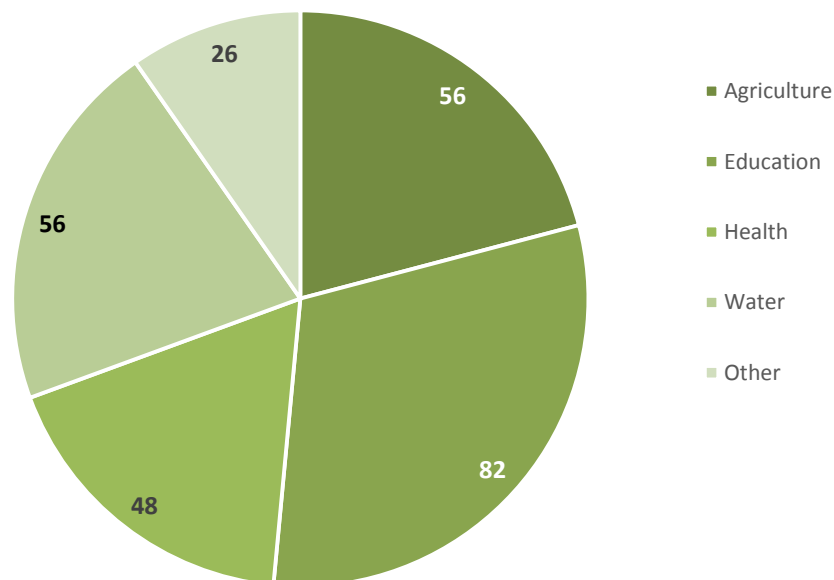
In 2016 the Commission supported 83 applications for funding and this represented 33% of the total number of applications received. This was a small improvement compared with 2015 when the Commission had only been able to support 30% of the requests for funding. In rejecting applications, the Commission was very mindful that in many cases, the applications were worthwhile and would make a lasting difference to the lives of very impoverished communities but the level of funding available simply prevented the Commissioners from supporting every project that they may wish to.

Figure 1 shows the distribution by project category across all the applications for funding received in 2016. Applications are categorised by the main focus of the project and the following award categories are used:

- Agriculture** Includes projects focusing on agriculture, horticulture, forestry and fishing and food security projects
- Education** Includes all education and training programmes and the construction of schools and education facilities
- Health** Includes all healthcare, vaccination, disease prevention and public health projects and the construction of medical facilities
- Other** Includes income generation schemes, micro-loans, disaster preparedness, land-mine clearance and rehabilitation projects
- Water** Includes projects to provide or improve water and sanitation services, the provision of wells and clean water supplies and the construction of latrine and washing facilities.

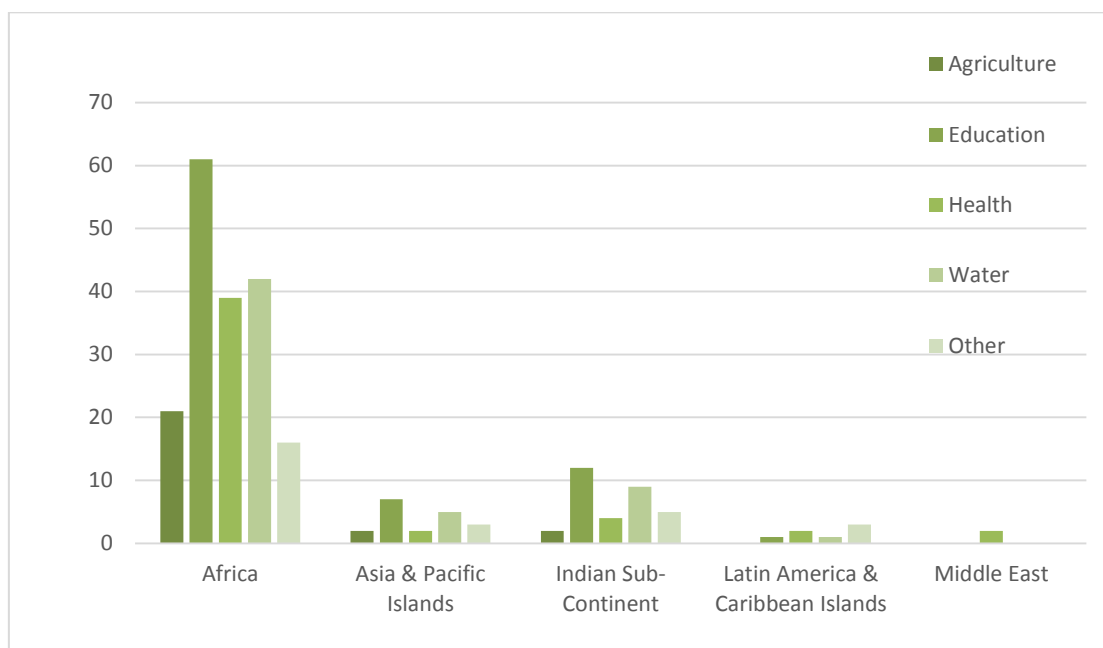
Figure 2 below shows the distribution of the Grant Aid applications by project category and region made by the Commission in 2016.

Figure 1 - Distribution of 2016 Grant Aid funding requests by project category



The Commission continues to afford a greater priority to the very poorest countries when considering funding requests. It also recognises that there are significant wealth inequalities across a particular country and the UN Human Development Index is but one indicator of poverty and the need for overseas development aid.

Figure 2 - Distribution of 2016 Grant Aid funding requests by Region and Project Category



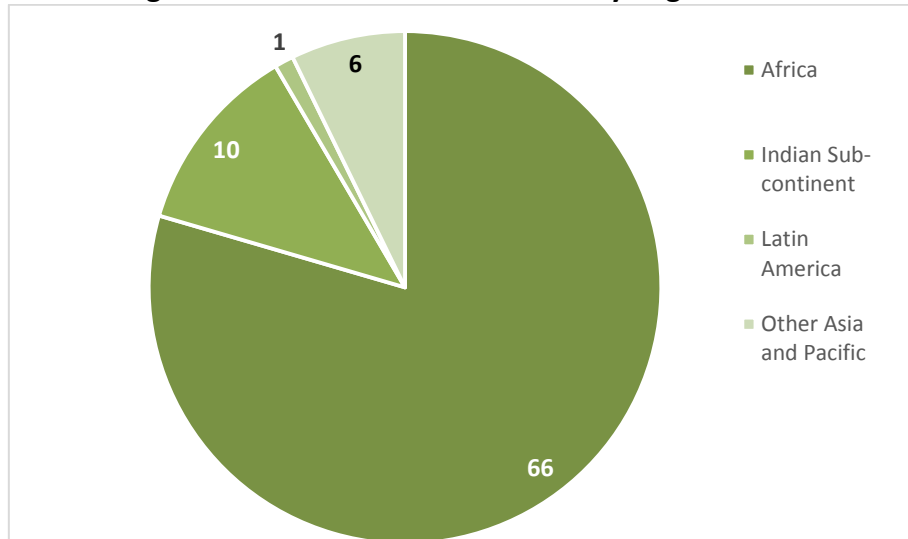
The Commission continues to encourage charities applying for funding in countries outside the lowest quartile to ensure that their application clearly explains why the particular area remains reliant on overseas development aid rather than in-country government support. The majority of applications continue to be for projects in Africa. The distribution broadly reflects the large number of African countries in the lowest quartile of the UN Human Development Index.

In addition, the Commission is always mindful that the impact of a natural disaster or civil conflict can last for many years after the event. It understands that the poorer the country the slower it is able to recover from such events. For these reasons, the Commission is always keen to support projects which seek to mitigate the impact of natural disasters (e.g. retro-fitting of schools, clinics and other community buildings in areas prone to earthquakes) and to rebuild communities following civil conflict (e.g. income generation projects to help rebuild a region’s economy).

Prior to the launch of the 2016 Grant Aid Funding Round, the Commission amended its funding guidelines and invited charities working in the many refugee camps in Syria and the Yemen and the neighbouring non-European countries to apply for funding for sustainable projects within the refugee camps, e.g. the provision of clean water, safe sanitation facilities, education and health care centres, etc. The Commission’s decision reflected the reality that for many Syrians these refugee camps have become a semi-permanent home and so there is a growing need for aid to improve the infrastructure in and safety of the camps.

Figures 3 and 4 show the distribution of Grant Aid awards by project category and region. Figure 5 shows the distribution of Grant Aid awards by country.

Figure 3 - Percentage Distribution of 2016 Grant Aid by Region



When compared with 2015, the percentage of water and sanitation-related projects the Commission supported showed an increase of over 10% of all projects when compared with 2015 grant aid awards. There was a small decrease in the percentage of educational projects receiving funding but an increase in the number of agricultural and food security projects. The Commission assigns the project to a category by the main focus of the project as many projects include more than one element. For example a school building project will typically include provision of latrines, water harvesting and collection and storage.

Figure 4 - Percentage Distribution of 2016 Grant Aid by Project Category

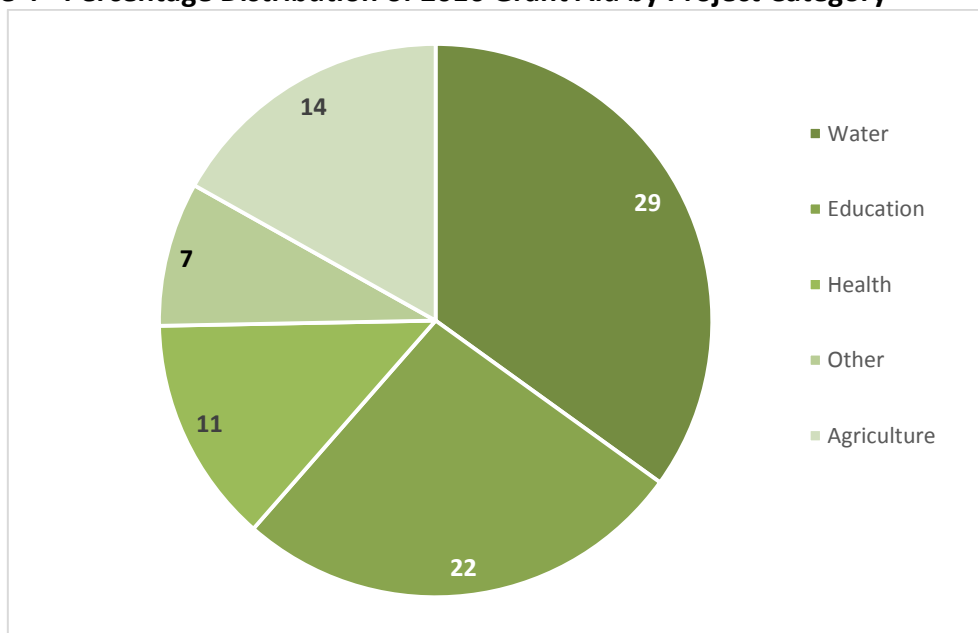
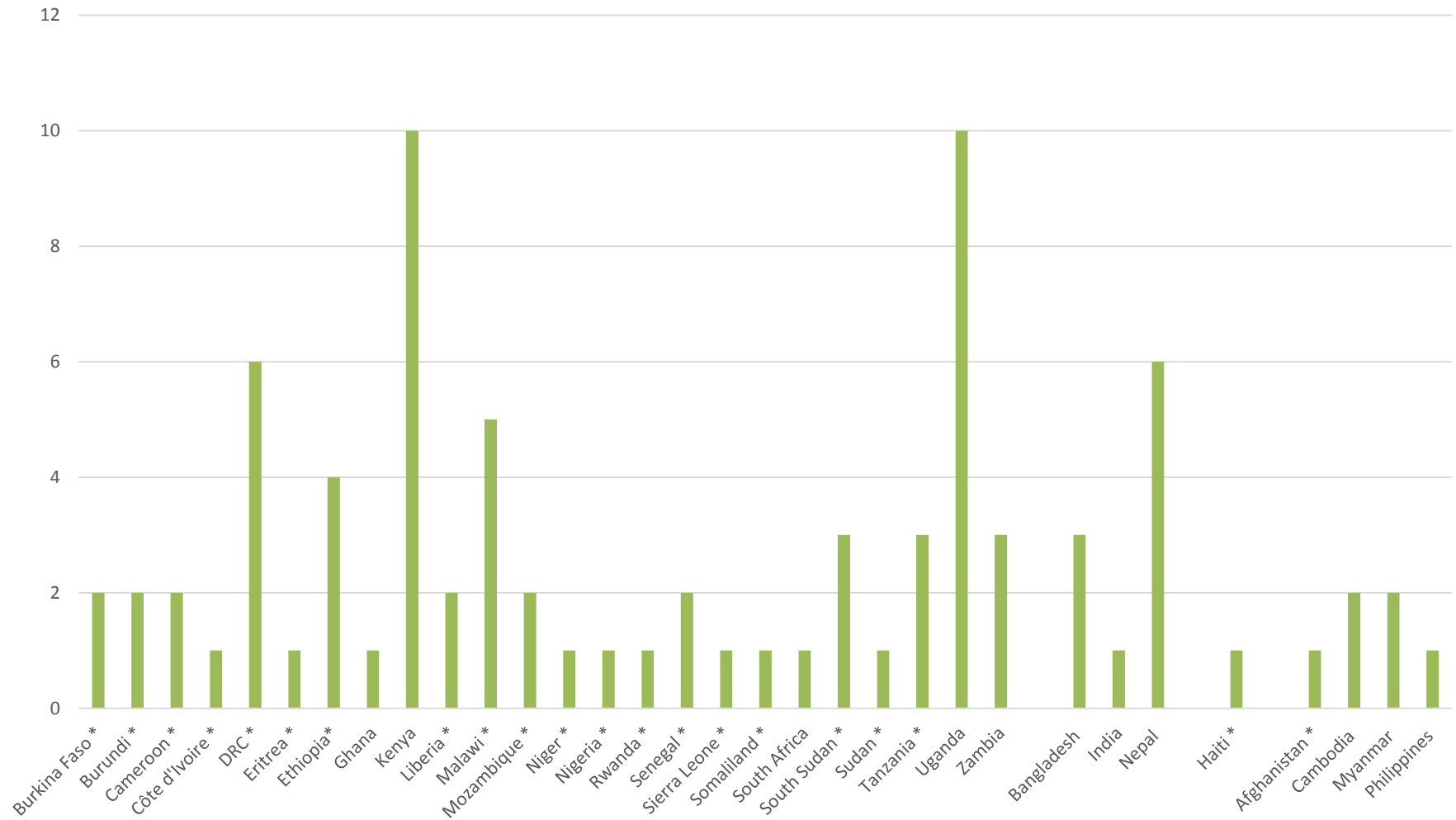


Figure 5 provides an overview of the distribution of grants by country and the predominance of African countries reflects the predominance of African countries at the lower end of the UN Index of Human Development. The countries marked with * denote countries in the lowest quartile of the UN Index.

Where the country is not in the lowest quartile of the UN Index, the Commission requires the charity to clearly and concisely explain why the project merits support through overseas development aid. The application should explain why the basic need to be addressed through the project is not being supported by the country's national or local government. The Commission is also mindful there are often significant disparities in the distribution of wealth and so does not have a list of countries from which it will or will not consider applications.

Figure 5 - Distribution of 2016 Grant Aid awards by Country



4. Updates on some of the projects funded in 2016

An integral aspect of all Grant Aid awards is a requirement for the charities to provide two reports on the delivery of the project. The first report is an interim report provides an overview of the progress of the project. The charity is required to indicate how work is progressing against the objectives set out in its application and details of how and how much of the Grant Aid award has been spent.

The second report must be submitted on completion of the project. This report must include an overview of the full delivery of the project and how the overall objectives of the project have been achieved. This report must include a budget showing the final costs against the approved budget. The report must also address how the project has and will continue to benefit the community. This should include reference to both direct and indirect beneficiaries. If the number of beneficiaries is different from the approved application, the report should explain why the differences have arisen.

The following case studies are drawn from projects funded by the Commission in 2015 and provide details from the various reports the charities have provided.

Charity	Project Category	Country	Project Outline	Amount of Award
Action on Armed Violence	Education	Burundi	Securing livelihoods through support to the Makamba Vocational Training Centre for Disabled People	£39,976
CORD	Agriculture	Burundi	Improving food security and rights conditions for marginalised Batwa people in Mutaho Commune, Gitega	£39,897
Excellent Development	Water	Kenya	Improved water access and hygiene awareness for 10,938 school children in Makueni County Kenya	£39,933
Hope for a Child	Water	Malawi	Malawi water, sanitation and hygiene project	£39,576
IMPACT Foundation	Water	Bangladesh	Provision of safe water to six impoverished communities in Bangladesh	£39,450
Mondo Challenge Foundation	Education	Nepal	Enabling safe access to school for girls in Timbu	£37,000
World in Need International	Water	Uganda	ACIMI sanitation and hygiene programme in northern Uganda	£5,800
World Vision	Water	Cambodia	Rural Pipe Water Connection & Treatment Project	£40,000

Action on Armed Violence - Securing livelihoods to cover basic needs through support to the Makamba Vocational Training Centre for People with Disabilities in Burundi

In 2016, the Commission supported a project from Action on Armed Violence (www.aoav.org.uk) to provide new equipment for the Makamba Vocational Training Centre in Burundi which provides training and support for people with disabilities to secure independence and sustainable livelihoods. The Centre teaches its students life skills and a choice of professional courses, including sewing, knitting, embroidery, and basket weaving.

The grant from the Commission has enabled the Centre to support sustainable reintegration of people with disabilities into the community. In addition to providing training in the use of equipment for the particular trade and business and marketing skills so that they can set up their own business, the Centre helps graduates join associations in their communities and offers employment starter kits (e.g. a sewing machine and materials). The resources supplied through the Commission's grant will assist 40 people with disabilities to graduate over the next five years, and will leave a stock of modern machines and materials with the Centre to contribute to the training of future beneficiaries.



Makamba Centre students, Sr. Odette, Director of the Makamba Centre (left) pose with some of the new equipment

The provision of the new equipment, each student currently enrolled has access to his or her own machine, whereas previously one machine was shared between two or three students. With the funds provided by the Guernsey Overseas Aid Commission the Makamba Centre is fully equipped for the first time since it was opened in 1977. Since the new equipment and materials were delivered the Centre has had enquiries from able-bodied young people in the local area seeking to enrol on the training course starting in September.

The Makamba Centre is unable to accommodate able-bodied people at this time due to the long waiting list of people with disabilities. However, the Commission notes that the training and resources provided by the Centre are now seen as a viable and sought-after option for improving access to livelihoods among the wider community, rather than a secondary option only suitable for people with disabilities who are perceived as unable to do anything else.



Makamba Centre students use their new equipment during a training class

CORD - Improving food security and rights conditions for marginalised Batwa people in Mutaho Commune, Gitega Province, Burundi

In 2016, the Commission funded a project proposed by CORD (www.cord.org.uk) supporting the Batwa people¹ which aimed to help them increase the productivity of their land through improved crop production, better livestock rearing and agriculture techniques. The objective of the project was to improve food security for 340 households in Mutaho commune, Gitega Province.

The project focused on establishing sustainable livelihoods through:

- Goat rearing which allows both to generate organic fertilizers to support agriculture activities and as a potential income source;
- Establishing banana plantations
- Establishing savings and loans schemes; and
- Training in conflict resolution for the Batwa people and other tribes.

The Commission's grant has provided 1 female and 35 male goats to local groups of about 10 households.

¹ The Batwa are widely accepted as amongst the first inhabitants of Central Africa. The Batwa are still to be found living in Rwanda, Burundi, Uganda and eastern Democratic Republic of Congo, with an estimated total population of 86,000 to 112,000. They are traditional farmers and pastoralists.



A veterinary technician inspects the goats before they are distributed to beneficiaries for breeding

A Batwa woman receives a goat



The beneficiaries have also been trained in banana production and this enables them to generate an income of about £39 from sale of 10 banana bunches. The savings and loans activities have assisted the beneficiaries to save and invest their new income sources and so provide greater financial and food security. A review of the impact of the project highlighted the following benefits:

- | | |
|-----------------------------------|--|
| Banana plantation | improved productivity through the introduction of a variety better suited to the region and the use of fertilisers from the goat rearing programme. |
| Goat rearing | between September 2016 and February 2017 over 160 kids were born and only 3 of the adult goats had died. |
| Self-help group activities | savings and loans schemes are now well-established in the communities who now have a better understanding of how to manage their income and expenditure. |

Conflict sensitivity session

training session are already improving understanding and communications between the Batwa and other community members and local taboo around Batwa living patterns is being reduced.

Excellent Development – Improved water access and hygiene awareness for over 10,000 school children in Makueni County Kenya

In 2016, the Commission awarded a grant of £39,933 to Excellent Development (www.excellentdevelopment.com) towards a project seeking to:

- Enable on site water supplies at five schools through the provision of rainwater harvesting tanks;
- Improve school attendance at five schools as children should be able to spend more time at school and less time collecting water to take to school; and
- Improve health at ten schools as a result of improved access to clean water and better hygiene practices.

The charity advised the Commission that this project would build on the outcomes of a project previously funded by the Commission which involved the construction of five rainwater harvesting tanks at primary and secondary schools in Makueni.

The charity’s final project report advised that all five new rainwater harvesting tanks had been completed, with construction materials (such as sand and stones) provided by SHGs, parents and school management. The tanks were ready ahead of the rainy season to start collecting water and thereby provide a sustainable year-round supply of water for the community at each school. The charity also said that the five new tanks, as well as five existing tanks previously funded by the Commission, have been painted with messages promoting good hygiene practices. These messages are aimed at encouraging better hygiene behaviours, first amongst students and then amongst their households. This should help to improve hygiene and health in communities by reducing the spread of water-borne diseases.

The report included the following pictures and messages from pupils at the Yekanga Secondary School and the Mituvu Primary School:



Agnetta Maithya (age 18):
“The messages remind me that cleaning hands washes away germs that may compromise one’s health”

Musyoka Nzuma (age 18):

“Washing hands used to be a problem because water was not available, now with the messages and water available I wash hands regularly as the messages are a reminder to me”.



Mumbua Mumina (age 14):

“The messages have been reminding me that I should wash my hands clean and stay away from diseases while at school. Even at home I teach my young siblings the importance of washing hands.”

Kithongo Mbithuka (age 14):

“I was elected as the Minister for Water while I was in Class 7. My major roles are to make sure that my fellow pupils don't waste the water while drawing it... It doesn't take long for us because we follow the class order, from the nursery school to Class 8. We are very excited to have plenty of water in our school since we no longer carry water from our homes like we used to.”



Hope for a Child – Malawi water, sanitation and hygiene project

Hope for a Child (www.hopeforachild.org.uk) is a Guernsey-register charity and in 2016, it applied for £39,576 to support a WASH project in the Mzimba District in Malawi. The project application explained the project's aims were:

“To reduce poor health and mortality rates caused by waterborne infections among 3,500 people in three communities in Malawi's Mzimba district, through provision of clean water sources, safe latrines and improved public hygiene. This will be achieved by drilling three new and rehabilitating four old boreholes, digging 150 latrines or upgrading existing ones, and changing detrimental habits through education and public campaigns promoting good hygiene. Children are being particularly targeted; the new boreholes and some latrines

will be installed at three primary schools, which currently lack a water source and adequate sanitation facilities. Boreholes will be available for use by the wider community.”

The charity’s end of project report concluded:

“The project has been extremely effective in achieving the outcomes of improving the health and wellbeing of five rural communities. Community members are reporting fewer visits to the health clinic, which were frequent due to cholera and other infections. The clinic is a day’s walk away for many. The communities are delighted to have access to clean water and experience improved health.”



Demonstrating the use of a “tippy tap” – a simple and affordable system to promote a culture of hand washing



Demonstrating the use of a raised dish rack to keep dishes out of the reach of animals and using UV radiation to sanitise the dishes



One of the new latrines with associated tippy-tap



New borehole at Lumemo Primary School, replacing the previous polluted stream as the water source for pupils



Kacheche school children performing a dance as part of the WASH awareness campaign

The report also noted the following challenges it had encountered in delivering the project:

“There was a severe food shortage during some of the project period, inhibiting smooth running of the project to an extent. It is difficult and can be inappropriate to engage community members when they are struggling to feed their families.

Foreign exchange-related issues presented financial challenges. The devaluation of the Malawi Kwacha made the drilling and purchase of components more expensive, and the devaluation of sterling meant the project budget could not cover all activities. As a result Hope for a Child contributed £4,713 to ensure the project was completed as planned.”

IMPACT Foundation - Provision of safe water to six impoverished communities in Bangladesh

In 2016, IMPACT (www.impact.org.uk) submitted an application for a project which aimed to:

“To install SIDKO water plants² in six impoverished villages; directly benefitting 3,000 of the poorest people and indirectly benefitting 15,000 people. SIDKO water plants have many benefits, the most important is removing the arsenic which occurs naturally in much of Bangladesh’s ground water and which causes illness and death on a wide scale. Approximately 13% of households in Bangladesh drink arsenic-contaminated water regularly. SIDKO plants also filter out iron and bacterial contamination, are robust, straightforward to maintain, and keep water relatively cool. Each water plant can provide accessible, safe water to at least 100 households for up to 20 years.”

² SIDKO water plants provide a water purification system capable of removing arsenic, iron and bacterial contaminants from 280 litres of water per hour

The Commission supported this project noting the durability of the technology and the high level of arsenic in Bangladesh’s ground water supplies and noted that,

“In Bangladesh an estimated 20 million people - mostly in poor, rural areas - have no choice but to drink arsenic contaminated water. 43,000 people die prematurely each year from arsenic-related disease such as cancer, cardiovascular and lung disease.”

IMPACT has reported that the project commenced in Hogoldanga and Gorchapra villages were already known to IMPACT Bangladesh because community members had attended their community hospital in Chuadanga town with symptoms of arsenic poisoning. IMPACT’s water management team visited both village areas, testing 226 tubewells for signs of arsenic. 93% of which were found with high levels of arsenic concentration. The team discovered that very few of the households had previously tested their wells and were unwittingly drinking dangerously high levels of arsenic.



Arsenic testing showing a high level of contamination

Each SIDKO water plants takes approximately four to six weeks to complete and lasts for up to 20 years. They do not require special permits. The benefits over other arsenic filters are the large amount of water that can be processed; durability due to stainless steel construction; longevity; the ability to also remove iron and bacteria; and keeping water relatively cool in the heat.

Mondo Challenge Foundation – Construction of a Girls’ Hostel at Shree Golmadevi Secondary School, Timbu, Nepal

In its application, Mondo Challenge Foundation (www.mondochallengefoundation.org) requested £37,000 to:

“Build a boarding house for girls in the remote village of Timbu in Nepal’s Helambu valley to enable 60 girls a year access secondary school. A new boarding house means these girls can access education without a dangerous,

daily trek and with a safe place to stay during the week. The new 6 roomed girls' boarding house will be earthquake-resistant."

The 2015 earthquake had destroyed a previous building and the charity was seeking funding to rebuild the dormitory block with an earthquake proof structure.



The dormitory building after the 2015 earthquake

The charity planned to build a six-room two storey dormitory building using a brick and cement reinforced concrete frame structure. However the plans were modified to an eight room building plan using a stone masonry load-bearing concrete approach. This change was at the request of the school management committee who were keen to utilize the available space to the maximum so that they can accommodate more students in the future. The charity's engineers agreed the modifications and the new design was approved by the Nepal Department of the Engineering.

The following picture montage shows the progress of the building work.





Mondo Challenge Foundation has advised the Commission that the buildings would be completed in time to receive students for the new school year in April 2017.

World in Need International – ACIMI sanitation and hygiene programme in northern Uganda

One of the smaller grants issued by the Commission in 2016 was a grant of £5,800 to World in Need International for a project to provide a toilet sanitation facility supplementing the provision of a new 90 metre deep well the cost of which has been agreed to be funded by Wilmslow Wells for Africa (UK another registered charity). The project aimed to provide the facilities for a holistic wash programme with hygiene and sanitation education being provided by world in need Northern Uganda in partnership with local elders and the local community health council.

As part of their project implementation report, the charity provided the following photo montage showing the delivery of the project.



Preparation for drilling



Drilling rig arrives on site



Drilling commences



Drilling in progress



Construction of borehole



Borehole nearing completion



Installation of pump



Installation of pump



Final testing of borehole and pump



Borehole and pump in use by beneficiaries

World Vision – Rural pipe water connection and treatment project in Cambodia

In 2016, World Vision (www.worldvision.org.uk), was awarded £40,000 towards a project aimed at increasing access to clean water year round through a pipe water connection and treatment. The project was located in Krang Serei village, Kiri Voan commune, Phnom Sruoch district, Kompong Speu province, Cambodia. Kiri voan commune covers nine villages and the Commission's contribution has directly benefited six of the villages. Communities in this commune rely on home gardening, livestock raising, and farming (personal and cash crop) to earn their living. Their main source of water supply comes from Krang Serei community pond which is used to provide year round water for household consumption and agriculture. Over 2,800 people, including over 1,000 children and infants will benefit directly from the project.

In addition to the renovation of existing water ponds, the project included the construction of a water treatment plant including water testing, storage and a distribution network to connect the three main villages.

World Vision's end of project report provided the following summary of the project activities and its impact on the communities:

Conduct technical survey and design of pond, dam and water treatment plant and bidding for a contractor

A local consultant was recruited to lead the feasibility study/survey and design the layout and plan of pond, water treatment plant and main pipe connection from one village to another and the project team worked with him, the Water User Committee ("the WUC") in Krang Serei village and the local authorities.

Renovation of the water storage pond to increase its capacity (from 50,000m³ of water for 200 households to 65,000 m³ of water for 516 households)

Following on from the progress described in the interim report, where the pond size was adjusted and the contractor to complete the works was selected after a competitive bid process, the pond renovation was completed in July 2016. The adjusted pond size took into account evaporation. The size of the pond is now 167m x 64.5m x 4.7m (0.7m deeper than original plan). The new design of pond renovation together with the pond dam can store at least 69,824m³ of water.



The renovated pond and water treatment plant

Construction of water treatment plant including water treatment system, quality testing, storage for distribution, and pipe connection to 3 main villages

After completion of the ground work in preparation of the water treatment plant, as reported in the Interim Report, the water treatment plant construction was successfully completed by mid-November 2016. The building is large enough to adequately store and produce clean water to supply for the whole coverage area of the 6 target villages.



Connecting water pipes to the villages

Equipping the Water User Committee (WUC) with operation and maintenance skills to ensure the sustainable water supply with proper maintenance

The project provided capacity building to WUCs on maintenance and operation skills to ensure that they understand how to operate ‘dozer’ motors to mix Soda Ash Powder and Poly Aluminum Chloride for treating the pond water through and managing the water treatment plant. Water testing is required once per month to ensure water quality for community consumption is maintained, and this will be paid by WUC committees.

Raising awareness on safe water use to motivate and ensure beneficiaries have safe water storage and safe drinking water

277 households in rural Kiri Voan commune are now connected to the piped water supply system that enables them to access clean and E. coli-free water. This greatly contributes to reducing the risks of residents infected with water-related illnesses such as diarrhoea, typhoid, and kidney disease.



Community children accessing safe and clean water

One of the villagers benefiting from the new water sources said,

“I used to access water directly from unsafe dams/ponds for daily washing, cooking and drinking. Very often, one of my children suffered from diarrhea, fever or stomach cramps and I’d take them to the health center; after we’ve been connected to the piped system, none of the children have been ill.”

LEPRA – Community Action for Health and Hygiene Project in Bogra, Bangladesh

In 2016, LEPRA (www.lepra.org.uk) advised the Commission that the project funded by the Commission in 2015 had won a prestigious international award from the International Society for Neglected Tropical Diseases (www.isntd.org) for Cross-Disease Collaboration.

In 2015, the Commission supported a project to improve the health of people affected by leprosy, at risk of contracting leprosy and meeting gaps in the provision of safe drinking water, adequate sanitation and health education. The aims were to:

- Facilitate a change in behaviour towards a higher level of general and personal hygiene and health, especially amongst those affected by leprosy;
- Break the infection cycle of sanitation and hygiene-related diseases through the provision of latrines and tubewells; and
- Reduce the incidence of water-borne diseases and helminthic infestations, especially among children.

LEPRA's final project report showed that the number of households reporting the use of 'safe drinking water' is almost double (from 34% to 57%) and people are now spending only 5 minutes to fetch water, whereas the previous average was 30 minutes. Most importantly, the project enabled two-thirds of people involved to take better care of their pre-existing health condition and that 47% of those benefiting from the project reported that family members are now less ill compared to before the project.



Hand washing demonstration

LEPRA's Programmes Officer Bangladesh & Mozambique, Maartje Pronk, said

"I would like to thank the Guernsey Overseas Aid & Development Commission for its generous support to the project. That support enabled us to implement this project and see such great changes in the lives of people affected by leprosy in Bangladesh. The project enabled two-thirds of people involved in the project to take better care of their pre-existing health condition. It also achieved a direct impact on health of half of the people in the project, as 47% reported that family members are now less ill when compared to one year ago. The Cross-Disease Collaboration Award allows us to share the story of our project even more widely and recognises the important contribution of all those involved in the project."

The Commission was delighted to learn of this award as it underlines the huge and sustainable impact projects funded by the Commission have on the communities it supports.

5. Assessment of Grant Aid Applications and Compliance and Governance

The Commission's procedures for assessing Grant Aid applications and how it administers awards are fully set out in its guidance notes. The notes are available from the Commission's website and are emailed to all the charities on the Commission's mailing list prior to the commencement of a new funding round.

In 2016, following discussions with the Director of the States Regulatory and Financial Crime Unit, the Commission strengthened its internal governance to ensure that it closely follows the best practice guidance set out in the FAFT Best Practices paper, *Combating the Abuse of Non-Profit Organisations (Recommendation 8)*³. In particular, the Commission applies rigorous compliance checks before confirming any Grant Aid awards to ensure that charities it supports are not ones either being or at risk of being misused by terrorist organisations:

- to pose as legitimate entities;
- to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; or
- to conceal or obscure the clandestine diversion of funds intended for legitimate purposes, but diverted for terrorist purposes.

In addition, following consideration of the recommendations in the Moneyval report which assessed the effectiveness of measures in place in Guernsey to prevent money laundering and the financing of terrorism, the Commission, in close consultation with the Policy & Resources Committee, reviewed its agreements with funded charities. As a result of this review, a more detailed charity registration form must be satisfactorily completed before any award is made. The registration form addresses the mechanism the charity has in place to ensure that all funds received and transferred to overseas development aid is properly accounted for and that the charity has appropriate measures in place to mitigate the risk of its funds (from any source) being used unlawfully, including through the payments of bribes, for financing terrorism or for money laundering purposes.

As a result of these discussions, the Commission's decision whether or not to support a particular project will now be made in two stages. The first stage will involve consideration of the applications for funding against the Commission's published criteria. An in principle decision to support a particular project will be made but the

³ <http://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf>

decision will not be confirmed and no funding will be released until the charity satisfactorily completed detailed compliance checks to ensure that charities it supports are not ones either being or at risk of being misused by terrorist organisations.

The form the charities receiving funding from 2017 onwards will enable the Commission to undertake appropriate compliance checks to ensure that all funds received and transferred to overseas development aid is properly accounted for and that the charity has appropriate measures in place to mitigate the risk of its funds (from any source) being used unlawfully, including through the payments of bribes, for financing terrorism or for money laundering purposes. The registration form requires the charity to evidence that it:

- is appropriately licensed or registered.
- maintains information on their activities and those who own, control or direct their activities;
- issues annual financial statements;
- has controls in place to ensure that funds are fully accounted for and spent in a manner consistent with the charity's stated activities;
- follows a "know your beneficiaries and associate charity" rule;
- keeps appropriate records; and
- is subject to monitoring by the appropriate authorities, including the application of effective, proportionate and dissuasive sanctions for violating these requirements.

6. Compliance with Grant Aid Awards

The Commission continues to emphasise to the charities the importance of compliance with the reporting requirements. Compliance with these requirements is closely monitored and the sanctions may be imposed should a charity fail to comply with the reporting requirements. The Commission is pleased to report that all the charities receiving Grant Aid funding in 2016 have fully complied with the reporting requirements.

In administering the compliance regime, the Commission recognises that there are very often genuine reasons for a report being delayed. Delays in the delivery of a project are not a problem so long as the charity advises the Commission as soon as it is aware their report will not be ready ahead of the reporting deadline.

In 2016, the elections and other government-linked events meant that work on a number of projects in Nigeria and Ethiopia and civil unrest in South Sudan and the Democratic Republic of the Congo were delayed because it was unsafe for the in-country partners to progress work on the project. In each such case, the Commission's Secretary worked with the charity affected to agree new reporting timelines. The

Commission is pleased to report that all the delayed projects are again back on track and work is progressing well.

7. 2016 Disaster Emergency Relief Awards

The Commission receives an annual budget of £200,000 for use in response to natural disaster and humanitarian emergencies in least developed countries.

The Commission’s Disaster Emergency Relief budget policy is predicated on the basis that it will focus support through appeals launched by the UK’s Disasters Emergency Committee (“the DEC”). However, it also has an exceptional policy under which it considers one-off applications from individual charities for disasters and emergencies that for whatever reason have not resulted in the DEC launching a national appeal.

In 2016, the Commission received sixteen requests for emergency and disaster relief. The total amount request was £418,645. The Commission supported eight of these requests and made contributions amounting to £168,645. The largest single award was £50,000 to the DEC-led appeal for the humanitarian crisis in the Yemen.

The Commission also made four awards, totalling just under £70,000, to the worsening food crisis in the Horn of Africa. In making each of these awards it was mindful of the impact severe and prolonged drought has when associated with civil conflict. It remains mindful that such awards of themselves cannot have a significant impact on such crisis but recognises that governments should not ignore such disasters and humanitarian crisis.

Supported Requests		
Charity	Details	Amount
Red Cross	Disaster emergency relief for response to the Hurricane Matthew in Haiti	£16,500 to each charity
Plan International		
ActionAid		
OXFAM	Disaster emergency relief for response to the ongoing drought and famine in Ethiopia	£20,000
HART-UK	Disaster emergency relief for response to the ongoing humanitarian crisis in South Sudan, camp for IDPs in Wau, Western Bahr-El-Ghazal	£29,145
Christian Aid	Disaster emergency relief for response to the ongoing drought and famine in Ethiopia	£10,000
Christian Aid	Disaster emergency relief for response to the ongoing humanitarian crisis in Juba, South Sudan	£10,000
The DEC	Yemen humanitarian crisis	£50,000
Total Disaster and Emergency Relief awards in 2016		£168,645

Rejected Requests		
Charity	Details	Amount
RED International	Aid to support refugees in camps in Northern Iraq	£15,000
Christian Aid	Aid to support refugees in camps in Northern Iraq	£15,000
UNHCR	Disaster emergency relief for response to earthquake	£50,000
OXFAM	Disaster emergency relief for response to floods in Pakistan	£20,000
Red Cross	Disaster emergency relief for response to floods in Pakistan	£50,000
HelpAge	Disaster emergency relief for response to the ongoing drought and famine in Ethiopia	£50,000
ActionAid	Disaster emergency relief for response to the ongoing drought due to El Nino in Cambodia	£30,000

8. Part 2 Projects

During 2016, the Commission continued to work closely with the Association of Guernsey Charities to support the work of Guernsey-based overseas development charities. The Commission arranged a further workshop for these charities to help them better understand the Grant Aid application process. The workshop explained how to apply and highlighted the key information needed to assist the Commissioners when reviewing applications and so maximise their chances of securing a successful outcome. The workshop was a rerun of a similar workshop the Commission had delivered in 2015 and the charities had requested the event.

The Commission also held a presentation in July 2016 at Les Cotils to publicise its 2015 Annual Report and provide an update on its work and ambitions for 2016 and beyond.

The Commission invited representatives of three Guernsey charities - The Eleanor Foundation, School Farms Africa LBG and Goal50 - which it had supported with a Grant Aid award in 2016 to speak about their work in Tanzania, Kenya and South Africa.

In addition, Dr. Nick Paluch gave a presentation on three projects the Commission had supported in 2015 in Cambodia, which he had had an opportunity to visit whilst on holiday. Dr. Paluch's presentation showed the lasting impact of each project and how the facilities built with money from Guernsey was both changing and saving lives.

ActionAid - rehabilitation of a floating school on the Tonle Sap Lake in the Pursat Province and the provision of life-jackets and text books;



PlanUK – construction of a maternity unit at the Kandol Chrum Health Centre;



VSO – provision of a dedicated maternity unit and improvements to the water and electricity supply for a health clinic in the Stung Treng Province.



In 2016, the Commission agreed to provide matched funding to two local charities:

- The World Aid Walk; and
- Rotary Club of Guernsey Benevolent Fund.

2016 World Aid Walk

In April 2016, the Commission agreed to provide matched funding to the World Aid Walk and pledged to match £ for £ all the money raised through the sponsorship collected by the walkers. The Commission's decision reflected its recognition as to how much part of Island life the World Aid Walk has become since its inception in 1970 and the huge difference the funds raised by countless walkers since then has made to the lives of some of the poorest people in the world.

The 2016 World Aid Walk raised £22,000. On the basis of a matched funding agreement, six charities will receive £3,500 each from the Walk, and a further £3,500 from the Commission. The charities supported by the walk are ActionAid, Christian Aid, the Eleanor Foundation, Oxfam, Save the Children Fund and the Tumaini Fund. In addition, the Walk's sponsor, Standard Chartered, will receive £1,000 towards its overseas charity for 2016, Seeing Is Believing.

The Commission asked the charities to identify a specific project into which the money would be directed. The following projects will benefit from the £7,000 raised by the World Aid Walkers and the Commission's matched support:

<i>ActionAid</i>	A school rebuilding project in Nepal to assist with post-earthquake rehabilitation.
<i>Christian Aid</i>	The cost of constructing a plinth-raised cluster village in Gaibandha in the north of Bangladesh. The total projects costs are just over £14,000 and the village will house 15 households.
<i>Eleanor Foundation</i>	The construction of a shallow well in Kagera, Tanzania. Each shallow well costs £7,000 and serves around 2,000 people.
<i>OXFAM</i>	An ongoing food security programme it has established in the Somali region of Ethiopia.
<i>Save the Children</i>	An emergency feeding programme for a small school in Ethiopia. This proposal is part of its wider response to the famine disaster relief the charity undertaking in Ethiopia.
<i>Tumaini Fund</i>	The purchase mosquito nets for families its supports in Kagera, Tanzania. The charity will purchase the nets locally and each net costs about £4.
<i>Seeing Is Believing</i>	To provide eye care services (through cataract surgery, treatment, eye examinations, distribution of spectacles, eye health education and training of eye health workers) in the Muchinga and Eastern Provinces, Zambia.

Rotary Club of Guernsey Benevolent Fund

The Commission agreed to match any monies raised by the Rotary Club of Guernsey Benevolent Fund as part of Rotary International's End Polio Now campaign (www.endpolio.org).

The first recorded cases of polio were recorded in 1894 in Vermont in the USA. However, it was not until 1955 that a vaccine was developed until 1955. The Rotary Clubs involvement in a global vaccination programme dates from 1979. By 2006 only four countries remained polio-endemic – Afghanistan, India, Nigeria and Pakistan.

Since 1979, the Rotary Foundation's overall contribution to the programme to eradicate polio through a comprehensive vaccination programme is over US \$800 million. Between 1988 and 2014, polio cases had been reduced by over 99%.



Top left - Medicines being dispensed free of charge at the health camp

Top right – People registering at the health camp at Karnal, Haryana State, India

Bottom Left - Children in a tented slum community waiting patiently to receive their vaccination

The fundraising agreement will see the Commission match funding every pound raised by the island's two Rotary clubs up to an overall total of £40,000 thus doubling the money they raise to £80,000. The Commission notes that the Bill & Melinda Gates Foundation has already agreed to match fund the money raised by Rotary on the basis of £2 for every £1 raised. This means that up to an additional £160,000 will be added to the money raised here in Guernsey. In other words, the fundraising by the Rotary clubs in Guernsey and the Commission's pledge of £40,000 could generate a total of up to £240,000 in support of Rotary's work to end the paralyzing disease.

9. Looking Forward

In 2017, the Commission will continue to strengthen and develop its partnerships with the charities applying for funding and, in particular, with Guernsey-based charities working overseas. The Commission will also continue to work to identify opportunities to develop programmes relating to the collection and distribution of funds involving the private and voluntary sectors.

The States' current funding arrangement for the Commission expires in January 2017. During 2017, the Commission will be submitting a Policy Letter setting out its proposal for the future funding arrangements for the Commission.

The Commission will also continue to work closely with Director of the States Regulatory and Financial Crime Unit and the Association of Guernsey Charities to ensure that all charities seeking funding from the Commission have appropriate and robust controls in place to ensure that all funds are fully accounted for, and are spent in a manner which is consistent with their purpose and objectives. The Commission will continue to review and update its policies and guidance mindful that where monies are being distributed outside of the Bailiwick and the United Kingdom such controls need to be stronger.

The Commission recognises that there are increasing risks associated with the provision of cash and it must ensure that any recipient charity has the necessary measures in place to manage the risk so that they can demonstrate that the use of the funds is consistent with their purpose and objectives. The Commission will also continue to ensure that charities understand the measures they must take to ensure that the funds and other economic resources are not being used in any way for: financial crime, such as fraud or corruption; for money laundering or terrorist financing purposes; or direct or indirect provision to any person listed under the Bailiwick's sanctions framework.

Finally, the Commission remains grateful to the States of Guernsey for its commitment to continue to provide funding for overseas development programmes. It is grateful that, despite the constraints that have been placed on States funding, this commitment to assisting some of the world's poorest and most vulnerable communities continues to be regarded as important.

APPENDICES

Appendix 1 Applications where 2016 Grant Aid requests were supported by the Commission

Charity Name	Name of Project	Project country	Project Category	Amount Funding
ACCORD (Agency for Cooperation and Research in Development)	Improving livelihoods and food security in underserved areas of Addis Ababa	Ethiopia	Agriculture	£39,976
ACCORD (Agency for Cooperation and Research in Development)	Strengthening food security and income generation in the Kaffrine region of Senegal	Senegal	Agriculture	£40,000
Action on Armed Violence	Securing livelihoods to cover basic needs through support to the Makamba Vocational Training Centre for people with disabilities in Burundi	Burundi	Other	£10,997
Action on Armed Violence	Socio-economic support to survivors of sexual violence in Kalonge, Democratic Republic of the Congo	Democratic Republic of the Congo	Education	£39,257
ActionAid	Improving access to quality education for children in rural Kampot Province, Cambodia	Cambodia	Education	£39,997
Advantage Africa	Sustainable livelihoods for vulnerable people in Kirondo, Uganda.	Uganda	Other	£36,860
Africa Educational Trust	Safe Space for Women's Education	South Sudan	Education	£34,470
African Revival	Bwacha Community School	Zambia	Education	£39,008
All Hands Volunteers (UK) Trust	Samar boat building project	Philippines	Agriculture	£8,450
ATA (Appropriate Technology Asia)	Environmentally sustainable energy provision for mountain communities	Nepal	Other	£29,468

Charity Name	Name of Project	Project country	Project Category	Amount Funding
Book Aid International	School Library in a Box for Zambia Open Community Schools	Zambia	Education	£23,300
British and Foreign Bible Society	Promoting literacy among Pygmies in the Republic of the Congo	Republic of the Congo	Education	£9,133
British Red Cross	Improved water, sanitation and hygiene in schools across Kurigram, Bangladesh	Bangladesh	Water	£39,319
British Red Cross	Providing clean water, safe sanitation and improved hygiene in Sierra Leone	Sierra Leone	Water	£39,863
Chance for Childhood	Rebuilding young lives in DRC	Democratic Republic of the Congo	Education	£30,977
Childreach International	Save Shermathang's School	Nepal	Education	£35,888
Christian Aid	Enhancing the resilience, health and prosperity of rural communities in Karukh district, Afghanistan through the provision of a permanent safe water supply	Afghanistan	Water	£40,000
Christian Outreach (Cord)	Increasing food security and supporting equal rights for marginalized Batwa communities in Gitega Province, Burundi	Burundi	Agriculture	£39,897
Concern Worldwide UK	Water, sanitation and hygiene project in rural Lofa (Zorzor and Salayea Districts)	Liberia	Water	£40,000
CURE International UK	X-ray digital imaging system to expand the capability of X-ray machine at the CURE Hôpital des Enfants au Niger	Niger	Health	£39,595

Charity Name	Name of Project	Project country	Project Category	Amount Funding
Emmanuel International	Zomba Disaster Risk Recovery	Malawi	Agriculture	£20,193
Excellent Development Ltd	Improved water access and hygiene awareness for 10,938 schoolchildren in Makueni County, Kenya	Kenya	Water	£39,933
Feed the Minds	Vocational training to combat the exploitation of indigenous Bajoh cocoa farmers in South West Cameroon	Cameroon	Education	£13,000
Fields of Life	Water provision for 10 communities in Kumi District, Uganda	Uganda	Water	£27,546
Friends of Kipkelion Charitable Trust	Kipkelion school latrines	Kenya	Water	£37,807
Funzi and Bodo Trust	Improved Water Harvesting for Funzi Island	Kenya	Water	£19,060
GOAL International	Essential agricultural inputs for farmers in Maiwut County, Upper Nile State, South Sudan	South Sudan	Agriculture	£24,150
Goal50	Orphanage Project	South Africa	Other	£24,105
Habitat for Humanity Great Britain	Water and sanitation project for vulnerable populations in the Central, Northern and Eastern Regions of Côte d'Ivoire	Côte d'Ivoire	Water	£40,000
Haiti Hospital Appeal	Improving emergency and surgical care in Haiti through a new emergency department at one of North Haiti's leading hospitals, including a self-sustainable power system providing reliable and clean energy	Haiti	Health	£39,797

Charity Name	Name of Project	Project country	Project Category	Amount Funding
Hands Around The World	Athi Special School Classrooms	Kenya	Education	£28,042
Hope for a Child	The Malawi Water, Sanitation & Hygiene Project	Malawi	Water	£39,576
Humanitarian Aid Relief Trust (HART UK)	Health and Hope hydro power and water supply	Myanmar	Water	£39,798
Henry van Straubenzee Memorial Fund	Kifuyo Primary School	Uganda	Education	£39,800
IcFEM Mission Europe	IcFEM Dreamland Mission Hospital Isolation and Private Ward Project- Phase One	Kenya	Health	£39,115
IMPACT Foundation	Restoring physical mobility through access to assistive devices and physiotherapy	Bangladesh	Health	£39,427
IMPACT Foundation	Providing accessible safe water to six impoverished communities	Bangladesh	Water	£39,450
Just a Drop	Kakelenge and Lwesubo villages safe water and sanitation project	Uganda	Water	£33,071
Leprosy Mission	Hospital lodgings for capacity building persons	Nepal	Health	£39,977
Leprosy Mission	Water, power, sanitation and education for Leprosy Villages in Myanmar	Myanmar (Burma)	Education	£39,815
Let Us Shine	Shining Stars Senior High School expansion - 4-classroom block and 6 KVIP latrines	Ghana	Education	£21,102
MaterCare International	Project Isiolo	Kenya	Health	£22,201
Methodist Relief and Development Fund	Improving crop yields and food security in Northern Ethiopia	Ethiopia	Other	£38,496

Charity Name	Name of Project	Project country	Project Category	Amount Funding
MondoChallenge Foundation	Enabling safe access to school for girls in Timbu, Nepal	Nepal	Education	£37,000
Network for Africa	Generating income through agriculture for 180 beneficiaries and their families in northern Uganda who are recovering from war and living in extreme poverty.	Uganda	Agriculture	£40,000
New Ways	Earth Pan Dam - Natete area	Kenya	Water	£20,265
One World Foundation Africa	Kiboga District education and WASH project	Uganda	Education	£39,841
Opportunity International United Kingdom	Improving the livelihoods of 500 women smallholder farmers in rural Rwanda.	Rwanda	Other	£40,000
Oxfam	Ethiopia: Feeding Families	Ethiopia	Agriculture	£39,575
PHASE Worldwide	Livelihoods in 6 Villages in Mugu District, Karnali Zone	Nepal	Agriculture	£38,902
PHASE Worldwide	Sanitation in the Sindupalchok District	Nepal	Water	£39,298
Pump Aid	Provision of safe and sustainable supplies of water, improved sanitation and hygiene education for communities in rural Malawi	Malawi	Water	£38,865
Quicken Trust	Village Health Centre	Uganda	Health	£ 8,529
Rainforest Saver Foundation	Cameroon Inga Project	Cameroon	Agriculture	£12,500
Raleigh International Trust	Improving access to school sanitation and hygiene education in Njombe, Tanzania	Tanzania	Water	£28,231

Charity Name	Name of Project	Project country	Project Category	Amount Funding
Reall (Homelessness International)	Establishment of a sustainable bio-digester system providing low income families with decent sanitation and affordable energy in Kitengela, near Nairobi, Kenya	Kenya	Water	£37,399
Salvation Army International Development	Bateke Beekeeping	Democratic Republic of Congo	Agriculture	£14,147
School Farms Africa LBG	Kibera Farm Project: kitchen, food store and bore hole construction, Kibera Academy	Kenya	Education	£40,000
Send a Cow	Securing sustainable livelihoods for vulnerable families in the Oromia Region, central Ethiopia.	Ethiopia	Other	£39,174
SIGNAL	Toilet construction and biogas installation at the Vocational Training Centre for the Deaf	Tanzania	Water	£18,516
SOS Sahel International UK	Community sand dam construction project in North Darfur	Sudan	Water	£36,721
TASTE	The Bassa School for the Deaf Borehole and Buildings refurbishment Project	Nigeria	Water	£30,505
Tearfund	Beyond Subsistence Food Security Initiative	South Sudan	Agriculture	£39,417
Tearfund	Equitable and sustainable WASH for all	Liberia	Water	£39,998
The Friends of Katete	Accommodation improvement	Zambia	Education	£ 8,500
This Is EPIC	Helping survivors of sexual violence re-integrate into communities and rise from poverty	Democratic Republic of Congo	Education	£18,613

Charity Name	Name of Project	Project country	Project Category	Amount Funding
Transform Burkina	'Water for Life' clean water for Burkina Faso	Burkina Faso	Water	£ 6,626
Transform Burkina	'Safe space' Bethanie medical clinic development	Burkina Faso	Health	£13,992
Trócaire (Northern Ireland)	Ensuring access to safe water for 17 communities in Eastern DRC	The Democratic Republic of Congo	Water	£39,914
Tropical Health and Education Trust	Improved treatment and prevention services through providing high quality medical training tools to health workers	Somaliland	Education	£38,889
Trust for Africa's Orphans	Increasing profitable and sustainable farming for poor small holder farmers and their families affected by conflict and HIV/Aids	Uganda	Agriculture	£40,000
Tumaini Fund	Vocational training school for tailoring	Tanzania	Education	£18,000
UNICEF UK	Improving water and sanitation facilities in schools in Eritrea	Eritrea	Water	£39,997
United Society	Hold my Hand in Education	Malawi	Education	£39,625
Village Water	Local enterprise creation for safe water provision in Mozambique	Mozambique	Water	£39,309
VSO (Voluntary Service Overseas)	Chitunga Hydropower Project Phase II	Mozambique	Water	£39,999
WASOT	Construction of 8 learning classrooms Pap Othany Pri School	Kenya	Education	£42,550
World In Need International	ACIMI sanitation and hygiene programme, Northern Uganda	Uganda	Water	£ 5,800
World Medical Fund for Children	Improving access to health care in rural areas by training Village Health Volunteers.	Malawi	Health care prevention	£30,798

Charity Name	Name of Project	Project country	Project Category	Amount Funding
World Vision UK	Integrated nutrition, health and economic development Project in the Mbellacadio District, Fatick Region, Senegal	Senegal	Health care	£40,000
World Vision UK	Rural pipe water connection & treatment project	Cambodia	Water	£40,000

APPENDIX 2 – Grant Aid Policy

1. Introduction

The Overseas Aid & Development Commission (the Commission) is a non-statutory, non-governmental committee of the States of Guernsey to distribute grants and emergency and disaster relief overseas. The Commission’s mandate is:

“To distribute funds voted by the States for aid and development overseas by making contributions to ongoing programmes and to emergency and disaster relief.

To develop programmes relating to the collection and distribution of funds involving the private sector.

To carry out the duties and powers above in accordance with policies set out by the Policy & Resources Committee.

To fulfil the responsibilities set out in Annex One to the mandates of committees of the States.”

The objectives of the Commission are to manage and administer the budget approved by the States of Guernsey for overseas aid. The Commission’s President is a member of the States of Deliberation and the six Commissioners are appointed by the States of Deliberation.

2. Background

Guernsey has been contributing to overseas development projects through the award of Grant Aid to approved charities and agencies since 1980. The underlying approach adopted by the Commission, on behalf of the States of Guernsey, is,

“To support projects which will help to provide the basic needs of the world’s least developed countries or to help the indigenous population to provide those needs.”

Basic needs includes medical and health facilities, educational programmes and facilities, housing, water and sanitation provision and the means of sustaining a living, e.g. through agriculture, horticulture or through training in sustainable employment skills. The Commission supports projects which will generate a lasting and sustainable improvement in the living conditions for the communities receiving the aid. This ethos underpins the Commission’s overriding object to offer a “hand up” to some of the world’s least developed areas rather than a “hand out”.

3. Governance

The Commission is closely following the best practice guidance set out in the FAFT Best Practices paper, *Combating the Abuse of Non-Profit Organisations (Recommendation 8)*⁴. In particular, the Commission has strengthened its compliance checks to ensure that charities it supports are not ones either being or at risk of being misused by terrorist organisations:

- to pose as legitimate entities;
- to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; or
- to conceal or obscure the clandestine diversion of funds intended for legitimate purposes, but diverted for terrorist purposes.

Decisions the Commission makes to support Grant Aid wards subject to the recipient charity satisfactorily completing detailed compliance checks to ensure that charities it supports are not ones either being or at risk of being misused by terrorist organisations:

- to pose as legitimate entities;
- to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; or
- to conceal or obscure the clandestine diversion of funds intended for legitimate purposes, but diverted for terrorist purposes.

As part of the Commission's rigorous compliance checks, prior to the release of the award, the charity will be required to complete a detailed charity registration form which will be used for detailed compliance checks to ensure that all funds received and transferred to overseas development aid is properly accounted for and that the charity has appropriate measures in place to mitigate the risk of its funds (from any source) being used unlawfully, including through the payments of bribes, for financing terrorism or for money laundering purposes. The registration form requires the charity to evidence that it:

- a) is appropriately licensed or registered.
- b) maintains information on their activities and those who own, control or direct their activities;
- c) issues annual financial statements;
- d) has controls in place to ensure that funds are fully accounted for and spent in a manner consistent with the charity's stated activities;
- e) follows a "know your beneficiaries and associate charity" rule;
- f) keeps appropriate records; and

⁴ <http://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf>

- g) is subject to monitoring by the appropriate authorities, including the application of effective, proportionate and dissuasive sanctions for violating these requirements.

4. The Applicant Charity

The Commission's general policy is to only consider applications from:

- Charities registered with one of the Charity Commissions in the British Isles
- Approved humanitarian agencies (e.g. UNICEF, UNHCR, etc.)

If an agency is not a British Isles registered charity or an approved humanitarian agency, it is advised to contact the Commission's Secretary prior to submitting an application for Grant Aid.

4. The Location of the Project

As indicated above, the Commission was established to,

"To support projects which will help to provide the basic needs of the world's least developed countries or to help the indigenous population to provide those needs."

As a general rule, the Commission will give priority for funding to countries at the lower end of the UN Human Development Index. Where the country is not defined as a "least developed" country, the Commission requires the charity to provide additional reasons why this project should be supported over one in a least developed country. Applications for projects from the BRIC countries (the Federal Republic of Brazil, the Russian Federation, the Republic of India and People's Republic of China), the CIVETS countries (Colombia, Vietnam, Egypt, Turkey and South Africa) and other countries with emerging economies are afforded a lower priority than least developed countries.

The Commission does not accept applications for Grant Aid for projects in European countries.

5. The Project

The primary purpose of Grant Aid awards is to fund projects that make a sustainable and enduring improvement to the basic needs of very poor communities without the an on-going reliance on year-on-year overseas aid funding. The Commission does not provide Grant Aid to support the core funding for the charity's administration or day-to-day operation, salaries of staff employed by the charity, including any of the charity's staff who may be working on the project either in the local area or within the charity's organisational basis, staff training or development.

The Commission is mindful that many charities work with local partner agencies in the project country. An application may include wages for locally employed staff where key to the delivery of the project. This may include those taken on to assist with a construction project, to provide training and outreach, especially where this work is linked to enabling the local community to become more self-sufficient through the development of new sources of income or reducing the impact of illness and disease, etc. The Commission recognises that staff employed by a local partner agency often are key to the successful delivery of a project because of their local knowledge and understanding of cultural issues, etc.

6. The Grant Aid Award

(a) *Level of Awards*

The maximum amount of a Grant Aid award is £40,000 for an individual project. There is no lower threshold for Grant Aid awards.

(b) *Number of applications per annum*

As a general rule the Commission limits the number of applications a single charity may make in a particular funding year to two applications.

(c) *Period of an award*

The Commission's general policy is to fund annual projects, i.e. the project should be commenced and completed within the twelve months following the making of the award.

(d) *Payment of Awards*

It is the Commission's general policy to pay annual awards in two instalments. The first instalment will be released three to four weeks before the project is due to commence subject to receipt of the completed agreement form which will be sent to the charity when the Commission confirms that an award has been approved.

The first payment will generally be for 50 percent of the Grant Aid award. The second instalment will be made on receipt of the interim report, subject to the Commission being satisfied that the project is being delivered in accordance with the approved application proposal.

7. Evaluation of Applications

Each project is considered on its own merits and balanced against the various criteria. No weighting is applied to any of the individual criteria. When deciding which projects

should be funded, the Commission reviews all applications and, where the application has satisfied the general procedure, the projects are assessed against the criteria set out below. The procedure is in four parts:

- (i) *Charity or agency* – including compliance with Charity Commission regulations, proportion of income spent on campaigning and governance; where previous awards have been made - compliance with the Commission’s own monitoring and reporting requirements.
- (ii) *Project location* – including position on UN Human Development Index, the political situation in the country, whether the country is subject of any UN or other international sanctions, the country’s human rights record, etc.
- (iii) *Project objectives* – including projects objectives, how it will benefit the community, how many people will benefit, directly or indirectly, from the funding, the sustainability of the project, without reliance on further overseas aid funding, the reasonableness of the time frame for delivering the project, whether the needs of the beneficiaries have been fully identified, whether all logistical issues have been considered and planned for, whether the project has been well thought out, etc.
- (iv) *Project budget* – including assessing the proposed spending on the project, the cash flow projection, the level of detail, the cost-effectiveness of the project, whether the proposed spending appears to support the objectives of the project, the level of any administrative costs, including travel expenses and monitoring and evaluation costs, etc.

The Commission may take account of issues which may have wider public concern to Guernsey and any advice from the Policy & Resources Committee’s External Relations Advisor regarding any sanctions regime which may be in place in the project country.

8. Notification of Decisions

Due to the large number of applications received, the Commission is unable to consider all applications at the same time. The Commission will advise the charities of its decision as soon as it is able following determination. In some cases, the Commission may defer an application to request additional information or clarification of some aspect of the application.

(a) Successful applications

Where an application is approved the charity will be asked to confirm that the project is still able to proceed as set out in the application and the anticipated start date. The charity is also required to sign a simple agreement which sets out the amount of the award, the purpose for which the award is made and the reporting requirements. The

Commission will not release the Grant Aid award until the signed agreement and charity registration form have been received.

(b) *Unsuccessful applications*

Where an application is rejected the Commission will use its best endeavours to provide feedback to the unsuccessful applicants. In some cases, the reason for refusing an application is simply because the Commission's budget is not able to support all applications that satisfies the general criteria and may merit funding. The Commission will, in general terms, advise the charity as to any aspects of the unsuccessful application which were unclear, lacking in detail or not within the general funding criteria.

9. Monitoring and Evaluation of Grant Aid Awards

The monitoring and evaluation of Grant Aid awards is a fundamental aspect of the Commission's work. The Commission will set out the reporting time frame when confirming a Grant Aid award and this will be adjusted as necessary depending on the nature of the project receiving funding. The Commission requires two reports to be submitted.

The first obligatory report is the Interim Report. This report must be submitted about six after the release of the Grant Aid award by the Commission. This report will serve to trigger the release of the second instalment of the Grant Aid award, subject to the Commission being satisfied that the project is progressing in accordance with the approved application.

The second obligatory report is the Final Report. This report must be submitted within two months of completion of the project or no later than fourteen months after the payment of the first Grant Aid instalment, whichever is the sooner.

The Commission recognises that local circumstances may have an impact on the feasibility of reporting within the above general timescales. It is therefore happy to accept reports outside the general timescales, subject to the charity contacting the Commission's Secretary prior to the date on which the report is due and setting out the reasons for the delay.

(c) *Interim Report*

The interim report must provide a concise overview of the progress of the project and include reference to the overall objectives of the project and the spending against the approved budget. Where feasible, the interim report/s must also address how the delivery of the project is benefiting the community.

(d) Final Report

The final report must provide a concise overview of the full delivery of the project and this must reflect to the overall objectives of the project and the final costs against the approved budget. It must also address how the project has and will continue to benefit the community and include reference to both direct and indirect beneficiaries. If the number of beneficiaries is different from the approved application, the report must explain why the differences have arisen.

(e) Other reporting requirements

In addition to the obligatory reporting requirements set out above, the Commission requires funded charities to notify it of any material changes in circumstances, without delay, which may impact on how the project is delivered. Such reports must clearly outline,

- What has changed;
- What steps the charity has taken to mitigate the change in circumstances;
- How the charity proposes to overcome the change in circumstances;
- What impact the change of circumstances will have on the costs of the project; and
- The length of any delay to the overall project timetable.

Where the change in circumstances will have an impact on the approved project budget a revised budget must be included with the report.

Further, the charity must ensure that no further money is spent on the project until it has received confirmation from the Commission that the revised project has been approved. The Commission reserves the right to require a charity to return all or part of the Grant Aid award where it is satisfied that it would be appropriate and reasonable to do so.

(f) Non-compliance with the reporting requirements

As stated above, the reporting is a fundamental requirement for all Grant Aid awards. Therefore, non-compliance is viewed very seriously by the Commission. The Commission has a range of sanctions available to it, including:

- Agreeing a revised reporting deadline with the charity where it is satisfied that non-compliance was due to factors outside the reasonable control of the charity;
- Issuing a warning notice to a charity, advising that a breach has occurred and may be taken into consideration when considering future applications over a specified period;
- Requiring the charity to return some or all of the Grant Aid award; or

- Automatically rejecting future applications from the charity for a specified period.

Where the Commission believes some action must be taken, the charity will be provided with reasons for the Commission's decision and given an opportunity for the decision to be reviewed.

(g) *Return of unspent balances*

If the project is achieved under budget the Commission requires all unspent balances to be returned to the Commission without delay and in any case no later than the date for submission of the final report, i.e. generally no later than twelve months after the original award was made.

(h) *Non-delivery of approved projects*

If for any reason a charity is unable to proceed with a project for which funding has been granted, the charity must notify the Commission's Secretary without delay. The charity must also ensure that no further monies from the approved award are spent. The Commission will require a report explaining:

- Why the project cannot proceed as approved;
- How far the project had progressed; and
- How much of the Grant Aid award has been spent and on what.

The report must also address whether the problems are such that the project is unlikely to be able to proceed at all or the anticipated length of any delay in completing the project. The report must include a comparative budget, showing how much money and on what has already been spent against the approved budget.

As a general rule, the Commission will require a charity to return any unspent balances without delay. The Commission will re-release any returned money, if, during the funding year, the charity is able to confirm with the Commission that the situation has further changed and the project can now proceed as originally approved.

(i) *Non-compliance with funding agreements*

In addition to the above internal sanctions which the Commission may impose for non-compliance with its audit, financial management and reporting requirements, the Commission may also notify the Charity Commission with which the charity is registered of the breach and its actions to rectify the position. In these circumstances the Commission will have pre-warned the charity of its intention to do so and will copy the report to the charity.

10. UN or other international sanctions

The Commission is very mindful that UN and other international sanctions are not applied lightly and are only applied after careful scrutiny and debate within the UN, etc. Such sanctions will have also been widely publicised through the international media and have been the subject of wide public and political debate.

The Commission is also very conscious that there may be what could be best described as “unintended consequences” following the imposition of sanctions. Such unintended consequences can include a significant impact on the daily lives of country’s population, particularly the poorest and most vulnerable members of the population. As a result there may be a heightened need for humanitarian aid.

The Commission is also mindful that such sanctions may be varied or removed and indeed imposed between the date on which the Commission may consider a Grant Aid application and the commencement of the project. For this reason it will not automatically refuse applications where UN or international sanctions may be in force and requires the charity to explain how such sanctions may impact on the need for and the delivery of the project when submitting their application. The application must show a clear understanding of the scope and impact of any sanctions and on the community which will benefit from the proposed project.

The Commission will always take advice from the Policy & Resources Committee’s External Relations Advisor. The final decision whether or not to accept an application will always rest with the Commission, however the advice from the Policy & Resources Committee’s External Relations Advisor will be central to informing the Commission’s decision.

*Overseas Aid & Development Commission
May 2017*

APPENDIX 3 – Disaster and Emergency Relief Policy

Introduction

The Commission has an annual budget of £200,000 for awards in response to disaster and emergency relief work following catastrophic natural disasters and other major crises and emergencies in the world's least developed countries or where, because of the scale of the disaster or emergency the infrastructure and the usual coping mechanisms of the country are unable to respond quickly and effectively.

General Policy

The Commission's general policy in respect of Emergency Disaster Relief awards is to support appeals launched by the UK Disasters Emergency Committee (the DEC) following a natural disaster or humanitarian crisis.

Exceptional Award Policy

The Commission will exceptionally consider applications from individual charities for awards in response to non-DEC led disasters following a catastrophic natural disaster where the day-to-day patterns of life are suddenly disrupted and the population requires supplies of basic food, shelter and medical supplies to protect them in the immediate aftermath of the disaster.

The Commission will generally not support applications under this policy for funding where the request relates to ongoing civil conflict. The Commission is mindful that its disaster emergency budget is small and the demands on it are considerable and so it has drawn this distinction between one-off catastrophic events and situations arising from civil conflict, where people's lives are increasingly affected by such conflict. However, the Commission may exercise its discretion in exceptional circumstances depending on the nature and the scale of the humanitarian need in question.

Disaster emergency aid funding will normally be provided for one of more of the following activities:

- Provision of water, sanitation, medical services and emergency feeding programmes to disaster areas in the immediate aftermath of the disaster
- Provision of emergency shelter and clothing
- Distribution of emergency supplies within the areas affected by the disaster.

In most cases, these awards will be to a maximum of £50,000 per disaster or emergency. The application must set out in detail how the charity proposes to use the funding and the budget must show what items will be purchased and in what quantity.

Assessment Criteria

When assessing applications, the Commission will consider the following matters:

- The nature and extent of the disaster
- The number of people killed, injured or displaced from their homes following the disaster
- The extent of media reporting of the disaster
- The most pressing needs
- Details of other sources of aid being directed to the affected region
- The position of the affected area on the UN Index of Human Development.

It will also contact the DEC, or such other agency it believes may be able to assist it in assessing the application, for expert advice and guidance.

In addition to, the Commission will have regard to whether:

- The DEC is likely to launch an appeal in the very near future (*the Commission is unlikely to make an award to an individual charity if the DEC advises that a national public appeal is likely to be launched within the near future*).
- The applicant charity has launched its own public appeal in response to the disaster and the initial and anticipated public response to the appeal.
- The applicant charity is a DEC member agencies or a major UK-registered charity (*Commission is unlikely to make an award to small charity unless it has appropriate experience and the resources to respond to the disaster immediately and efficiently and that it already has staff and resources in the region*).
- The charity has received funding from the Commission under its Grant Aid policy and has fully complied with the terms of such awards.
- The charity is already working in the region affected by the disaster or emergency and so is able to mobilise key staff and resources immediately.
- The charity has relevant experience to respond in a timely manner to the disaster and the resources to respond effectively to the particular event.
- Any issues which may have wider public concern to Guernsey.

The Commission will also seek advice and guidance from the Policy Council External Relation Group on issues relating to international sanctions and other international relationship considerations which may arise.

Revised – May 2016



ACORD

Maize crop nursery in Biharamulo, Tanzania



African Revival

New classroom at Bwacha Basic School, Kalomo, Zambia



Habitat for Humanity

Villagers helping construct well at Assérékro, Central Region, Côte d'Ivoire



Advantage Africa

Pig breeding in Kirondo, Uganda



Christian Aid

Solar pump system at Anbar well, Karukh District, Afghanistan



Concern Worldwide

Fencing rehabilitated well in Gorlu, Sorzor District, Liberia