



BILLET D'ÉTAT

WEDNESDAY, 8th NOVEMBER, 2017

XXI
2017

ELECTIONS AND APPOINTMENTS

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Reappointment of Members, P.2017/85

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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 **8th November, 2017** at **9.30 a.m.**, to consider the items listed in this Billet d'État which have been submitted for debate.

R. J. COLLAS
Bailiff and Presiding Officer

The Royal Court House
Guernsey

20th October, 2017

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

THE COMMITTEE *FOR* HOME AFFAIRS

POLICE COMPLAINTS COMMISSION: REAPPOINTMENT OF MEMBERS

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled 'Police Complaints Commission: Reappointment of Members of the Committee *for* Home Affairs, they are of the opinion

1. To approve the reappointment of Mrs Bonita Louise Hamilton as an ordinary member of the Police Complaints Commission for four years, retrospectively with effect from 1st July 2017.
2. To approve the reappointment of Mrs Ann Patricia Nippers as an ordinary member of the Police Complaints Commission for four year, retrospectively with effect from 1st July 2017.

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**

THE COMMITTEE *FOR* HOME AFFAIRS

POLICE COMPLAINTS COMMISSION: REAPPOINTMENT OF MEMBERS

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

19th September 2017

Dear Sir

1. Executive Summary

The purpose of this report is to propose the reappointment of Mrs Bonita Hamilton and Mrs Ann Nippers as members of the Police Complaints Commission ('the Commission').

2. Background

In 2005, the States of Deliberation approved the Committee *for* Home Affairs' (then Home Department's) recommendation that legislation be introduced to establish a Police Complaints Commission at a local level (Billet d'État I, 2005). The Police Complaints (Guernsey) Law, 2008 ('the Law') accordingly came into effect on 1st July 2011 and creates the Commission as an independent panel to maintain oversight of how complaints against the police are handled.

The Schedule to the Law sets out the composition of, and appointment process to, the Commission, and establishes that:-

- the Commission shall consist of a Chairman and five ordinary members;
- the Chairman and ordinary members shall be appointed for a term of four years by the States of Deliberation upon the recommendation of the Committee *for* Home Affairs;
- members of the Commission may be reappointed.

3. Reappointment

Mrs Hamilton and Mrs Nippers have both served as Commissioners since their appointment on 1 July 2011. Mrs Hamilton and Mrs Nippers were later reappointed by the States on 30th October 2013 the reappointment taking effect from 1st July 2013, meaning that their term of office came to an end on 1 July 2017.

The Committee is satisfied that both Commissioners meet all of the prescribed criteria set out in Law regarding the suitability for reappointment and, over the last four years, have both discharged their duties with professionalism and integrity. The Committee is therefore pleased to confirm that Mrs Hamilton and Mrs Nippers have both indicated a wish to stand for reappointment.

4. Recommendation

The States are asked to decide whether they are of the opinion:

1. To re-appoint Mrs Bonita Hamilton as ordinary member of the Police Complaints Commission for four years, retrospectively with effect from 1 July 2017.
2. To re-appoint Mrs Ann Nippers as ordinary member of the Police Complaints Commission for four years, retrospectively with effect from 1 July 2017.

5. Proposition

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 accompanying this policy letter have the unanimous support of the Committee *for* Home Affairs.

Yours faithfully

M M Lowe
President

R H Graham
Vice-President

M P Leadbeater
V Oliver
R G Prow

Appendix 1 – Members' Profiles

Mrs Bonita Louise Hamilton

Mrs Hamilton has professional experience as a Certified Account Technician and has experience with the implementation of, and subsequent compliance with, legislation.

Mrs Ann Patricia Nippers

Mrs Nippers has professional experience of working with children in education and has developed key skills through her professional contribution to the Pupil Support Advisory Service.

Each candidate greatly exceeds the required criteria and it is believed that they will collectively continue to form part of an efficient and effective Commission.

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

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

No. 61 of 2017

THE DATA PROTECTION (PROCESSING OF SENSITIVE PERSONAL DATA) (OFSTED) ORDER 2017

In pursuance of Section 66(20) and paragraph 10 of Schedule 3 of the Data Protection (Bailiwick of Guernsey) Law 2001, The Data Protection (Processing of Sensitive Personal Data) (OFSTED) Order 2017, made by the Committee *for* Home Affairs on 11th September 2017, is laid before the States.

EXPLANATORY NOTE

This Order provides that sensitive personal data may be processed where that processing is necessary for the purposes of an inspection by Ofsted of any person, body, service or institution in the Bailiwick that is to be carried out pursuant to a written agreement containing appropriate safeguards in relation to the processing of personal data.

This Order comes into force on 12th September, 2017.

No. 62 of 2017

THE OFFENCES (FIXED PENALTIES) (GUERNSEY) ORDER 2017

In pursuance of Section 5(1)(b), 7(3)(a) and 7(4)9b(ii) of the Offences (Fixed Penalties) (Guernsey) Law 2009, The Offences (Fixed Penalties) (Guernsey) Order 2017, made by the Committee *for* Home Affairs on 11th September 2017, is laid before the States.

EXPLANATORY NOTE

This Order specifies the manner in which, and the place at which, a fixed penalty is to be paid. This Order provides for payment in person to be made at Edward T Wheadon House, instead of Sir Charles Frossard House as at present; includes a reference to Corporate Customer Services as the agency to which such payments must be made; removes the reference to payment by postal order; and removes the requirement for a surcharge when paying by credit card. The equivalent Order made in 2015 is revoked.

This Order comes into force on the 16th day of September, 2017.

No. 63 of 2017

**THE FIREARMS AND WEAPONS (SPECIALLY DANGEROUS AIR WEAPONS)(GUERNSEY)
REGULATIONS 2017**

In pursuance of Section 55A and 58(1) of the Firearms and Weapons (Guernsey) Law 1998, The Firearms And Weapons (Specially Dangerous Air Weapons)(Guernsey) Regulations 2017, made by the Committee *for* Home Affairs on 11th September 2017, is laid before the States.

EXPLANATORY NOTE

These Regulations prescribe certain types of air weapons as specially dangerous and thus, to be regarded as firearms under the Firearms and Weapons (Guernsey) Law, 1998 ("**the Law**").

Regulation 1 prescribes air weapons disguised as other objects, air pistols with 6 foot pounds kinetic energy or more, and other air weapons with 12 foot pounds kinetic energy or more as specially dangerous air weapons for the purposes of section 58(1) of the Law.

Regulations 2, 3 and 4 are the interpretation, citation and commencement provisions respectively.

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

No. 64 of 2017

THE WASTEWATER CHARGES (GUERNSEY) REGULATIONS, 2017

In pursuance of section 5 of the Fees, Charges and Penalties (Guernsey) Law, 2007, "The Wastewater Charges (Guernsey) Regulations, 2017", made by the States' Trading Supervisory Board on 17th August, 2017, are laid before the States.

EXPLANATORY NOTE

These Regulations prescribe new wastewater charges and rates applying under the Wastewater Charges (Guernsey) Law, 2009.

These Regulations come into force on 1st January, 2018.

No. 65 of 2017

THE WATER CHARGES (AMENDMENT) REGULATIONS, 2017

In pursuance of section 5 of the Fees, Charges and Penalties (Guernsey) Law, 2007, "The Water Charges (Amendment) Regulations, 2017", made by the States' Trading Supervisory Board on 17th August, 2017, are laid before the States.

EXPLANATORY NOTE

These Regulations prescribe the charges which will be made for the supply of water for 2018.

These Regulations come into force on 1st January, 2018.

No. 35 of 2017

THE COMPANIES (GUERNSEY) LAW, 2008 (AMENDMENT OF PART XVIA) REGULATIONS, 2017

In pursuance of section 537 of the Companies (Guernsey) Law, 2008, The Companies (Guernsey) Law, 2008 (Amendment of Part XVIA) Regulations, 2017 made by the Committee for Economic Development on 6th July 2017, are laid before the States.

EXPLANATORY NOTE

These regulations amend Part XVIA of the Companies (Guernsey) Law, 2008 to introduce a requirement that a recognised auditor of a market traded company must maintain the working papers relating to an audit in English and make such papers available to the Registrar, a recognised supervisory body or a professional oversight body upon demand.

The three Crown Dependencies of Guernsey, Jersey and the Isle of Man have introduced systems of public oversight, quality assurance, investigations and penalties which have been assessed by the European Commission as equivalent to the systems for auditors and audit firms in EU Member States under Directive 2006/43/EC.

These regulations came into operation on the 6th July, 2017.

No. 51 of 2017

THE BENEFICIAL OWNERSHIP (DEFINITION) (AMENDMENT) REGULATIONS, 2017

In pursuance of sections 31 and 39 of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017, "The Beneficial Ownership (Definition) (Amendment) Regulations, 2017", made by the Policy & Resources Committee on 15th August 2017, are laid before the States.

EXPLANATORY NOTE

These Regulations correct an error in the definition of "recognised stock exchange" in the Beneficial Ownership (Definition) Regulations, 2017.

These Regulations come into force on 15th August 2017.

No. 52 of 2017

**THE BENEFICIAL OWNERSHIP OF LEGAL PERSONS (GUERNSEY) LAW, 2017
(COMMENCEMENT) REGULATIONS, 2017**

In pursuance of sections 39 and 43 of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017, “The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (Commencement) Regulations, 2017”, made by the Policy & Resources Committee on 15th August 2017, are laid before the States.

EXPLANATORY NOTE

The Regulations bring the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 into force on the 15th August 2017, with the exception of Schedule 4, in respect of which equivalent alternative legislation provision has been made.

No. 53 of 2017

**THE DISCLOSURE (FINANCIAL SERVICES COMMISSION) (BAILIWICK OF GUERNSEY)
(AMENDMENT) (COMMENCEMENT) REGULATIONS, 2017**

In pursuance of section 4 of the Disclosure (Financial Services Commission) (Bailiwick of Guernsey) (Amendment) Ordinance, 2017, “The Disclosure (Financial Services Commission) (Bailiwick of Guernsey) (Amendment) (Commencement) Regulations, 2017”, made by the Policy & Resources Committee on 15th August 2017, are laid before the States.

EXPLANATORY NOTE

These Regulations bring the Disclosure (Financial Services Commission) (Bailiwick of Guernsey) (Amendment) Ordinance, 2017 into force on the 15th August 2017.

No. 54 of 2017

**THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (BAILIWICK OF GUERNSEY) (AMENDMENT)
(COMMENCEMENT) REGULATIONS, 2017**

In pursuance of section 7 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2017, “The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (Commencement) Regulations, 2017”, made by the Policy & Resources Committee on 15th August 2017, are laid before the States.

EXPLANATORY NOTE

These Regulations bring the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2017 into force on the 15th August 2017.

No. 55 of 2017

THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (BAILIWICK OF GUERNSEY) (BENEFICIAL OWNERSHIP) REGULATIONS, 2017

In pursuance of sections 49DA and 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, “The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Beneficial Ownership) Regulations, 2017”, made by the Policy & Resources Committee on 15th August 2017, are laid before the States.

EXPLANATORY NOTE

These Regulations prescribe the Guernsey Financial Services Commission as a supervisory authority in respect of the duties and requirements to be complied with under the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017, and the Beneficial Ownership of Legal Persons (Alderney) Law, 2017 (together, the Beneficial Ownership Laws), and other enactments relating to the beneficial ownership of legal persons, by regulated persons within the meaning of the Beneficial Ownership Laws. They also extend sections 49B and 49C of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 to regulated persons within the meaning of the Beneficial Ownership Laws, and to compliance with the provisions of those Laws.

These Regulations come into force on the 15th August 2017.

No. 56 of 2017

THE REGULATION OF FIDUCIARIES, ADMINISTRATION BUSINESSES AND COMPANY DIRECTORS, ETC. (BAILIWICK OF GUERNSEY) (AMENDMENT) REGULATIONS, 2017

In pursuance of section 61 or, and paragraph 6 of Schedule 1 to, the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000, “The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Regulations, 2017”, made by the Policy & Resources Committee on 15th August 2017, are laid before the States.

EXPLANATORY NOTE

These Regulations amend the minimum criteria for licensing under Schedule 1 to the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000 to include consideration of compliance with relevant provisions under the Limited Liability Partnerships (Guernsey) Law, 2013, and the Companies (Alderney) Law, 1994.

These Regulations come into force on the 15th day of August, 2017.

No. 71 of 2017

WASTE DISPOSAL AND RECOVERY CHARGES REGULATIONS, 2017

In pursuance of Section 32(3)(c) and (4) and section 72 of the Environmental Pollution (Guernsey) Law, 2004 and all other powers enabling it in that behalf, the Waste Disposal and Recovery Charges Regulations, 2017, made by the Waste Disposal Authority on 14th September 2017, is laid before the States.

EXPLANATORY NOTE

These Regulations prescribe the charges, or rates of charge, payable in 2018 as a pre-condition of the acceptance of waste of particular descriptions by the Waste Disposal Authority for disposal or recovery at specified public waste management sites (see Table 1 in Schedule 1). They also set out charges in 2018 for the reloading of waste which is not accepted at specified public waste management sites (see Table 2 in Schedule 1).

These Regulations and the new charges or rates of charge come into force on 1st January, 2018.

No. 73 of 2017

THE HARBOUR DUES AND FACILITIES CHARGES (GUERNSEY) REGULATIONS, 2018

In pursuance of the powers conferred upon it by sections 2 and 3 of the Harbour Dues (Saint Peter Port and Saint Sampson) Law, 1957, section 33 of the Harbours Ordinance, 1988, sections 1 and 5 of the Fees, Charges and Penalties (Guernsey) Law, 2007, made by the States Trading Supervisory Board on 26th September, 2017, is laid before the States.

EXPLANATORY NOTE

These Regulations prescribe the harbour dues payable under section 2 of the Harbour Dues (Saint Peter Port and Saint Sampson) Law, 1957, and the charges payable for the use of harbour facilities under section 33(1) of the Harbours Ordinance, 1988. Under the terms of the Fees, Charges and Penalties (Guernsey) Law, 2007, these dues and charges may now be prescribed by regulations of the States' Trading Supervisory Board.

These Regulations came into force on 1st January, 2018.

No. 74 of 2017

THE AIRPORT FEES (GUERNSEY AND ALDERNEY) REGULATIONS, 2018

In pursuance of the powers conferred upon it by section 2(1) of the Airport Fees Ordinance, 1987, as amended, and as delegated to it by section 1(1)(d) of the Fees, Charges and Penalties (Guernsey) Law, 2007, made by the States Trading Supervisory Board on 26th September, 2017, is laid before the States.

EXPLANATORY NOTE

These Regulations prescribe the fees for the use of Alderney Airport and Guernsey Airport. Under the terms of the Fees, Charges and Penalties (Guernsey) Law, 2007, these dues and charges may now be prescribed by regulations of the States' Trading Supervisory Board.

These Regulations come into force on 1st April, 2018.

No. 75 of 2017

THE MOORING CHARGES (GUERNSEY) REGULATIONS, 2018

In pursuance of section 2 of the Vessels and Speedboats (Compulsory Third-Party Insurance, Mooring Charges and Removal of Boats) (Guernsey) Law, 1972, sections 1 and 5 of the Fees, Charges and Penalties (Guernsey) Law, 2007 made by the States Trading Supervisory Board on 26th September, 2017, is laid before the States.

EXPLANATORY NOTE

These Regulations prescribe the mooring charges payable under section 2 of the Vessels and Speedboats (Compulsory Third-Party Insurance, Mooring Charges and Removal of Boats) (Guernsey) Law, 1972 (the "**1972 Law**"). Under the terms of the Fees, Charges and Penalties (Guernsey) Law, 2007, these charges may now be prescribed by regulations of the States' Trading Supervisory Board.

These Regulations come into force on the 1st April, 2018.

No. 76 of 2017

THE PILOTAGE DUES (GUERNSEY) REGULATIONS, 2018

In pursuance of the powers conferred upon it by sections 1, 2, 3 and 8 of the Pilotage Dues and Fees Ordinance, 1987 and sections 1 and 5 of the Fees, Charges and Penalties (Guernsey) Law, 2007, made by the States Trading Supervisory Board on 26th September, 2017, is laid before the States.

EXPLANATORY NOTE

These Regulations prescribe the pilotage dues and related charges payable under the Pilotage Dues and Fees Ordinance, 1987. Under the terms of the Fees, Charges and Penalties (Guernsey) Law, 2007, these dues and charges may now be prescribed by regulations of the States' Trading Supervisory Board.

These Regulations came into force on 1st January, 2018.

No. 77 of 2017

**THE FORFEITURE OF MONEY ETC IN CIVIL PROCEEDINGS (DESIGNATION OF COUNTRIES)
(BAILIWICK OF GUERNSEY) REGULATIONS, 2017**

In pursuance of Section 53 and 64 of the Forfeiture of Money etc in Civil Proceedings (Bailiwick of Guernsey) Law 2007, The Forfeiture of Money etc in Civil Proceedings (Designation of Countries) (Bailiwick of Guernsey) Regulations, 2017, made by the Committee *for* Home Affairs on 25th September 2017, is laid before the States.

EXPLANATORY NOTE

These Regulations amend the list of persons, bodies or authorities in England and Wales to which assistance may be provided under the Forfeiture of Money etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007.

These Regulations come into force on the 15th September, 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 STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY

BENEFIT AND CONTRIBUTION RATES FOR 2018

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled 'Benefit and Contribution Rates for 2018', dated 2nd October 2017, they are of the opinion:

1. To set the contributions limits and rates as set out in Table 4 of that Policy Letter, from 1st January 2018.
2. To set the standard rates of contributory social insurance benefits as set out in Table 7 of that Policy Letter, from 1st January 2018.
3. To set the prescription charge per item of pharmaceutical benefit at £3.90, from 1st January 2018.
4. To set the contribution (co-payment) required to be made by the claimant of care benefit, under the Long-term Care Insurance Scheme, at £200.62 per week, from 1st January 2018.
5. To set the maximum weekly long-term care benefit at the rates set out below, from 1st January 2018:
 - a) £444.57 per week residential care benefit for persons resident in a residential home;
 - b) £585.76 per week elderly mentally infirm (EMI) benefit for qualifying persons in a residential home; and
 - c) £829.99 per week nursing care benefit for persons resident in a nursing home or the Guernsey Cheshire Home.
6. To set the maximum weekly respite care benefit at the rates set out below, from 1st January 2018:
 - a) £645.19 per week for persons receiving respite care in a residential home;
 - b) £786.38 per week for the elderly mentally infirm (EMI) rate for persons receiving respite care in a residential home; and

- c) £1,030.61 per week for persons receiving respite care in a nursing home or the Guernsey Cheshire Home.
- 7. To set the supplementary benefit requirement rates at the rates set out in Table 13 of that Policy Letter, from 5th January 2018.
- 8. To set the weekly benefit limitations for supplementary benefit at the rates set out below, from 5th January 2018:
 - a) £670 for a person living in the community;
 - b) £549 for a person who is residing in a residential home; and
 - c) £787 for a person who is residing as a patient in a hospital, nursing home, the Guernsey Cheshire Home, or as an elderly mentally infirm resident of a residential home.
- 9. To set the amount of the personal allowance payable to persons in Guernsey and Alderney residential or nursing homes who are in receipt of supplementary benefit at £31.41 per week, from 5th January 2018.
- 10. To set the amount of the personal allowance payable to persons in United Kingdom hospitals or care homes who are in receipt of supplementary benefit at £52.91 per week, from 5th January 2018.
- 11. To set the supplementary fuel allowance paid to supplementary benefit householders at £27.20 per week, from 27th October 2017 to 27th April 2018.
- 12. To set the rate of family allowance at £13.90 per week, from 1st January 2018.
- 13. To set the rates and annual income limit for severe disability benefit and carer's allowance at the rates and limit set out in Table 17 of that Policy Letter, from 1st January 2018.
- 14. To rename "supplementary benefit" as "income support" and to make all necessary amendments to legislation to allow and reflect the name change.
- 15. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

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

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY

BENEFIT AND CONTRIBUTION RATES FOR 2018

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

2nd October 2017

Dear Sir

1. Executive Summary

- 1.1.1. The Committee *for* Employment & Social Security has undertaken its annual review of the social security, health, and long-term care benefits paid under the various schemes for which it is responsible. The Committee is recommending that the rates of both the contributory and non-contributory benefits be increased in 2018 by 2.8%, being the annual rate of 'core' inflation (RPIX) for the year to June 2017.
- 1.1.2. In recent years, contributory benefit and contribution rates have been uprated according to the States-approved policy of applying a rate at approximately one third of the difference between the Quarter 2 RPIX figure and the most recent annual median earnings index figure, which relates to the previous December. However, the June 2017 RPIX inflation rate is actually higher than the December 2016 median earnings figure. As such, the uprating policy cannot be applied. The Committee has therefore taken the decision to propose an uprating of all rates by RPIX. This effectively creates a 'double-lock', so that rates will be increased by a minimum of RPIX, in a year when the median earnings figure is lower than inflation. The reason for this proposal is that the application of the uprating policy when inflation is higher than median earnings would effectively mean that the uprating applied to benefit and contribution rates would be lower than the increase in the cost of living, which the Committee is not comfortable with.
- 1.1.3. In 2016, the States changed the methodology used to calculate median earnings in the island. Under the revised methodology, the median earnings figure, as at 31 December 2015, was recalculated as 1.8%, rather than 1.3%

(the figure that had been used by the Committee in the last Up-rating Policy Letter). The Committee seeks to maintain a link between the incomes of the working population and those of pensioners, by up-rating contributory benefits by RPIX plus a proportion of the increase in earnings, so that pensions grow if earnings grow. In order to ensure that this link is not eroded, the Committee has decided to restate last year's benefit rates using the revised median earnings figure, before applying this year's RPIX and earnings figures, in order to calculate the rates for 2018. A more detailed explanation of this is available in Appendix 1.

- 1.1.4. In addition to the contribution and benefit rates for 2018, the Policy Letter also provides progress updates on Employment & Social Security policy work streams, as set out in Part V of this Policy Letter.

2. Introduction

2.1. Up-rating policy

- 2.1.1. The up-rating policy for social insurance benefits was addressed in the Policy Letter on benefit and contribution rates for 2016 (Billet d'État XVIII of 2015, Article 8), and the States debate thereon. The States resolved:

'1. That a guideline for the annual up-rating of statutory old-age pensions be established, set initially at one third of the real increase in median earnings, with the intention to reduce this to RPIX subject to suitable policies to enhance personal provision being in place.

2. That the Social Security Department be directed to take the above guideline into account in its recommendations for the annual up-rating of statutory old-age pensions, and to provide the States of Deliberation with detailed reasoning for any recommendation to deviate from it in its annual up-rating Policy Letter.

3. That the Social Security Department be directed to review the guideline for the annual up-rating of statutory old-age pensions no later than 2020, having regard to progress made in establishing supporting policies to enhance personal pension provision and the actuarial projections for the Guernsey Insurance Fund at that time.'

- 2.1.2. The second Resolution above requires the Committee to explain in detail any recommendation to deviate from the policy. The Committee is proposing to amend the policy for 2018 because it cannot be applied when inflation

(RPIX) is higher than median earnings. Instead, the Committee is recommending that rates are uprated by RPIX only for 2018. This effectively creates a 'double-lock', so that pensions, and other contributory benefits, are not uprated by less than inflation. This would be the case if one third of the difference between inflation and a median earnings figure that was lower than RPIX was applied.

- 2.1.3. Aside from the use of a double-lock in the event that inflation exceeds the change in median earnings, the Committee remains of the opinion that the uprating policy should not change between now and 2020. As explained in the Committee's Policy Plan (Billet d'État XII of 2017, Article 1), the Committee will review the uprating policy and report back to the States on this by no later than 2020.

PART I: INCOME

3. Contributions

3.1. Proposed contribution rates for 2018

- 3.1.1. Following the two changes to Contribution rates for 2017, which were 0.5% on all contribution classes, except employers, to improve the sustainability of the Long-term Care Insurance Fund, and 0.1% on both the employer and employee rate, to fund the new package of parental benefits, the Committee is recommending no change for 2018. Contribution rates are therefore proposed to remain as follows in Tables 1-3 below.

Table 1 – Proposed contribution rates for 2018, and the proportions of income split between the funds for employed persons (Class 1)

Employed persons (Class 1)	2018
Employer	6.6%
Guernsey Insurance Fund	5.0%
Guernsey Health Service Fund	1.6%
Long-term Care Insurance Fund	-
Employee	6.6%
Guernsey Insurance Fund	3.5%
Guernsey Health Service Fund	1.3%
Long-term Care Insurance Fund	1.8%
Combined	13.2%
Guernsey Insurance Fund	8.5%
Guernsey Health Service Fund	2.9%
Long-term Care Insurance Fund	1.8%

Table 2 – Proposed contribution rates for 2018, and the proportions of income split between the funds for self-employed persons (Class 2).

Self-employed persons (Class 2)	2018
Totals	11.0%
Guernsey Insurance Fund	6.5%
Guernsey Health Service Fund	2.7%
Long-term Care Insurance Fund	1.8%

Table 3 – Proposed contribution rates for 2018, and the proportions of income split between the funds for non-employed persons (Class 3).

Non-employed persons (Class 3)	2018
Under pension age	10.4%
Guernsey Insurance Fund	5.7%
Guernsey Health Service Fund	2.8%
Long-term Care Insurance Fund	1.9%
Over pension age	3.4%
Guernsey Insurance Fund	-
Guernsey Health Service Fund	1.3%
Long-term Care Insurance Fund	2.1%

- 3.1.2. The Committee is mindful that there are likely to be structural changes to the long-term care insurance scheme in both the scope of benefits and the financing structure as the various strands of the Supported Living and Ageing Well Strategy are developed. The actuarial review of the Long-term Care Insurance Fund indicated that if no mitigating action is taken, the Fund will be exhausted by 2031. The 0.5% increase in contributions to the Fund, which took place from 1st January 2017, is projected to extend the life of the Fund by 16 years to 2047. This was based on the principal assumptions of net immigration of +100 a year, real earnings growth of 1.5% per year (net of RPIX price inflation), and real investment return of 2.5% per year (net of RPIX price inflation). If immigration, earnings growth, or investment return are lower than projected, then the contribution rate required to achieve a break even rate will need to be higher, and as such, the Fund will be exhausted more quickly.
- 3.1.3. The Committee recognises that, based on the latest actuarial assumptions, without further increases in contribution rates to improve the sustainability of the Guernsey Insurance Fund, the minimum buffer of two times annual expenditure will be breached by 2035 and the reserves of the Guernsey Insurance Fund will be entirely depleted by 2046. The reasons that the contribution rate is no longer adequate are that, over the next 20 to 30 years, more people are expected to live longer and the dependency ratio (i.e. the ratio of dependants to persons of working age) is projected to increase. In addition, the work to introduce Secondary Pensions will not take effect quickly enough for many of the current adult population, especially those who are nearer to retirement age. This will be addressed in a Policy Letter on the future provision and sustainability of first and second pillar pensions for Guernsey and Alderney, which will be brought to the States during 2018.

3.2. Proposed contribution limits and rates for 2018

- 3.2.1. The Committee is recommending that all contribution rates and limits are increased by the June 2017 RPIX figure of 2.8%. The Committee also recommends that the 2018 uprating is applied to restated 2017 rates, as described in the Appendix to this Policy Letter.
- 3.2.2. Table 4 below shows the effects of the restated figure for 2017 and the 2.8% rate for 2018 uprating on the limits for all contributor classes. This includes the upper and lower earnings limits for employers, employees, and self-employed people, and the upper and lower income limits for non-employed people. It also shows the minimum and maximum weekly contribution rates payable for each class of contributor, including voluntary, overseas, and special rate contributions. These proposed rates are shown alongside the actual rates which applied in 2017, instead of the restated figures described.

Table 4 – Contribution limits and rates for 2018

		2018	2017
Class 1 – Employer/Employee		6.6% / 6.6%	6.6% / 6.6%
Upper Earnings Limit:	Weekly	£2,748.00	£2,667.00
	Monthly	£11,908.00	£11,557.00
Lower Earnings Limit:	Weekly	£138.00	£134.00
	Monthly	£598.00	£580.67
Weekly full rate:	Maximum	£181.37	£176.02
	Minimum	£9.11	£8.84
Class 2 – Self-employed people		11%	11%
Annual Earnings Limit:	Maximum	£142,896.00	£138,684.00
	Minimum	£7,176.00	£6,968.00
Weekly full rate:	Maximum	£302.28	£293.37
	Minimum	£15.18	£14.74
Voluntary overseas contribution		£103.82	£100.79
Class 3 – Non-employed people:			
Under pension age		10.4%	10.4%
Over pension age		3.4%	3.4%
Annual Income Limit:	Maximum	£142,896.00	£138,684.00
	Minimum	£17,940.00	£17,420.00
Allowance (both under & over pension age)		£8,110.00	£7,875.00
Weekly full rate: (under pension age)	Maximum	£269.57	£261.62
	Minimum	£19.66	£19.09
Weekly full rate: (over pension age)	Maximum	£88.13	£85.53
	Minimum	£6.43	£6.24
Overseas contributor		£93.91	£91.17
Voluntary contribution		£19.66	£19.09
Special rate non-employed		£19.66	£19.09

- 3.2.3. Employers, employees, and self-employed persons whose earnings are at or above the lower earnings limit, will be liable to pay contributions on all of their earnings up to the relevant upper earnings limit, at the percentage rates set out in Tables 1 and 2.
- 3.2.4. As with self-employed persons, non-employed contributors are liable to pay non-employed, Class 3, contributions at the maximum rate, unless an application is made to the Committee, and authorisation given, for the release of the relevant information by the Director of Income Tax. This allows an income-related contribution to be calculated. People with income at some point between the upper and lower income limits will pay pro-rata.
- 3.2.5. There are two categories of non-employed contributions:
- Full percentage rate contributions to cover social insurance, health service and long-term care insurance liabilities are the rate of contribution that non-employed adults under pension age are liable to pay, based on their personal income.
 - Specialist health insurance and long-term care insurance contributions, which are payable by people over pension age, go towards funding the specialist health insurance scheme and the long-term care insurance scheme.
- 3.2.6. Where a non-employed person's annual income is below the lower income limit, that person will be exempted from the payment of contributions. However, this could affect old age pension entitlement. A voluntary contribution, which counts towards old age pension, can be paid by, or on behalf of, non-employed people resident in Guernsey and under pension age with personal income below the lower income limit. The rate is calculated by applying the social insurance element of the non-employed contribution rate, being 5.7% of the total 10.4%, to the lower income limit.
- 3.2.7. Self-employed and non-employed people living outside of the Island are able to pay overseas voluntary contributions in order to maintain their entitlement to old age pension.
- 3.2.8. A special rate non-employed contribution is payable by insured people who would normally rely upon their employee contribution record for their entitlements to benefit, but have a small gap in their record where they were neither employed nor receiving an unemployment contribution credit. The rate of this contribution is aligned with the voluntary contribution rate.

3.3. Number of contributors paying at the upper limits

- 3.3.1. The four quarter average, from Q2 2016 to Q1 2017 inclusive, of the number and corresponding percentages of contributors paying at the upper limits are shown in Table 5 below.

Table 5 – Average number of contributors paying at the upper limits – Q2 2016 to Q1 2017

	No. contributors paying at upper limits¹	Proportion of total for each classification
Employee/employer	575	1.99%
Self-employed	321	11.88%
Non-employed	346	6.18%

4. States Grants to Contributory Funds

- 4.1.1. The Guernsey Insurance Fund currently receives a grant from General Revenue equal to 14.7% of the total amount collected in contributions.
- 4.1.2. Until 2017, the Guernsey Health Service Fund received a grant from General Revenue, which was equal to 12% of contributions collected for that Fund. The States grant to the Guernsey Health Service Fund was suspended for 2017, in accordance with a Resolution in the 2017 Budget (Billet d'État XXVI of 2016, Article 1). This was intended to be for one year only, and indeed the States Medium Term Financial Plan showed the restoration of the States grant from and including 2018 (Billet d'État XII of 2017, Article 1). However, following recent discussions with the Policy & Resources Committee, the Committee *for* Employment & Social Security has agreed with the Policy & Resources Committee that the grant should be suspended for a further year.
- 4.1.3. The estimated costs to General Revenue of the States grant to the Guernsey Insurance Fund and Guernsey Health Service Fund in 2017 and 2018 are shown in Table 6 overleaf. The estimated costs to the Health Service Fund of the States grant that was removed in 2017 is £4.8m, and for 2018 is £4.9m.

¹

Figures rounded to the nearest whole number

Table 6 – Estimated costs to General Revenue of the States grants in 2017 and 2018

Fund	Estimated cost of States grant for 2018	Estimated cost of States grant for 2017	Percentage of contribution income
Guernsey Insurance Fund	£16.2m	£15.7m	14.7%
Guernsey Health Service Fund	£0	£0	12.0%
Total	£16.2m	£15.7m	

PART II: EXPENDITURE – CONTRIBUTORY BENEFITS

5. Social Insurance Benefits

5.1. Proposed benefit rates for 2018

- 5.1.1. The Committee is recommending that an adjustment is made to the 2017 rates to account for the change in the methodology used to calculate the median earnings index during 2016, which was published as being 0.2% higher than the figure used for 2017 uprating. In addition, the Committee is proposing for 2018, that the standard rates of pension and other contributory social insurance benefits be increased by 2.8%.
- 5.1.2. The proposed new weekly rates of benefit, effective from 1st January 2018, are set out in Table 7 below. These rates of weekly benefit and grants apply to persons who have fully satisfied the contribution conditions. Reduced rates of benefit are payable on incomplete contribution records, down to threshold levels, after which, no benefit is payable.

Table 7 – Proposed rates of contributory social insurance benefits for 2018

Weekly paid benefits	2018	2017 (actual)
<u>Old Age Pension</u>		
Insured person	£212.27	£206.09
Increase for dependant wife ²	£106.33	£103.23
Total	£318.60	£309.32
<u>Widow's/Survivor's Benefits</u>		
Widowed Parent's Allowance	£223.22	£216.71
Bereavement Allowance/Widow's Pension	£191.94	£186.34
Maternal Health Allowance, Newborn Care Allowance, and Parental Allowance	£212.66	£206.43
Unemployment Benefit, Sickness Benefit, and Industrial Injury Benefit	£156.17	£151.62
Incapacity Benefit ³	£187.74	£182.28
<u>Industrial Disablement Benefit (100%)⁴</u>	£171.06	£166.07
One off grants:		
Maternity Grant and Adoption Grant	£391.00	£379.00
Death Grant	£610.00	£592.00
Bereavement Payment	£1,928.00	£1,871.00

² For men/women, as appropriate, whose marriages took place before 1st January 2004, and who reached pension age before 1st January 2014.

³ Incapacity benefit was formerly known as 'Invalidity Benefit'. The new name was implemented on 20th September 2017.

⁴ Lower rates are payable based on degree of disability.

5.2. Summary of social insurance expenditure financed by the Guernsey Insurance Fund

- 5.2.1. If the above proposals for benefit rates are approved, the 2018 Budget estimates that social insurance benefit expenditure will increase by 4.0% to £142.6m (2017 Forecast: +1.8% to £137.1m), as shown in Table 8 below. This includes the proposed 2.8% increase in the general rate of benefit (2017: +0.8%), and a further 1.2% increase due to changes in the number of people claiming benefit, particularly old age pensions. In addition, administration costs in 2018 are estimated to be £4.9m (2017 Revised: £4.7m).
- 5.2.2. Social insurance benefits are almost wholly statutory entitlements based on contributions paid. Pension expenditure accounts for over 85% of the total benefit expenditure of the Fund. Expenditure is estimated to increase by 4.2% to £122.0m in 2018 (2017 Forecast: +1.4% to £117.1m). As at 1 July 2017, there were 17,872 people in receipt of a pension from Guernsey.

Table 8 – Summary of expenditure for the Guernsey Insurance Fund

	2018 Budget £m	2017 Forecast £m	2016 Actual £m	2015 Actual £m	2014 Actual £m
Pension	122.0	117.1	115.4	110.7	106.2
Incapacity ⁵	8.2	8.0	8.1	8.1	7.9
Sickness	4.0	3.9	3.8	3.6	3.6
Parental	2.2	2.0	1.2	1.2	1.2
Travelling Allowance Grant	2.3	2.1	2.1	2.1	1.9
Bereavement	2.0	2.0	1.9	1.8	1.9
Unemployment	1.2	1.2	1.4	1.4	1.4
Industrial Injuries	0.7	0.8	0.8	0.9	0.9
Total benefit expenditure	142.6	137.1	134.7	129.8	125.1
Administration	4.9	4.7	4.8	4.7	4.4
Total expenditure	147.5	141.8	139.5	134.5	129.5

6. Health Service Benefits

6.1. Medical Benefit Grants

- 6.1.1. The total benefit expenditure on consultation grants in 2016 was £3.4m. This represented a decrease of around 0.9% on the 2015 cost. The consultation grants remained unchanged at £12 towards a consultation with a doctor and £6 towards a consultation with a nurse.

⁵ Invalidity Benefit was re-named 'Incapacity Benefit' from 20th September 2017.

- 6.1.2. The Committee is not recommending any change in the level of the consultation grants for 2018. However, the Committee is mindful of Resolution 24 from the March 2015 debate on the Personal Tax, Pensions and Benefits Review (Billet d'État IV of March 2015, Article 1), which was:

‘To note that in the opinion of the Treasury & Resources Department and the Social Security Department, the Health Benefit grant for primary care appointments should be phased out by 2025.’

- 6.1.3. The Committee is aware that the consultation grants were introduced in 1991, when the policy intention was to develop a comprehensive scheme of health insurance to cover primary care and secondary care. At that time, the grants were seen as a stepping stone towards that objective. Almost three decades on, the policy objective of the grants is now unclear. However, the Committee remains concerned about the affordability of accessing primary care for individuals and families, and recognises its responsibility to ensure that people can access primary care services when they need to.
- 6.1.4. The Committee recognises that the future of the consultation grants needs to be considered, in consultation with the Committee *for* Health & Social Care (HSC) and the medical profession, in the context of the primary care environment of today. This will be reviewed as part of the Committee *for* Health & Social care's work to develop a target operating model for the delivery of the Island's future health and social care services.

6.2. Pharmaceutical Service

- 6.2.1. Drugs and medicines, and appliances, cost a total of £18.1m in 2016, before netting off the prescription charges of £2.2m paid by patients. This was an increase of 1.8% on 2015. The number of items prescribed under the pharmaceutical service decreased by 0.3% in 2016 to 1.5 million items.
- 6.2.2. The year saw a fall in the number of items dispensed, but an increase in the ingredient cost, driven by specialist prescribing. There were further reductions in the prescribing of antibiotics and hypnotics, and large savings achieved from a reduction in the prescribing of high cost and low value products. In addition, significant costs were avoided by the controlled entry of new drugs onto the prescribing list.

6.3. Prescription charge

- 6.3.1. The prescription charge has traditionally been uprated by ten pence each year. The current standard prescription charge for persons who are not exempt is set at £3.80. The Committee is proposing for 2018 that the

prescription charge be increased to £3.90. This is an increase of 2.6% on the 2017 charge, which is lower than RPIX for June 2017.

- 6.3.2. Resolutions, resulting from the States Debate on the Personal Tax, Pensions and Benefits Review (Billet d'État IV of 2015), noted the opinions of the former Social Security Department and Treasury and Resources Department that a nominal charge of £1 per item for people who were currently exempt from paying the charge should be introduced. In addition, the States noted those Departments' opinions that the standard prescription charge should be increased to £4.40 per item from 2016. The Social Security Department was also directed to reflect on the views expressed on these matters in the States debate.
- 6.3.3. The Committee considered the views of the former Social Security and Treasury and Resources Departments, and reported on this in last year's Policy Letter on contributions and benefit rates (Billet d'État XXVII of 2016, Article 4). The Committee said that it shared the opinion of the two former Departments on the phasing out of the universal exemption from prescription charges for those over pension age by 2020, but not on the introduction of a nominal charge for those who were currently exempt. However, as outlined in the Committee's Policy Plan (Billet d'État XII of 2017, Article 1), resources are not available to pursue the phasing out of the universal exemption as a priority during this political term. In addition, the Committee is still of the view that, while the States' finances require increased income and controls on expenditure, this should not be sought through the prescription charge.
- 6.3.4. The Committee notes that the total cost of prescriptions in 2016, including the drug costs and dispensing fees, was £18.1m. £2.2m was recovered through the payment of prescription charges, set at £3.70 per item in 2016. Although only 12% of the total cost is recovered in prescription charges, the fundamental importance of the pharmaceutical service is that patients can obtain drugs, some of which cost hundreds or thousands of pounds, for the standard prescription charge, or are exempt from paying altogether. In fact, nearly two-thirds of all items dispensed are to people who are exempt from paying the prescription charge.

6.4. Specialist Medical Benefit

- 6.4.1. Under the Health Service (Benefit) (Guernsey) Law, 1990, and the Health Service (Specialist Medical Benefit) Ordinance, 1995, Specialist Medical Benefit is predominantly the secondary healthcare services provided through the contract with the Medical Specialist Group. The benefit also includes treatment by visiting medical specialists. The current contract

between the States and the Medical Specialist Group reaches the end of its 15 year term on 31st December 2017.

- 6.4.2. Negotiations between the States and the Medical Specialist Group took place during 2016 and early 2017. A new contract was signed in March 2017, and will take effect from 1st January 2018. Whereas, in the current contract, the States act through the Committee *for* Employment & Social Security and the Committee *for* Health & Social Care, in the new contract, the States will act through the Committee *for* Health & Social Care only. The involvement of the Committee *for* Employment & Social Security will be limited to the provision of funding for the contract.
- 6.4.3. The new contract will involve greater collaboration between the two parties, allowing the current high standard of secondary healthcare to continue, while also delivering value for money and increased efficiencies. The inclusion of Key Performance Indicators in the new contract should enable the States to closely monitor the service across a broad range of measures.
- 6.4.4. The Medical Specialist Group contract amounted to £17.7m in 2016. The forecast for 2017 expenditure is £18.0m. The expected cost of the contract in 2018 is £18.3m.

6.5. Physiotherapy benefit

- 6.5.1. Under the Health Service (Benefit) (Guernsey) Law, 1990, physiotherapy services are provided through a contract with the Guernsey Therapy Group. The contract expires on the 31st December 2017. The Committee *for* Health & Social Care is leading on the development of a new model for the provision of these services.
- 6.5.2. The contract with the Guernsey Therapy Group cost £2.2m in 2016, and expenditure for 2017 is forecast to be £2.2m.

6.6. Summary of expenditure financed by the Guernsey Health Service Fund

- 6.6.1. Table 9 overleaf summarises the impact of the proposed benefit rates on projected expenditure from the Guernsey Health Service Fund for 2018, and the 2017 revised forecast at the time of writing. This is compared with the actual expenditure figures for 2014-2016.

Table 9 – Summary of expenditure for the Guernsey Health Service Fund

	2018 Budget £m	2017 Forecast £m	2016 Actual £m	2015 Actual £m	2014 Actual £m
Specialist Health Insurance	20.7	20.5	20.1	19.3	17.7
Pharmaceutical	15.9	15.9	16.3	16.0	14.9
Consultation grants	3.4	3.3	3.4	3.4	3.5
Visiting Medical Consultants	0.8	0.8	0.7	0.7	0.7
Primary Care Psychological Therapies	0.4	0.4	0.3	0.3	0.3
TOTAL BENEFIT EXPENDITURE	41.2	40.9	40.8	39.7	37.1
Administration	1.5	1.6	1.6	1.6	1.2
Total expenditure	42.7	42.5	42.4	41.3	38.3

7. Long-term Care Benefits

7.1.1. The Long-term Care Insurance Scheme pays benefits to assist with fees in private residential and nursing homes. The Committee is recommending increases of 2.8% in the benefit rates, which was the June 2017 RPIX figure.

7.2. Co-payment by person in care

7.2.1. Under the Long-term Care Insurance Scheme, it is a condition of entitlement to benefit that the person in care should make a co-payment. The 2017 co-payment is £195.16 per week. The Committee recommends a co-payment of £200.62 per week from 1st January 2018.

7.2.2. It should be noted that the co-payment to the Long-term Care Insurance Scheme also sets the level of fees to be charged for accommodation in States-run homes and long-stay wards. This includes the Duchess of Kent, the Corbinerie (or Lighthouse) Wards, and the long-stay beds at the Mignot Memorial Hospital in Alderney.

7.2.3. Approximately two thirds of those in care are required by the care homes to pay additional amounts over and above the co-payment, known as ‘top-up fees’. The cost of Long-term Care is being investigated as part of the work to progress the Resolutions from the Supported Living and Ageing Well (SLAWS) Policy Letter (Billet d’État III of 2016, Volume II, Article 14), which will be reported back to the States in 2018.

7.3. Long-term care benefit rates

- 7.3.1. The Committee recommends that the rates of long-term care benefit be increased by 2.8%, with effect from 1st January 2018, as set out in Table 10 below.

Table 10 – Weekly rates of long-term care benefit

	2018	2017
Residential care benefit	£444.57	£432.46
Elderly Mentally Infirm (EMI) benefit	£585.76	£569.80
Nursing care benefit	£829.99	£807.38

7.4. Respite care benefit

- 7.4.1. People needing respite care in private sector residential or nursing homes are not required to pay a co-payment. The Long-term Care Insurance Fund pays instead. This is to acknowledge the value of occasional investment in respite care, in order to allow the person concerned to remain in their own home as long as practicable. It also acknowledges that people having respite care continue to bear the majority of their own household expenditure. The respite care benefits, therefore, are the sum of the co-payment and the residential care benefit, with or without EMI care, or nursing care benefit, as appropriate.
- 7.4.2. Some work is being undertaken on respite care, as part of the project to progress SLAWS. An update on this will be reported to the States during 2018.
- 7.4.3. The Committee recommends that the rates of respite care benefit are set as shown in Table 11 below, with effect from 1st January 2018.

Table 11 – Weekly rates of respite care benefit

	2018	2017
Residential care respite benefit	£645.19	£627.62
EMI respite benefit	£786.38	£764.96
Nursing care respite benefit	£1,030.61	£1,002.54

7.5. Summary of expenditure financed by the Long-term Care Insurance Fund

- 7.5.1. Table 12 overleaf summarises the impact of the proposed benefit rates on projected expenditure from the Long-term Care Insurance Fund for 2018, along with the 2017 revised forecast at the time of writing, compared with the actual expenditure figures for 2014-2016.

Table 12 – Summary of expenditure for the Long-term Care Insurance Fund

	2018 Budget £m	2017 Forecast £m	2016 Actual £m	2015 Actual £m	2014 Actual £m
Residential care	10.5	9.9	8.6	8.6	9.0
Nursing care	10.2	9.8	9.8	9.3	9.0
	20.7	19.7	18.4	17.9	18.0
Administration	0.3	0.3	0.3	0.3	0.3
	21.0	20.0	18.7	18.2	18.3

PART III: EXPENDITURE – NON-CONTRIBUTORY BENEFITS

8. Summary of non-contributory benefits

- 8.1.1. Non-contributory benefits are those funded entirely through General Revenue, which comes from tax income, and not from social security contributions. These benefits include supplementary benefit, family allowance, and severe disability benefit and carer's allowance. In addition, the Community and Environmental Projects Scheme and the free TV licence scheme are administered by the Committee, and funded through General Revenue.
- 8.1.2. The Committee recommends general increases in the rates of supplementary benefit, severe disability benefit and carer's allowance of 2.8%, in line with the published RPIX figure for June 2017.

9. Supplementary benefit

9.1. Supplementary benefit requirement rates

- 9.1.1. The Committee recommends that supplementary benefit requirement rates be increased by 2.8%, in line with RPIX for June 2017, as set out in Table 13 overleaf. These rates are expected to apply until 5th July 2018, as the new scheme of Income Support, which amalgamates supplementary benefit and the social housing rent rebate scheme, is proposed to be implemented from 6th July 2018.
- 9.1.2. Long-term rates are payable when a claim reaches six months in duration. However, a person of working age who qualifies for supplementary benefit, on the basis of acting in compliance with the work requirement relating to them, will continue to be paid short-term rates until they have maximised their work requirement. A person's work requirement will depend on their individual circumstances. A rent allowance, on top of the short-term or long-term rates, applies to householders living in rented accommodation.
- 9.1.3. Under Income Support, the short-term rates, which will apply from July 2018, will be lower than the current short-term supplementary benefit rates, and the long-term rates will be higher than at present. As such, the Committee is proposing that only the long-term rates are uprated by RPIX of 2.8%, and that the short-term rates are frozen at the current 2017 rates. The reason for this is to assist in the transition, as the future short-term rates will be lower. Further, the Committee will be proposing in its Policy Letter in early 2018, that any claimant on short-term rates at the time of implementation, will remain on the current short-term rates until their claim reaches long-term status.

Table 13 – Proposed short-term and long-term supplementary benefit requirement rates for 2018 (2017 in brackets)

Supplementary benefit requirement rates for 2018	Short-term rates (Up to 6 months)	Long-term rates (Over 6 months)
Householders:		
Cohabiting/married couple	£203.63 (£203.63)	£258.28 (£251.25)
Single householder	£141.42 (£141.42)	£178.69 (£173.83)
Non-householder:		
18 or over	£107.66 (£107.66)	£138.71 (£134.93)
16 – 17 ⁶	£73.26 (£73.26)	£75.31 (£73.26)
Member of a household:		
18 or over	£107.66 (£107.66)	£138.71 (£134.93)
16 – 17	£91.42 (£91.42)	£117.49 (£114.29)
12 – 15	£56.63 (£56.63)	£72.69 (£70.71)
5 – 11	£41.13 (£41.13)	£52.70 (£51.27)
Under 5	£29.95 (£29.95)	£38.84 (£37.79)

- 9.1.4. As explained in the Committee’s Policy Plan, considered by the States in June 2017 (Billet d’État XII of 2017, Article 1), Income Support will introduce benefit rates which the Committee considers to be a move towards alleviating poverty in Guernsey.

9.2. Benefit limitations

- 9.2.1. The amount of benefit paid, in the majority of cases, is equal to a household’s total personal and family requirements. In a very limited number of cases, the amount of benefit that an individual or family can receive, through a combination of earnings and various benefits, is capped by the benefit limitation. The current benefit limitation is £650 per week.
- 9.2.2. In addition, two adjustments can be made to make the benefit limitation more flexible for those who reach the cap. The first adjustment is to

⁶

16 and 17 year olds are eligible for supplementary benefit only by exception.

disregard family allowance, so that it can be paid over and above the cap. The other adjustment is to further disregard any earnings that would be excluded in the normal calculations for supplementary benefit entitlement.

9.2.3. Traditionally, the benefit limitation has been increased by inflation only, often rounded to the nearest £10. The exceptions to this were in 2003, 2008, 2012, and 2015, when the cap was increased by significant amounts to prevent poverty being created as a result of the benefit limitation. For 2017, the benefit limitation was also increased by more than inflation. In part, this was in order to ensure that families affected by the cap would be no worse off when the reduction in the rate of family allowance was applied from 1st January 2017.

9.2.4. The Committee discussed increasing the benefit limitation above inflation for 2018, but agreed that it would be more appropriate to propose to uprate it by inflation pending the introduction of Income Support. However, as explained in its Policy Plan, debated by the States in June 2017 (Billet d'État XII of 2017, Article 1), the Committee recommends that between now and 2020, the benefit limitation should increase by a greater rate than inflation. This is in order to address the fact that some individuals are not able to enjoy a standard of living, or level of participation in society, that would be deemed acceptable against independent measures of wellbeing. The Committee will continue to monitor the benefit limitation, and would like to remove it altogether, having reviewed the impact of implementing Income Support.

9.2.5. The 2017 benefit limitation was set at £650. After applying the inflation figure for 2018, it is then rounded to be a whole number, as shown below:

$£650 + 2.8\% = £668.20$, which is rounded to £670.00

9.2.6. Table 14 overleaf shows the weekly benefit limitations which currently apply, and the proposed limitations from 5th January 2018.

Table 14 – Weekly supplementary benefit limitations

Benefit limitation	2018	2017
Community	£670.00	£650.00
Residential homes ⁷	£549.00	£534.00
Nursing homes, EMI residents and Guernsey Cheshire Home ⁸	£787.00	£766.00

9.3. Long-term rate eligible claims

- 9.3.1. Short-term rates were introduced in 1988 (Billet d'État XIX of 1988, Article 14) and the March 2016 Policy Letter from the Social Welfare Benefits Investigation Committee (Billet d'État VII, Article 9) recommended that two sets of benefit rates should remain, one for short-term claims and the other for long-term claims. This is to recognise that, in the long-term, people may have additional requirements to replace clothing, furniture and household goods. This was approved by the States, and followed the approach of the current supplementary benefit system, where the majority of claimants move onto long-term rates after 26 weeks of claiming benefit at the short-term rates.
- 9.3.2. In general, the new Income Support short-term rates proposed by SWBIC are lower than the current short-term supplementary benefit rates, and the proposed long-term rates are generally higher than the current long-term rates. The new short-term rates will only apply to people of working age who have an immediate work requirement, which includes single parents with children over the age of seven. The Committee recommends that this continues, and that people of pension age and people with a disability, where no work requirement is placed on them, should be assessed for benefit at the long-term rates from the beginning of their claims.
- 9.3.3. It was decided to retain two sets of benefit rates because people's short-term financial needs are assessed to be lower than those of longer-term claimants. It has also been deemed reasonable to assume that a claimant could reduce non-essential expenses and delay expenditure on essential items in the short-term.

⁷ This limitation applies to a person residing in a residential home who does not satisfy the residence requirements for long-term care benefit and may, therefore, need to rely on financial support from supplementary benefit.

⁸ This limitation applies to a person residing in a nursing home or a residential home with EMI care needs, or the Guernsey Cheshire Home, who does not satisfy the residence requirements for long-term care benefit and may, therefore, need to rely on financial support from supplementary benefit.

- 9.3.4. Due to their level of income, some people who are not entitled to benefit when assessed at the short-term rates, would be entitled when assessed at the long-term rates. However, as there is no entitlement at the short-term rates, no claim is currently taken. This means that these people are never assessed at the long-term rates, which for other short-term claims happens automatically after 26 weeks. The gap between the short-term rates and the long-term rates will be more pronounced when Income Support is introduced from early July 2018, and therefore the number of customers affected will increase. There is a need to open non-paying claims for these people, so that their entitlement is reassessed at long-term rates after 26 weeks.
- 9.3.5. The Committee will propose, in the forthcoming Policy Letter on the implementation of Income Support, that people who fall between the short-term and long-term rates should be able to open a 'Long-term Rate Eligible' (LTRE) claim. These claimants would not receive a cash benefit until six months have passed, when a normal claim would become eligible to move onto the long-term rates.

9.4. Personal allowances

- 9.4.1. The Committee pays a personal allowance to residents of residential or nursing homes who qualify for supplementary benefit. The personal allowance is intended to allow modest purchases of, say, newspapers, confectionery, toiletries, small family presents and so on.
- 9.4.2. The Committee *for* Health & Social Care (HSC) pays for Guernsey and Alderney residents to be placed in UK hospitals and specialised institutions if their mental or physical health needs cannot be met on-Island. While HSC meets the cost of accommodation and care, residents are expected to pay for items of personal expenditure from their own resources. Residents who cannot afford these things can apply to Social Security for a personal allowance.
- 9.4.3. There is a need for this particular personal allowance to be higher than the rate which applies in Guernsey residential and nursing homes, because the people living temporarily off-Island tend to be a much younger age group, more active, and with more opportunities for using a personal allowance in the course of their supervised activities and outings.
- 9.4.4. Table 15 overleaf sets out the weekly personal allowances which currently apply and the proposed allowances to apply from 5th January 2018. The proposed allowances are in line with the general uprating policy for non-contributory benefits for 2018, which is set at 2.8%. Ahead of uprating for

2019, the Committee intends to review whether the allowances continue to be set at an appropriate level.

Table 15 – Weekly personal allowances

Personal allowance	2018	2017
Residents of local residential and nursing homes	£31.41	£30.55
Guernsey people in UK hospitals and care homes	£52.91	£51.47

9.5. Maximum rent allowances⁹

- 9.5.1. In January 2013, maximum rent allowances were introduced for new claims from single people and couples with no children (tenancy group 1) and for people living in shared accommodation (tenancy group 5). Maximum rent allowances are upper limits of rental support, rather than fixed amounts, given to all people within the two groups. The actual rent allowance paid never exceeds the rent of the property occupied and indeed, in accordance with legislation, the Administrator sometimes awards a lower rent allowance if it is considered that this is reasonable, having regard to the circumstances of the claimant and the nature and standard of the accommodation.
- 9.5.2. While maximum rent allowances for families have been applied in practice since 2013, they have not been expressly introduced in legislation. A Resolution following the debate on the SWBIC Policy Letter (Billet d'État VII of 2016, Volume II, Article 9) approved that maximum rent allowances be extended to families at the rates set out in paragraph 126 of that Policy Letter.
- 9.5.3. In the Policy Letter on benefit and contribution rates for 2017 (Billet d'État XXVII of 2016, Article 4), the Committee also stated that it was of the view that it was the right time to introduce maximum rent allowances for families, following the conclusion of SWBIC's work. It is proposed that the necessary amending provisions to extend the system to families will be included in the legislation introducing the SWBIC amendments.
- 9.5.4. The proposed maximum rent allowances in respect of tenancy groups 2, 3 and 4 match the highest rent charged by the Committee and GHA in respect of social housing properties with the necessary number of bedrooms.
- 9.5.5. The maximum rent allowances for 2017 and the proposed allowances for 2018 are set out in Table 16 overleaf. It should be noted that, at the time of

⁹ The increases to a person's requirements to allow for rental payments are known as a rent allowance in paragraph 6 of the First Schedule to the Supplementary Benefit (Implementation) Ordinance, 1971.

writing, the rates were still subject to approval by the GHA Board and the Committee, and therefore should be treated as provisional.

Table 16 – Maximum rent allowances for 2018

Tenancy Group	Description	2018	2017
Group 1	Single or couple with no children	£222.50	£217.50
Group 5	Living in shared accommodation	£175.41	£174.97

9.6. Supplementary fuel allowance

- 9.6.1. A supplementary fuel allowance is paid from General Revenue, to all householders in receipt of supplementary benefit, for 26 weeks from the last week in October until the last week in April of the year following. The fuel allowance was £26.03 per week for the winter of October 2016 to April 2017. The rate of the fuel allowance for the period was decreased by 5.9% on the previous year and reflected the inflation adjusted cost of fuel, light and power in the year to June 2016¹⁰.
- 9.6.2. The Committee is recommending an increase of 4.5% in the fuel allowance, taking it to £27.20 per week for the period from 27th October 2017 to 27th April 2018. This is in line with the change in the cost of fuel, light, and power in the year to June 2017¹¹.
- 9.6.3. The fuel allowance will cost in the region of £0.96m over the 26 week payment period for October 2017 to April 2018.
- 9.6.4. The Committee notes that work is in progress to convert existing social housing to be more energy efficient. As social housing now falls under the Committee's mandate, the Committee has every intention to continue to investigate these options for improving energy efficiency in social housing. In the future, the Committee intends to review whether those properties which are considered to be energy efficient should continue to receive the full fuel allowance. The Committee is minded to review how the winter fuel allowance is calculated, and what the eligibility criteria are, once the new Income Support Scheme has been implemented.

9.7. Community and Environmental Projects Scheme

- 9.7.1. The Committee administers the Community and Environmental Projects Scheme (CEPS), which offers short-term employment and training

¹⁰ Source: Guernsey Quarterly Inflation Bulletin – 22nd July 2016.

¹¹ Source: Guernsey Quarterly Inflation Bulletin – 26th July 2017.

opportunities for unemployed people. The Committee contracts with States Works for the necessary supervision of the work teams, and also for the provision of transport, equipment, and tools.

- 9.7.2. The hourly wage rates for the CEPS employees are set by the Committee and do not require a Resolution of the States. From 1st October 2010, the rates payable were brought into line with minimum wage rates. From 1st January 2018, the rates payable will continue to mirror the minimum wage rates agreed by the States.

10. Family Allowance

- 10.1.1. Family allowance is a universal benefit that is paid to all families with qualifying children, irrespective of the level of their household income. The weekly rate of family allowance was £13.50 per child for 2017.
- 10.1.2. Expenditure on family allowance amounted to £9.6m in 2016. It is estimated that expenditure on family allowance in 2017 will be £8.2m.
- 10.1.3. In line with the November 2015 Resolution of the States (Billet d'État XX of 2015, Article 9), the rate of family allowance was reduced by £2.40 per week, from £15.90 to £13.50 per week, with effect from 2nd January 2017. This equated to a reduction of 15.1% in the weekly payment, and was anticipated to have reduced the Committee's General Revenue expenditure by approximately £1.4m for 2017.
- 10.1.4. The saving was used for two purposes. Firstly, to increase the cash limit of the Committee *for* Education, Sport & Culture by approximately £1.27m to cover part of the funding requirement for the implementation of universal pre-school education. Secondly, approximately £0.15m was redirected to supplementary benefit. This was to ensure that the amount of benefit received by families affected by the benefit limitation was not reduced as a result of the decrease in family allowance.
- 10.1.5. A successful amendment from Deputy Dorey, to the former Social Security Department's report on benefit and contribution rates (Billet d'État XVIII of 2015, Article 8) resolved:

“To agree that, after consultation with other relevant committees of the States, the Committee for Employment & Social Security shall report to the States by no later than October, 2017 setting out their opinion on whether the universal payment of family allowances should be altered, reduced or ceased and the costs thereof redirected to allow the States to provide additional financial support for some or all of the following children's services: medical and paramedical, including

but not limited to primary care, dental, optical and physiotherapy provided either by States-employed clinicians or contracted private practitioners; and breakfast clubs, after school homework clubs, school meals and holiday clubs at States' schools.

- 10.1.6. The Committee still intends to review the future use of family allowance to support children's services, and is mindful of the obligation to report back to the States, but regrets that it has not been able to progress this review yet.
- 10.1.7. From 2013 to 2016 inclusive, the rate of Family Allowance was frozen at £15.90. The previous Social Security Department was of the view that the universal benefits should be phased out, however the current Committee is of the opinion that if the allowance is to remain valid, that it should increase in line with inflation.
- 10.1.8. As such, the Committee are proposing that family allowance should be uprated by RPIX for June 2017 (2.8%), in line with all other benefits from 1st January 2018. This takes the weekly rate of family allowance from £13.50 per child to £13.88. Normally, the rate of family allowance is rounded to the nearest ten pence, so the Committee is proposing that the rate for 2018 is £13.90.

11. Severe Disability Benefit and Carer's Allowance

11.1. Rates and annual income limit

- 11.1.1. The Committee recommends that the rates of severe disability benefit and carer's allowance be increased by 2.8%, with effect from 1st January 2018, as shown in Table 17 below.

Table 17 – Current and proposed annual income limit and weekly rates of severe disability benefit and carer's allowance

	2018	2017
Severe disability benefit - weekly rate	£103.88	£101.08
Carer's allowance - weekly rate	£84.06	£81.77
Annual income limit for both allowances	£97,000	£94,000

- 11.1.2. The annual income limit is the upper limit of income that a family may have, while still being entitled to receive either severe disability benefit or carer's allowance. The annual income limit has traditionally been rounded to the nearest thousand pounds.

- 11.1.3. Actual benefit expenditure on severe disability benefit and carer's allowance for 2014-2016 is shown in Table 18 below. The expected outturn for these benefits for 2017 and the budget figure for 2018 is also shown in Table 18. The increase in expenditure is in part due to the continuation of an increasing number of claims following legislative changes, promotion of the benefit, and an ageing population.

12. Table 18 – Expenditure on severe disability benefit and carer's allowance

Severe Disability Benefit and Carer's Allowance	2018 Budget £m	2017 Forecast £m	2016 Actual £m	2015 Actual £m	2014 Actual £m
Expenditure	5.8	5.5	5.4	5.1	4.5

- 12.1.1. One of the work streams of SLAWS is to develop a Carer's Strategy, as a matter of priority. This would include a review of the range, provision, and funding of short break services, and an investigation into the establishment of a pro-active care coordination service. Work is commencing on this in October, to develop a public consultation, and it is likely that a Policy Letter with policy proposals will be brought to the States before the end of 2018.
- 12.1.2. The Extra Needs Allowance, approved as part of the Resolutions to implement Income Support (Billet d'État VII of 2016, Volume II, Article 9), will be paid to particular groups, such as pensioners and people with disabilities, based on their needs for additional payments. The allowance will not be available to people who are already in receipt of severe disability benefit, however, it will assist those on supplementary benefit who have lower levels of disability. The intention of the allowance is that it is simple and easy to understand and access, and as such, the Committee envisages that the payment will be made for the three identified categories: energy; laundry and clothing; and food and diet.

13. Free TV licences

- 13.1.1. In 2015, the States made the decision to end the free TV licence scheme in Guernsey, by not issuing any new licences to people who reach the age of 75 on or after 1st September 2016. Anyone who reached 75 before that date would continue to receive a free TV licence each year.
- 13.1.2. In 2016, the BBC agreed to take over the policy responsibility for the TV licence concession for people over the age of 75 in the UK from June 2020. This means that the BBC will take on the policy responsibility for Guernsey residents at the same time as the UK. In addition, the BBC will contribute to

the cost of the Island's current age concession scheme in a phased approach over the periods of 2018 and 2019.

- 13.1.3. At present, the BBC has not announced any decision on the future of this policy when it gains control of it in 2020, although officers are continuing to monitor the situation and engage regularly with the BBC on this matter.

PART IV: FINANCIAL POSITION

14. Financial position of the Contributory Funds

- 14.1.1. This section of the Policy Letter explains the financial position of the four funds, including reference to the actuarial reviews undertaken for the 2010-2014 period, undertaken by the UK Government Actuary's Department.

14.2. Guernsey Insurance Fund: Summary of the financial position

- 14.2.1. The financial performance of the Guernsey Insurance Fund is shown in Table 19 below. The 2018 budget estimates that the operating deficit will increase to £21.4m (2017 forecast: £19.4m deficit). The Fund has now been in deficit, before investment returns are taken into account, since 2009.
- 14.2.2. The operating deficit arises when benefit and administration expenditure exceeds contribution income and States grants. This shortfall is met by drawing down the Fund's reserves, and although planned, this causes the number of years expenditure cover to reduce.

Table 19 – Financial performance of the Guernsey Insurance Fund

	2018 Budget £m	2017 Forecast £m	2016 Actual £m	2015 Actual £m	2014 Actual £m
Income	126.1	122.3	117.3	115.1	113.9
Expenditure	(147.5)	(141.7)	(139.4)	(134.5)	(129.5)
Operating deficit	(21.4)	(19.4)	(22.1)	(19.4)	(15.6)
Investment returns	30.2	24.5	76.5	(5.9)	25.4
Net surplus/(deficit) for the year	8.8	5.1	54.4	(25.3)	9.8
Net assets at 1 January	735.8	731.2	676.8	702.1	692.3
Net assets at 31 December	744.6	736.3	731.2	676.8	702.1
Expenditure cover in number of years	5.0	5.2	5.2	5.0	5.4

- 14.2.3. The 2010-2014 actuarial review indicated that, if the assumptions were correct for the Guernsey Insurance Fund, and there are no further increases in contribution rates beyond those that were implemented in 2017, then the reserves will run out completely by 2046. The review suggests that sustainability could be achieved through some combination of higher contribution rates, increased inward migration, and better-than-expected long-term investment returns. However, while the States has very little control over the macro-economic factors which drive both migration and

investment returns, it does have control over benefit and contribution rates, and must therefore look to these as the principal tools for securing the future of the Fund.

- 14.2.4. The projections of sustainability of the Guernsey Insurance Fund have been positively impacted by the increase in pension age and the pulling back of the annual uprating of benefits to bare RPIX from 2025 onwards. Without these measures, future annual deficits would be significantly higher, adversely affecting reserves.

14.3. Guernsey Health Service Fund: Summary of the financial position

- 14.3.1. The financial performance of the Guernsey Health Service Fund is shown in Table 20. The 2018 budget estimates that the operating deficit will be £1.7m (2017 forecast: £2.6m deficit), with the States grant not being reinstated.

Table 20 – Financial performance of the Guernsey Health Service Fund

	2018 Budget £m	2017 Forecast £m	2016 Actual £m	2015 Actual £m	2014 Actual £m
Income	41.1	39.9	43.6	42.7	42.2
Expenditure	(42.7)	(42.5)	(42.3)	(41.3)	(38.4)
Operating deficit	1.6	(2.6)	1.3	1.4	3.8
Investment returns	4.9	3.9	12.0	(0.9)	3.6
Net surplus/(deficit) for the year	3.3	1.3	13.3	0.5	7.4
Net assets at 1 January	118.4	116.4	103.1	102.6	95.2
Net assets at 31 December	121.7	117.7	116.4	103.1	102.6
Expenditure cover in number of years	2.9	2.8	2.8	2.5	2.7

- 14.3.2. The actuarial review for the 2010-2014 period showed the Fund to be in a favourable position over the 15 year projection period, out to 2030. It is expected that the Fund balance will increase through re-invested returns, from 2.7 to 3.3 times annual expenditure. However, future health costs are notoriously hard to predict, and the sustainability of the Fund is affected mostly by movements in the price of prescription drugs. The assumption for the 15 year projection is that unit costs will increase by RPIX.
- 14.3.3. In addition, there are uncertainties around the future of the Fund until the the Committee *for* Health & Social Care has concluded its work on the Target Operating Model for the future of healthcare in Guernsey.

14.4. Long-term Care Insurance Fund: Summary of the financial position

- 14.4.1. The financial performance of the Long-term Care Insurance Fund is shown in Table 21 below. The 2018 budget estimates that the operating surplus will decrease to £7.2m (2017 forecast: £7.4m surplus). The significant increase in income between 2016 and 2017 was a result of the 0.5% increase in contribution rates to the Fund, which applied from 1st January 2017.

Table 21 – Financial performance of the Long-term Care Insurance Fund

	2018 Budget £m	2017 Forecast £m	2016 Actual £m	2015 Actual £m	2014 Actual £m
Income	28.2	27.4	19.4	18.5	18.5
Expenditure	(21.0)	(20.0)	(18.7)	(18.2)	(18.2)
Operating surplus	7.2	7.4	0.7	0.7	0.3
Investing activities	3.1	2.3	6.4	(0.5)	2.0
Net surplus/(deficit) for the year	10.3	9.7	7.1	0.2	2.3
Net assets at 1 January	72.6	62.9	55.8	55.6	53.3
Net assets at 31 December	82.9	72.6	62.9	55.8	55.6
Expenditure cover in number of years	3.9	3.6	3.4	3.1	3.1

- 14.4.2. The actuarial review for the 2010-2014 period showed that the increase in contribution rates of 0.5% to the Fund, which took place from January 2017, will extend the life of the Fund by 16 years to 2047. However, further measures will be required in the coming years to ensure the sustainability of the Fund thereafter, and to mitigate against the impact of an ageing population.
- 14.4.3. One of the key work streams within SLAWS is to address the strategic funding issues of long-term care. A progress update will be reported to the States during 2018.

15. Non-Contributory Services funded from General Revenue

15.1. Summary of the financial position

- 15.1.1. As this Policy Letter is about the benefit and contribution rates for 2017, it only considers those Non-Contributory Services and benefits funded from General Revenue, delivered by Social Security, and not the additional services that come under the Committee's mandate, which are also funded from General Revenue.

15.2. Summary of non-contributory Social Security expenditure financed by General Revenue

- 15.2.1. Table 22 summarises the impact of the proposed benefit rates on expenditure for 2018. This also includes the 2017 revised forecast at the time of writing, and the actual expenditure figures for 2014-2016.

Table 22 – Summary of non-contributory Social Security expenditure financed by General Revenue

	2018 Budget £m	2017 Forecast £m	2016 Actual £m	2015 Actual £m	2014 Actual £m
Supplementary benefit	22.7 ¹²	22.0	20.9	20.9	20.3
Family allowance	8.4	8.2	9.6	9.8	9.7
Severe disability benefit & carer's allowance	5.8	5.5	5.4	5.1	4.5
Concessionary TV licence	0.5	0.6	0.6	0.6	0.6
Contributory Fund States grants	21.1	15.7	19.7	19.6	19.4
Formula led expenditure	58.5	52.0	56.2	56.1	54.5
Administration	2.1	2.0	2.4	2.4	2.3
Others ¹³	0.3	0.3	0.3	0.3	0.4
Non-formula led expenditure	2.4	2.3	2.7	2.7	2.7
Total expenditure	60.9	54.3	58.9	58.8	57.2

15.3. Supplementary benefit expenditure and claim data

- 15.3.1. Supplementary benefit expenditure amounted to £20.9m in 2016. The expected outturn for 2017 is £22.0m.
- 15.3.2. As at 2nd September 2017, there were 2,342 active supplementary benefit claims, as set out in Table 23 overleaf. These claims also support 1,398 dependants, thereby giving a total supplementary benefit population of 3,740.

¹² The above table does not include the additional costs relating to the implementation of Income Support (SWBIC) during 2018. The supplementary benefit budget will increase by a further £9.2m in 2018. However, offsetting this additional cost is the removal of rent rebates of £6.7m. The net additional expense is therefore budgeted to be £2.5m.

¹³ Others include Community & Environmental Projects Scheme (CEPS), Charitable Grants, and miscellaneous expenditure.

- 15.3.3. Supplementary benefit claimants have been, in recent years, split into ten classifications by which they can be identified and managed in practice. An amendment to supplementary benefit legislation in 2014 removed these classifications, however, in practice, claims are still split into those categories for the purposes of claims management and financial analysis. The classifications are referred to in the analysis of claims and expenditure shown in Table 23.

Table 23 – Supplementary benefit claims and expenditure

Classification	Claims at 2nd September 2017	Claims at 3rd September 2016	2018 Budget (£m)	2017 Forecast (£m)	2016 Actual (£m)
Pensioner	715	720	£3.0m	£2.9m	£2.9m
Incapacitated	497	506	£4.5m	£4.4m	£4.3m
Jobseeker or low earner	535	537	£5.7m	£5.3m	£4.9m
Single parent	286	282	£3.7m	£3.6m	£3.5m
Disabled	205	207	£2.3m	£2.2m	2.0m
Incapable of self-support	73	57	£0.8m	£0.8m	£0.7m
Other ¹⁴	31	31	£0.3m	0.3m	0.3m
Total (excluding dependants)	2,342	2,340	£20.3m	£19.5m	£18.7
Special Grants ¹⁵			£2.4m	£2.5m	£2.3m
Total			£22.7m	£22.0m	£21.0m

¹⁴ Includes the following classifications: Carer, Pregnant, Prisoner's spouse, and Partner in hospital, and a small number of claimants whose classification is unknown

¹⁵ Includes special grants in respect of medical expenses, disability, funeral expenses and other miscellaneous expenses

PART V: COMMITTEE UPDATES

16. Progress with Extant Resolutions

16.1. Progress with the Reciprocal Agreement on Social Security with Latvia

- 16.1.1. In October 2015 (Billet d'État XVIII of 2015, Article 8), the States approved, in principle, the development of a Reciprocal Agreement on Social Security with Latvia. The Social Security Department, and subsequently the Committee for Employment & Social Security, is in discussion with the Policy & Resources Committee to progress this.
- 16.1.2. The proposed agreement will require an entrustment from the UK's Ministry of Justice, in order for Guernsey to conduct negotiations with the Latvian authorities. The UK decision to leave the EU has had an impact on this in relation to citizens' rights, and the future of any UK-EU social security arrangement. Discussions with the UK government on this matter are ongoing.

16.2. Scheme of medical insurance for travel to the UK

- 16.2.1. In October 2015, the former Social Security Department was directed, through a successful amendment by Deputy Fallaize to the Department's Uprating Report (Billet d'État XVIII, Article 8) to investigate the options for the implementation of a scheme of medical insurance that would replace the Reciprocal Health Agreement between the UK and Guernsey, which ended in April 2009.
- 16.2.2. The Social Security Department commissioned an independent consultant to investigate the insurance options available. This report was considered by the new Committee in June 2016. Since that date, a tender process has been completed. This involved a soft market test and full tender exercise, to identify an insurance company to provide a scheme of insurance for off-island medical treatment. At present, the Committee is considering the outcome of the tender process, and whether an insurance option is the most suitable. The Resolution requested that the Committee report back to the States by October 2017. Details of the proposed scheme will now be reported to the States in 2018 instead.

17. Policies, Projects and Updates

17.1. Longer Working Lives

- 17.1.1. In light of a decision following the Personal Tax, Pensions and Benefits Review (Billet d'État IV of 2015) to increase the State Pension Age to 70, a Resolution was also made:

‘To direct the Social Security Department, in consultation with all other relevant departments, to investigate measures aimed at supporting longer working lives and assisting older people who wish to work to remain in the workforce, and to report to the States of Deliberation with its findings no later than December 2017.’

- 17.1.2. Longer Working Lives is important, not only because of the increasing pension age, but also to ensure that we make the most of our on-island workforce, to ensure that people who wish to work (whether for social or financial reasons) are able to do so, and so that people have more options about how and when to retire.
- 17.1.3. Work began on the project in 2016. The project team met a wide range of people to discuss with them the challenges they might face in working for longer and to identify key barriers to continuing in work. It was found that people's ability and choice to continue to work could be affected by health, disability, care and family responsibilities, retirement ages specified in contracts, attitudes towards older people, out of date skills, difficulties changing career in later life, and lack of information and advice about retirement.
- 17.1.4. Building on the outcome of these discussions, a subcommittee was formed to further research and review what opportunities there were to address these barriers and to support people to work up to, or past, State Pension Age.
- 17.1.5. Whilst there was significant scope for action, the subcommittee focused on a few priority actions which it felt would have the biggest impact in addressing barriers and enabling people to stay in work. These priorities were formulated into a 'Draft Proposals' document which was published in June 2017, and is available at www.gov.gg/longerworkinglives. This document has been used as the basis for consultation with key interested parties and the general public. The consultation closed in July 2017 and 248 submissions were received. The Draft Proposals incorporated actions to:
- Continue to develop the Island's Occupational Health and Wellbeing to support people at work with health conditions and disabilities and to

prevent people from developing work related illness or injury in the first place.

- Promote flexible working and part time work options.
- Consult on the possibility of introducing age discrimination legislation.
- Provide information and advice to support people to undertake 'mid-career reviews' to think through where they are with their career, health and finances.
- Work with businesses to help them to take action, by providing information on why adapting to an ageing workforce is important, and by helping businesses to share good practice around supporting older workers.

- 17.1.6. The responses to this consultation have been analysed and considered and the Committee is in the process of drafting a Policy Letter including a set of final proposals to return to the States in December 2017, as directed in the above States Resolution.

17.2. Equality and Inclusion

- 17.2.1. The Committee was directed to report back to the States in November 2017 on the implementation of the Disability and Inclusion Strategy, as part of the States debate on the topic in 2015 (Billet d'État XX, Article 7). While work streams continue to progress, including the work to introduce disability discrimination legislation, the President will seek the approval of the Presiding Officer to provide a verbal update to the States on the equality and inclusion aspects of the Committee's mandate at the States Meeting in October 2017.

17.3. SLAWS: Update on strategic funding of Long-term Care

- 17.3.1. In February 2016, the States endorsed the recommendations to progress the Supported Living and Ageing Well Strategy (SLAWS) (Billet d'État III of 2016, Volume II, Article 14). The Committee was directed to address the strategic funding issues for Long-term Care.
- 17.3.2. The first action in respect of this was implemented when contribution rates were increased by 0.5% for all contribution classes, except employers, which took effect from 1st January 2017.
- 17.3.3. The States agreed that the costs associated with the provision of long-term care services should be separated into three areas: accommodation, day-to-day living expenses, and care and support. A policy officer has been appointed to undertake an investigation of those costs, and will report back

to the States as part of the Policy Letter on SLAWS, which is expected to be considered by the States in 2018.

17.4. Update on the number of jobseekers and unemployed persons

- 17.4.1. The total number of jobseekers is comprised of people who are unemployed, those temporarily employed on a government training scheme, and those in in part-time or casual employment. Some people who are fully employed but who are eligible for supplementary benefit on top of their low earnings are also considered to be jobseekers.
- 17.4.2. During 2016, the Job Centre placed a total of 972 jobseekers into employment. At the end of June 2017, the total number of jobseekers was 615, split across the three groups, as shown in Table 24 below.

Table 24 – Number of jobseekers as at the end of June 2017

Type of claimant	Number
In part-time or casual employment	262
Temporarily employed on the Community and Environmental Projects Scheme or another government training scheme	32
Unemployed - not in employment or training	321
Total	615

- 17.4.3. Unemployed people are those who are not engaged in any form of employment or training scheme. These figures are calculated using the International Labour Organisation's definition of 'unemployment'¹⁶. The contributory and non-contributory benefit entitlements of the 321 unemployed people for June 2017 are shown in Table 25.

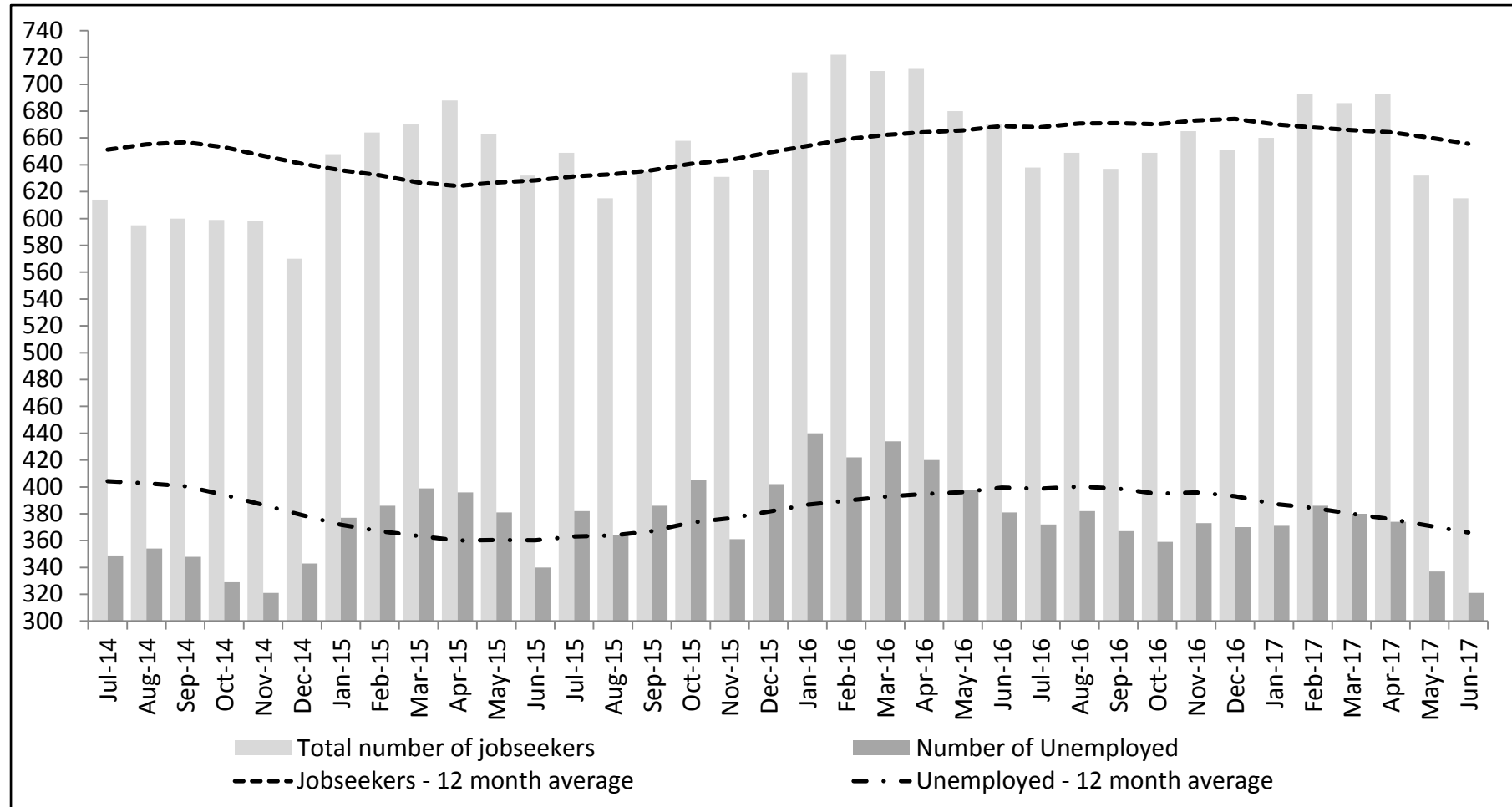
Table 25 – Number of unemployed persons as at the end of June 2017

Type of claimant	Number
Contributory unemployment benefit only	101
Contributory unemployment benefit and a supplementary benefit top-up	67
No contributory entitlement. In receipt of supplementary benefit only	153
Total	321

¹⁶

<https://stats.oecd.org/glossary/detail.asp?ID=2791>

Figure 1 – Total number of jobseekers and unemployed persons – July 2014 to June 2017



- 17.4.4. Figure 1 on the previous page shows the trend and seasonal fluctuations of the total number of jobseekers each month over the three years from July 2014 to June 2017 (inclusive). This graph also includes the number of those jobseekers who are unemployed for comparison purposes. The 12 month rolling average trend line is also shown, which smooths out the seasonal variations and, therefore, shows whether unemployment is stable, rising, or falling.
- 17.4.5. The Committee continues to develop and expand the range of initiatives that it offers to assist and support jobseekers to secure employment or improve their employment prospects, as set out in Table 26.

Table 26 – Employment initiatives run or supported by the Job Centre

Initiative	Description	Benefit paid?
Work trial	Chance to demonstrate capability to an employer where a real job is on offer.	Yes
Work experience	Extended work experience with learning goals.	Yes
Gradual return to work	Phased return to work following long-term sickness.	Partial payments
Kick start	On the job training with employers aimed at people at risk of long-term unemployment.	Minimum wage
Basic skills training and flexible IT	Help with IT, literacy & numeracy skills, including a flexible IT course to fit with commitments and 1 year IT courses leading to recognised qualifications.	Yes
Short-term training	Retraining following illness, or for parents re-entering work after long-term benefit claims.	Yes
Prepare and Passport To Work	Courses designed to develop useful skills such as communication, problem solving, organisation, and preparing for interviews.	Yes
Passport to Safety	A pre-requisite for construction industry jobs.	N/A
First Aid and Health & Safety	Short certified courses to enhance employment opportunities.	N/A
Ministry of Entrepreneurship (MOE)	The MOE Foundation actively supports young people, by providing them with a supportive network, as well as training, development, coaching, mentoring, and leadership and entrepreneurial initiatives	N/A

Prince's Trust Team Programme	A 12-week personal development programme, which offers young people the chance to gain new skills, qualifications and work experience	Yes
Back to work bonus	One-off lump sum payable following a return to work and closure of long-term claims.	N/A
Job start expenses	Help with some of the costs associated with starting work (e.g. tools, boots, and clothing).	N/A
Community & Environmental Projects Scheme	Paid work and training opportunities for people who are not working due to unemployment or long-term illness.	Minimum wage
Recruitment grant	Staged payments to an employer to recognise the extra support required for someone who has been long-term unemployed or sick.	N/A
'Prepare to...' courses	Short courses aimed at unemployed people to help identify their skills and aptitude within a specific industry.	Yes
Job Fairs	A targeted means of bringing employers and jobseekers together to fill vacancies.	N/A
Work2Benefit	A mandatory work scheme for unemployed persons in receipt of supplementary benefit.	Yes

17.5. Update on the proposals for the implementation of a second pillar pension scheme for Guernsey and Alderney

- 17.5.1. In order to address the current low levels of private pension savings, coupled with the demographic trends projected for the Island, the Social Security Department reported to the States in February 2016 (Billet d'État III of 2016, Article 15) on proposals for the implementation of a new system of automatic enrolment into private pension saving for working age residents of Guernsey and Alderney.
- 17.5.2. This Policy Letter received strong support within the States and among private sector employers who were consulted during its development. The States approved the principles for the introduction of a Secondary Pension scheme, subject to further research being carried out on any distinctions that should be made between employers of varying sizes and whether any temporary exemptions should apply to business start-ups.
- 17.5.3. The Committee was expected to report back to the States by no later than 31st December 2017 with detailed proposals for implementation, including an economic impact assessment.
- 17.5.4. The Committee formed a project team to progress the work, which found that to finalise the detailed proposals, a pension provider to deliver the

scheme needed to be selected through a competitive tender exercise. A soft market test was completed in July and a pre-qualification exercise was undertaken in August and September 2017.

- 17.5.5. Further, a local provider was appointed to develop actuarial projections for the scheme and the economic impact assessment. The initial findings are expected in the autumn and will form part of the invitation to tender for the scheme provision which will subsequently be issued before the end of the year.
- 17.5.6. Due to the time and resources needed to complete the procurement exercise for the scheme provider and finalise the detailed proposals, the Committee now aims to report back to the States by September 2018.

17.6. Supporting Occupational Health and Wellbeing

- 17.6.1. The Committee is aware of the very important relationship between work and health. Understanding this link is not only good for the health of staff, but also the health of any organisation. Through the Committee's Supporting Occupational Health and Wellbeing project (SOHWELL) and the FitTogether initiative, it has committed to working closely with healthcare professionals, employers and employees. Through this project, the Committee is keen to maximise the Island's workforce and ensure that people who have an illness, injury, or disability are supported early, to help them stay in work or get back to work more quickly.
- 17.6.2. All certifying practitioners have an important role in helping to manage sickness related absence. Therefore, the Committee has worked closely with GPs and other healthcare professionals to roll-out a new style medical certificate, and provide occupational health training. Both of these ensure that all practitioners, who can issue medical certificates, have had the same opportunities to assess capacity for work in a similar way. Medical practitioners are encouraged to give advice on an employee's present work capability, and provide basic recommendations about reasonable adjustments which may make an earlier return to work more likely.
- 17.6.3. A key factor in the success of the project will be a greater awareness of occupational health amongst employers and their willingness to consider reasonable workplace adjustments. Importantly, line managers also play a crucial role in implementing excellent working practices and creating the right culture and environment within the workplace.
- 17.6.4. The Committee recognises that some employers may not have access to occupational health advice and may be unsure of how to deal with sickness related absence. Therefore, over the last twelve months, officers from Social

Security have been working with employers to promote the SOHWELL and FitTogether initiatives, and gather information on access to Occupational Health services. In addition to the work the Committee has done with employers on an individual basis, it has also delivered two public events.

- 17.6.5. In March 2017, the Committee teamed up with the Guernsey Employment Trust and Guernsey MIND to host an event on the subject of health and wellbeing in the workplace. Over 150 employers attended this event to learn more about specific work and health related topics and support for people returning to work after an illness or injury.
- 17.6.6. In July 2017, the Committee invited Professor Sir Cary L Cooper, CBE, to deliver a presentation and workshop on 'A Good Day at Work'. Professor Cooper is one of the world's leading authorities on health and wellbeing in the workplace, and is the Professor of Organisational Psychology and Health at Manchester Business School, University of Manchester. The 'Good Day at Work' event was aimed at employers across the Bailiwick, and other interested parties. It also included a specific session for States of Guernsey line managers. The event was attended by over 200 people, and the feedback has been extremely positive.
- 17.6.7. Throughout its engagement with employers, the Committee is aware that fundamental changes and reduction to sickness absence and behaviour will take time. However, it is committed to working with all stakeholders to ensure better advice and guidance for employers, with particular focus on the important role of line managers. The Committee is grateful for the ongoing support and positive engagement from both employers and the medical profession.

17.7. Social Welfare Benefits Investigation Committee (SWBIC) – Income Support

- 17.7.1. The Committee intends to implement the 2016 SWBIC Resolutions (Billet d'État VII of 2016, Volume II, Article 9) in July 2018. In addition to inflation-based increases on the original benefit rates, the Committee also intends to make several amendments and policy proposals, in order to refine the system that will be implemented. This will be done through a separate Policy Letter early in 2018.
- 17.7.2. In March 2012, the Social Security Department brought a Policy Letter to the States proposing a number of reforms to the supplementary benefit system (Billet d'État V of 2012, Volume II, Article 6). One of the Resolutions was:

“To note the Department’s intention to re-name supplementary benefit to ‘Income Support’”

- 17.7.3. As this Resolution is 'to note an intention', rather than directing the Department to change the name of the benefit, a more specific instruction is preferable to give clear authority to implement this change. The Committee is therefore proposing that the name of supplementary benefit is changed to income support, that the Supplementary Benefit (Guernsey) Law, 1971, is renamed to be the 'Income Support (Guernsey) Law, 1971, and all other titles of legislation and legislative references to 'supplementary benefit' be replaced with 'income support'.
- 17.7.4. As stated in the 2012 Policy Letter, the reason for the name change is because supplementary benefit will be so extensively restructured that it would be misleading and confusing to continue to refer to it in the same way. The current Committee shares this view. Although it is unusual to change the title of legislation, it is desirable in this situation in order to ensure a more appropriate name for the restructured benefit. This was previously done when Attendance Allowance and Invalid Care Allowance were renamed Severe Disability Benefit and Carer's Allowance, respectively.
- 17.7.5. It is intended that the name change will take effect at the same time as the implementation of the SWBIC proposals. Due to the additional time it takes for a Law to receive Royal Assent, the Committee must bring this matter to the States through this Policy Letter, rather than with the other proposals in early 2018.

PART VI: CONCLUSIONS

18. Resource and Implementation Plan

- 18.1.1. Table 27 shows how the Committee has considered the resources required to implement the propositions set out in this Policy Letter.

Table 27 – Resource and Implementation Plan

Details considered	Committee comment
Cost	This Policy Letter recommends that benefit and contribution rates are uprated by the June 2017 RPIX figure of 2.8% for 2018. The Policy Letter also proposes that contributory rates should be uprated by a further 0.2% on the 2016 base rate to account for an adjustment in the methodology for calculating the median earnings index, which took place in mid-2016. The adjustment will take place before the 2018 uprating figure is applied to the rates.
Timescale	The timescales for the implementation of the proposals set out in this Policy Letter are commented on within the text, but will mostly take effect from January 2018. SWBIC proposals will be implemented in July 2018.
Resource requirements	Consideration of the financial position has been given throughout this Policy Letter, as well as the results of the 2010-2014 actuarial reviews, and staff availability to undertake project work. Consultation with the Law Officers' has identified the impacts of the proposals on their workload, with regard to legislative drafting.
Funding	Funding will come from contribution income, the States grants, the planned draw-down of the Funds, and General Revenue.
Staffing implications	The Committee does not envisage that the proposals contained within this Policy Letter would result in a request for additional staffing resources at this stage, and as such, expects that the work streams associated with the propositions will be carried out as business as usual, where staff provisions are not already in place.
Transitional arrangements	Some of the projects commented on in this Policy Letter require transitional arrangements to be put in place, which has been planned, however, the majority of the proposals relate to business as usual.
Communications plan	The Law Officers and the Policy & Resources Committee have been consulted with.

19. Compliance with Rule 4 of the Rules of Procedure

- 19.1.1. Through the drafting of this Policy Letter, the Committee has consulted with the Policy & Resources Committee at joint meetings.
- 19.1.2. The Committee has consulted with the Law Officers regarding the legal implications and legislative drafting requirements resulting from the propositions set out in this Policy Letter.
- 19.1.3. The Committee has set out its proposals for the benefit and contribution rates for 2018 throughout this Policy Letter, and seeks the States support for the propositions, which are based on the Committee's purpose:
- “To foster a compassionate, cohesive and aspirational society in which responsibility is encouraged and individuals and families are supported through schemes of social protection relating to pensions, other contributory and non-contributory benefits, social housing, employment, re-employment and labour market legislation.”
- 19.1.4. In particular, the propositions are aligned with the priorities and policies set out in the Committee's Policy Plan, which was approved by the States in June 2017 (Billet d'État XII, Article 1). The Committee's Policy Plan is aligned with the States objectives and policy plans.
- 19.1.5. 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 have 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

PART VII: APPENDIX

20. Appendix 1

20.1. Adjustment for 2017 rates to reflect the change in the methodology used to calculate median earnings

20.1.1. The Committee is proposing an adjustment to the contribution and benefit rates for 2017 to reflect the change in the methodology used to calculate the median earnings figure, which now excludes Alderney data.

20.1.2. The Committee does not want to back-date the increase. Instead, the additional amount will be added before the 2018 uprating is applied. In order to do this, it is necessary to uprate the 2016 rates by what it should have been, to create a restated 2017 figure, and then add the uprating for 2018. This is to prevent overstating the increase, which would happen if it was applied to the current 2017 rates. This calculation will only apply to the contribution rates and the contributory benefits that were uprated by the uprating policy for 2017, which excludes long-term care benefits.

20.1.3. The adjustment is reflected throughout the Policy Letter within the figure that is shown in the 2018 column of any tables. The figures shown in the 2017 columns of tables are the actual contribution and benefit rates that applied during 2017, rather than the restated figures. This is so that it is easier for comparisons to be made between the rates paid during 2017 and the rates that will be payable in 2018.

20.1.4. The uprating policy used for 2017 was to add one third of the difference between the RPIX inflation rate for Quarter 2 2016 and the annual median earnings figure for Quarter 4 2015 to the inflation rate. For those periods, RPIX was 0.6%, and the median earnings figure was 1.3%, respectively. As such, the uprating for contributions and contributory benefits for 2017 was:

$$(1.3\% - 0.6\%) \div 3 + 0.6\% = 0.8\%$$

20.1.5. The restated index, where median earnings was 1.8%, would have been:

$$(1.8\% - 0.6\%) \div 3 + 0.6\% = 1.0\%$$

20.1.6. An example of the adjustment is shown below, and continuing overleaf, for the full rate personal allowance for the Old Age Pension:

Rate for 2016: £204.45

Actual rate for 2017: £204.45 + 0.8% = £206.09

Proposed restated rate for 2017: £204.45 + 1.0% = £206.49

Proposed rate for 2018: = £206.49 + 2.8% = £212.27

- 20.1.7. To avoid overstating the 2018 rate by adding an additional 0.2% to the June 2017 RPIX figure of 2.8%, the 2017 rates have been restated by adding a further 0.2% to the base 2016 rates. These restated rates for 2017 have then been increased by 2.8% to generate the rates for 2018.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY

BENEFIT AND CONTRIBUTION RATES FOR 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, the Committee *for* Employment & Social Security requests that 'Benefit and Contribution Rates for 2018' be considered at the States' meeting to be held on 7th November 2017.

It would be helpful for the Policy Letter to be considered at the earliest opportunity following the debate on the 2018 States Budget for two reasons. Firstly, the timing of processes within Social Security's systems requires administrative actions on the Resolutions from the debate of the Policy Letter to take place as early as possible following their approval. Secondly, there are a number of legislation requirements which will follow the debate, and these need to be completed before the end of the year, to ensure that the benefit and contribution rates for 2018 can be applied from 1st January 2018.

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

POLICY & RESOURCES COMMITTEE

PROTECTING THE INTERESTS OF THE BAILIWICK OF GUERNSEY AS THE UK LEAVES THE
EU

The States are asked to decide: -

Whether, after consideration of the Policy Letter entitled “Protecting the interests of the Bailiwick of Guernsey as the UK leaves the EU”, dated 26th September 2017, they are of the opinion:-

1. To approve the legislative proposals set out in paragraphs 6.4 and 7.1 (particularly paragraphs numbered 1, 2 and 3 of the letter from Her Majesty’s Procureur reproduced therein) of the Policy Letter.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

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

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

PROTECTING THE INTERESTS OF THE BAILIWICK OF GUERNSEY AS THE UK LEAVES THE
EU

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

26th September 2017

Dear Sir

1. Executive Summary

- 1.1. The States of Deliberation will need to enact legislation to ensure that there is continuity and certainty during the Brexit process for individuals and businesses.
- 1.2. In June 2016, the States' first Brexit Policy Letter set high level objectives for Guernsey's relationships with the UK and the EU and indicated a wish to gain from any new opportunities. In March 2017, the States debated the second Brexit Policy Letter in relation to the UK's triggering of Article 50. This third Brexit Policy Letter is to update the Assembly and to set out the rationale for repealing the European Communities (Bailiwick of Guernsey) Law 1973 and implementing relevant EU measures into domestic law. This is analogous to the approach being taken in the UK, with its European Union (Withdrawal) Bill being debated in Parliament.
- 1.3. It is recommended that legislation be prepared to repeal the European Communities (Bailiwick of Guernsey) Law 1973 and to create enabling provisions for Ordinances. All of the legislative changes recommended are in response to the UK's forthcoming withdrawal from the EU. It is important to ensure that Bailiwick legislation is aligned, as appropriate, with UK and EU legislation and that the changes occur within the timescale (probably by March 2019). The States is asked to direct the Law Officers to review existing legislation and to draft appropriate legislation to enable these goals to be achieved. The legislative changes will help the Bailiwick to be well positioned

to react to the emerging situation as the UK-EU negotiations continue.

2. Background

2.1. In March 2017, in anticipation of the triggering of Article 50 by the United Kingdom, the States resolved¹:

- "i. To note that Her Majesty's Government intends to issue a notice under Article 50 of the Treaty on European Union;*
- ii. To note and recognise the subsequent impact this and the withdrawal of the United Kingdom from the European Union will have on the Bailiwick's domestic legislation and on the legislative and other measures that ought to be taken in consequence of the issue of the notice and withdrawal;*
- iii. To direct that a Policy Letter be prepared and submitted to the States together with suitable Propositions recommending:*
 - a) the repeal and/or amendment of the European Communities (Bailiwick of Guernsey) Law 1973 and any other enactments identified in the Policy Letter;*
 - b) the enactment of legislation necessary to preserve those EU measures which are applicable in the Bailiwick by virtue of Protocol 3 and which it is appropriate to preserve as part of the Bailiwick's domestic legislation following withdrawal of the United Kingdom from the European Union;*
 - c) the enactment of any other legislation or the taking of any measures which it may be appropriate, necessary or prudent for the States to enact or take; and*
 - d) the provision of such additional, or re-allocation of such existing, resources as the Policy & Resources Committee, following consultation with the other committees of the States, believes may be necessary to enable all committees to react appropriately in the best interests of the Bailiwick to the challenges with which they may be faced, having regard in particular to the specific functions and operations for which they are responsible under their respective mandates, as a consequence of the proposed withdrawal of the United Kingdom from the European Union; and*
- iv. To fully endorse the view expressed by the Policy & Resources Committee in paragraph 6.9(iii) of the Policy Letter, that guaranteeing the rights of EU nationals resident and economically active in Guernsey should be a*

¹ Billet d'État VI of 2017, Article III (P 2017/11): <https://gov.gg/CHttpHandler.ashx?id=106095&p=0>
The Resolutions of 8th March 2017 can be found at: <https://gov.gg/CHttpHandler.ashx?id=106445&p=0>

priority area in any negotiations with Her Majesty's Government and to direct that committee to impress on all relevant representatives of the Government, the States' wish to see those rights assured as soon as possible and not delayed as part of any extended negotiation process over the terms of the British exit from the EU."

- 2.2. The March 2017 States' debate and Resolutions ensured that an appropriate parliamentary process had been followed in Guernsey before 29th March 2017. That date marked the formal start of the process of the UK's withdrawal from the EU (as in paragraph 3.1 below). The process has a default two year timescale which can be shortened if an exit agreement is reached but can only be extended by mutual consent. The likely date for the UK's exit is expected to be 29th March 2019.
- 2.3. The June 2017 General Election in the United Kingdom has increased uncertainty about HM Government's Brexit negotiations and policy aims. Furthermore, the mere fact that the government was dissolved and an election held has meant that the United Kingdom has been slower in establishing firm and detailed policy positions than would otherwise have been expected. Indeed much of the detail around the United Kingdom's position in a range of critical areas, and the consequent implications for the Bailiwick, remains unclear. Clarity is beginning to emerge about the UK's and the EU's visions for Brexit. There is limited time available, before the UK's exit from the EU, for Guernsey to respond to the challenges that may be ahead and the States will need to ensure it can act quickly.
- 2.4. This Policy Letter provides the basis for the States to fulfil part iii) of the Resolutions from March 2017. These proposals take into account the timescale available and the lack of clarity from the UK-EU negotiations so far. The proposals seek to provide the States with the tools it will need to meet its objectives, as outlined in Section 4 of this Policy Letter, including mitigating any adverse impacts of Brexit and benefitting from any opportunities that are created.

3. Progress report on engagement

- 3.1. On 29th March 2017, the UK Prime Minister issued a letter to the President of the European Council to commence the formal process of leaving the EU ('the Article 50 Letter'). The UK Government had sought the views of the UK Parliament before issuing that letter, a copy of which is included in **Appendix 1**. The States of Deliberation had its own debate on 8th March and its views were formally communicated in a letter from the President of the Policy & Resources Committee to the Prime Minister before the UK's Article 50 Letter was sent. The UK Government was advised that the States wishes to provide certainty on the rights of those EU nationals residing in Guernsey on exit day. A copy of the

exchange of letters relating to Article 50 between the President of the Policy & Resources Committee and the UK Prime Minister is included in **Appendix 2**.

- 3.2. The UK Prime Minister's response to the letter from the President of the Policy & Resources Committee highlighted the importance of the relationship between the UK and the islands. The letter affirmed the UK's aspiration to *"strengthen the bonds between us as we forge a new relationship with the EU and the wider world"*. Importantly for the stages that lie ahead, the Prime Minister also recognised both the Bailiwick's own parliamentary processes in respect of Brexit and the UK's commitment to ensuring the Bailiwick's interests are properly taken into account.
- 3.3. The engagement with the Crown Dependencies falls under the overall policy responsibility of the UK's Ministry of Justice. Following the General Election, the UK Minister leading this engagement is the Lord Chancellor and Secretary of State for Justice, the Rt Hon David Lidington MP. In addition to this, Mr Robin Walker MP, Parliamentary Under Secretary of State at the Department for Exiting the European Union, is responsible for managing the UK's engagement with the Crown Dependencies in respect of Brexit. Mr Robin Walker MP visited Guernsey on 8th August 2017 to meet with representatives from Guernsey, Alderney and Sark. He met representatives from the finance sector and the fishing industry and also discussed immigration and customs arrangements. The visit helped to deepen Guernsey's strong and direct political link with the UK Government department responsible for negotiating the UK's exit from the EU.
- 3.4. Guernsey also has well-established and valued relationships developed through the British-Irish Council ('BIC'). The UK's General Election and uncertainty in Northern Ireland prevented the planned June 2017 BIC summit from taking place. However, the next summit is still scheduled to be held in Jersey during November 2017. Guernsey is due to host the BIC summit in June 2018.
- 3.5. The Policy & Resources Committee's strategy of political engagement with the UK Government and Parliament includes the maintenance of a wide network of contacts in the UK and across the political spectrum. Engagement with the All Party Parliamentary Channel Islands Group was re-established after the UK General Election. Relationships with other Members of Parliament are managed through a series of contact days and attendance at the main UK political party conferences, which in 2017 will be the Conservative Party Conference and the Labour Party Conference.
- 3.6. In order to support this work, Guernsey Finance and its board has now joined, and is actively engaged with, The CityUK. This is the body representing the interests of the City of London. Guernsey's finance sector is closely aligned with the City. It is important not only to understand the City's thinking and

approach to Brexit, but wherever possible to provide input into it. This work involves Guernsey Finance and representatives of the finance sector, the Guernsey Financial Services Commission, and government. The Vice-President of the Policy & Resources Committee, in his role as Chairman of the Board of Guernsey Finance, is actively involved at a senior level in The CityUK's Advisory Council. This brings together representatives of the key stakeholders to advise and lobby government on issues of concern to the financial services sector. This work helps to develop an understanding of the opportunities for and threats to the biggest part of Guernsey's economy. It also helps Guernsey to position itself to act on those opportunities and threats.

- 3.7. Following an inquiry into the effects of Brexit on the Crown Dependencies, the House of Lords EU Committee published a report on the impact of Brexit on the Crown Dependencies on 23rd March 2017². The President of the Policy & Resources Committee appeared before the House of Lords EU Committee in December 2016 to provide oral evidence for this inquiry. In its report, the EU Committee called on the UK Government to remember its responsibilities to the Bailiwicks of Guernsey and Jersey and the Isle of Man.
- 3.8. An inquiry was also carried out by the House of Commons Justice Committee to examine the engagement by the UK and the implications of Brexit for the Crown Dependencies. The Policy & Resources Committee provided formal written evidence to that Committee as well as hosting a visit to Guernsey in January 2017. The Committee published its report on the impact of Brexit for the Crown Dependencies on 28th March 2017³. The overriding recommendation from the Committee was that there should be no changes in the relationships between the Crown Dependencies and the United Kingdom. The Committee welcomed the UK's continued commitment to represent the interests of all the Crown Dependencies during the Brexit negotiations and pushed the UK Government to represent the Crown Dependencies' interests even when they differ from the UK's own.
- 3.9. The two UK Select Committees mentioned above still have the same Chairs, following the UK's June 2017 General Election. Both of the reports from these committees on Brexit and the Crown Dependencies, although being made in the last UK Parliament, are still relevant and will require a UK Government response and may yet be subject to parliamentary debate in the UK.
- 3.10. Representatives from the Bailiwick are also discussing the implications of

² The full House of Lords EU Committee report can be found at <https://publications.parliament.uk/pa/ld201617/ldselect/lddeucom/136/136.pdf>.

³ The full House of Commons Justice Committee report can be found at <https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/752/752.pdf>.

Brexit, and building and maintaining relationships, with contacts within the EU (both the EU as a whole and its individual nations). The President of the Policy & Resources Committee attended meetings in Brussels in June 2017 (alongside the Minister for External Relations from Jersey) and met with members of the Permanent Representations to the EU from Estonia⁴, Bulgaria⁵ and the UK, as well as a senior German MEP. The Bailiwick also hosts occasional visits from Ambassadors to the UK, which provide further opportunities to strengthen relations. This year the Austrian Ambassador visited Guernsey and in 2016 the French, Dutch and Swiss Ambassadors each visited the island. The Channel Islands have joint offices in Brussels and in Caen to ensure continuity of relations between the islands and the EU and French authorities. During 2016-17, relations with France have been strengthened at the regional level and through the French Embassy in London.

4. Brexit objectives

- 4.1. In June 2016, the States considered the first Brexit Policy Letter entitled “Managing the implications for Guernsey because of the UK’s changing relationship with the EU”⁶. That Policy Letter set the high level objectives, which can be summarised as:

“Negotiating considerations - relationship with the UK

- (i) For trade in **goods**, including agriculture and fisheries products, there is a long-standing historic trading arrangement which provides for tariff-free reciprocal trade.
- (ii) There are no arrangements in place that make reference to trade in **services**, including financial services.
- (iii) For **people**, the Common Travel Area should continue to apply (it predates UK Accession, and is not dependent on EU law).

Negotiating objectives: relationship with the EU

- (i) In order to maintain the status quo for Guernsey, the States of Guernsey will need to maintain the free **trade in goods** with the EU hitherto provided under Protocol 3. In principle, it is possible that this may be replaced by extending the goods provisions of any new UK/EU agreement to Guernsey, subject to the precise terms.

⁴ Estonia has the rotating EU Presidency in the second half of 2017.

⁵ Bulgaria has the rotating EU Presidency in the first half of 2018.

⁶ Considered as an ‘Urgent Proposition’ at the States’ Meeting of 29th June 2016 (P.2016/19):

<https://gov.gg/CHttpHandler.ashx?id=102958&p=0>

The Resolutions of 29th June 2016 can be found at: <https://gov.gg/CHttpHandler.ashx?id=102996&p=0>

- (ii) *The existing work exploring extension of the UK **membership of the WTO** should be given a higher priority. This will provide lower tariffs for any imported goods coming direct from the EU or elsewhere (not via the UK) and will underpin an agreement on free movement of goods as well as other trading relationship.*
- (iii) *For **trade in services**, the States will seek to maintain its current position of being outside the EU, with market access on a case by case basis as a third country.⁷*
- (iv) *For **people**, the States will need to seek to ensure any commitments made by the UK as part of its withdrawal agreement with respect to the grandfathering of rights of EU (non-UK) citizens in the UK and in the Channel Islands and that the legal status 'Channel Islander' (for the purposes of Protocol 3) is considered."*

"Main areas for engagement with the UK Government for the States of Guernsey

In order to ensure that Guernsey's interests are best served in the negotiations with the UK it will need to ensure it monitors and engages with the UK Government to:

- (i) *Ensure the interests of Guernsey residents are taken into account by the UK / EU exit agreement. This includes ensuring that Guernsey residents/persons with EU rights do not suffer any detriment compared to those resident in the UK;*
- (ii) *Ensure, where possible, the arrangements for free movement of goods described in Protocol 3 are replicated in some way. This may be through extension of the relevant part of any new UK / EU relationship. The States should also ensure that the best interests of Guernsey residents and businesses are served under that new agreement;*
- (iii) *Ensure there is no detriment to the existing, and historic, constitutional relationship between Guernsey and the UK. Work to mitigate against any risks of unintended consequences; and*
- (iv) *Seek opportunities for Guernsey in any new UK trading relationship including with the EU and with other countries outside of the EU, including any new free trade agreements and exploring extension of the UK membership of the WTO."*

⁷ This may be as third country seeking market access separately to the UK or as a third country taking part in any future UK-EU relationship alongside the UK.

4.2. Guernsey's objectives were set before the UK's objectives for Brexit were set. The UK Prime Minister, the Rt Hon Theresa May MP, delivered a speech on 17th January 2017 outlining the UK's negotiating objectives for its withdrawal from the EU⁸. A white paper entitled "The United Kingdom's exit from and new partnership with the European Union" built on the detail in that speech ('the white paper')⁹. The UK's 12-point negotiating objectives can be summarised as follows:

- 1) ***"Providing certainty and clarity*** – *We will provide certainty wherever we can as we approach the negotiations.*
- 2) ***Taking control of our own laws*** – *We will take control of our own statute book and bring an end to the jurisdiction of the Court of Justice of the European Union in the UK.*
- 3) ***Strengthening the Union*** – *We will secure a deal that works for the entire UK – for Scotland, Wales, Northern Ireland and all parts of England. We remain fully committed to the Belfast Agreement and its successors.*
- 4) ***Protecting our strong and historic ties with Ireland and maintaining the Common Travel Area*** – *We will work to deliver a practical solution that allows for the maintenance of the Common Travel Area, whilst protecting the integrity of our immigration system and which protects our strong ties with Ireland.*
- 5) ***Controlling immigration*** – *We will have control over the number of EU nationals coming to the UK.*
- 6) ***Securing rights for EU nationals in the UK, and UK nationals in the EU*** – *We want to secure the status of EU citizens who are already living in the UK, and that of UK nationals in other Member States, as early as we can.*
- 7) ***Protecting workers' rights*** – *We will protect and enhance existing workers' rights.*
- 8) ***Ensuring free trade with European markets*** – *We will forge a new strategic partnership with the EU, including a wide reaching, bold and ambitious free trade agreement, and will seek a mutually beneficial new customs agreement with the EU.*
- 9) ***Securing new trade agreements with other countries*** – *We will forge ambitious free trade relationships across the world.*
- 10) ***Ensuring the UK remains the best place for science and innovation*** – *We will remain at the vanguard of science and innovation and will seek continued close collaboration with our European partners.*
- 11) ***Cooperating in the fight against crime and terrorism*** – *We will continue to work with the EU to preserve European security, to fight terrorism, and to uphold justice across Europe.*

⁸ 17th January 2017, UK PM speech: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>

⁹ 2nd February 2017, the United Kingdom's exit from, and new partnership with, the European Union White Paper: <https://www.gov.uk/government/publications/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-union-white-paper>

12) Delivering a smooth, orderly exit from the EU – *We will seek a phased process of implementation, in which both the UK and the EU institutions and the remaining EU Member States prepare for the new arrangements that will exist between us.*

- 4.3. The second Brexit Policy Letter entitled “Acknowledging the triggering of Article 50 of the Treaty on European Union in respect of ‘Protocol 3’” was considered by the States on 8th March 2017¹⁰. The similarities between the Guernsey and UK sets of objectives were summarised in that Policy Letter.
- 4.4. On 29th March 2017, the Article 50 letter from the UK Prime Minister to the President of the European Council included proposed principles for the negotiations. That letter also set out the overall objectives of agreeing a *“deep and special partnership between the UK and the EU, taking in both economic and security cooperation”*; a *“partnership that contributes towards the prosperity, security and global power of our continent”*.
- 4.5. On 29th April 2017, the European Council published its guidelines for the Article 50 negotiations.¹¹ These guidelines reiterated the Council’s wish to have the UK as a close partner in the future. However, the Council maintains a core principle that access to the single market cannot be sector specific and the four freedoms of the single market are indivisible. It set out that the negotiations must be transparent and a single package. The Council set out a phased approach whereby the most immediate issues be tackled first, to:
- *“provide as much clarity and legal certainty as possible to citizens, businesses, stakeholders and international partners on the immediate effects of the United Kingdom’s withdrawal from the Union”*;
- and to
- *“settle the disentanglement of the United Kingdom from the Union and from all the rights and obligations the United Kingdom derives from commitments undertaken as Member State”*.
- 4.6. The Council intends to monitor progress and to determine when negotiations can move on to the second phase, which will aim to identify the framework for a future relationship between the UK and the EU.
- 4.7. The Brexit objectives of the UK Government have not changed following the UK General Election held on 8th June 2017.

¹⁰ Billet d’État VI of 2017, Article III (P 2017/11): <https://gov.gg/CHttpHandler.ashx?id=106095&p=0>
The Resolutions of 8th March 2017 can be found at: <https://gov.gg/CHttpHandler.ashx?id=106445&p=0>

¹¹ <http://www.consilium.europa.eu/en/press/press-releases/2017/04/29-euco-brexit-guidelines/>

- 4.8. On 19th June 2017, following discussion about the structure of negotiations, terms of reference were agreed¹². The parties have agreed that the default will be transparency. The phase one negotiations were to be grouped into citizen's rights, the financial settlement, other separation issues and dialogue on Ireland/Northern Ireland. This will inform the terms of the exit agreement which will provide clarity about the rights and obligations of individuals in the UK and EU and businesses trading with the UK and EU on exit day. The new EU-UK relationship, and associated rights and obligations after exit day, will be subject to any new partnership the UK manages to secure with the EU. In its Article 50 letter, the UK Government envisaged a need for an implementation period to allow transition from the UK being a full member of the EU to the new EU-UK relationship. This will help to minimise disruption and give as much certainty as possible.
- 4.9. The phase one negotiations were scheduled to continue until early October 2017. The EU negotiation team would need to return to the European Council after this in order to get a mandate to proceed with the next phase.
- 4.10. Since the commencement of the negotiations, the EU and the UK have started to publish a series of papers.¹³ In order to meet the joint commitment to transparency, these papers provide for the UK and EU negotiating position to be placed in the public domain for scrutiny before each negotiation session. The UK has begun to publish a series of 'position papers' and 'future partnership papers'. These papers are intended to inform discussion and are published in advance of formal negotiating rounds with the EU. The future partnership papers set out key issues that form part of the Government's vision for the 'deep and special partnership' between the UK and the EU. The UK papers make assertive references to taking the interests of the Crown Dependencies into account.
- 4.11. The UK's position papers and future partnership papers have started to clarify the UK Government's aspirations and to indicate how it foresees their implementation, including for the future EU-UK relationship. The UK intends to leave the EU Single Market and the Customs Union. This is a prerequisite to being able to make new trade agreements with other countries.
- 4.12. One of Guernsey's objectives is to seek opportunities for Guernsey in any new UK trading relationships and to ensure that the island can continue to benefit from the collection of import duties. To achieve this, the States may need to

¹² <https://www.gov.uk/government/publications/terms-of-reference-for-the-article-50-negotiations-between-the-united-kingdom-and-the-european-union>

¹³ https://ec.europa.eu/commission/brexit-negotiations/negotiating-documents-article-50-negotiations-united-kingdom_en and <https://www.gov.uk/government/collections/article-50-and-negotiations-with-the-eu>

move quickly to engage with the development of the UK's trade policy and consider implementing any necessary or desirable parts of it, including meeting the UK's World Trade Organisation ('WTO') obligations. In its recent discussion paper on the future customs arrangements, the UK Government stated that *"the Crown Dependencies will have the opportunity to engage with and to contribute to [its] trade policy"*¹⁴.

- 4.13. The UK envisages a deep and special partnership with the EU that is based on economic and security cooperation. The economic cooperation sought by the UK with the EU is a matter of direct interest. The UK wishes its future trading arrangements with the EU to be underpinned by a comprehensive free trade agreement that will cover access to markets. This will provide the UK with greater access to markets above the baseline of WTO standards. The UK is also striving for a new customs regime with the EU which relies on one of two models: an innovative streamlined customs arrangement or a new customs partnership with the EU. It is not yet clear how these arrangements might work in detail because they will be subject to negotiation. Guernsey's objective is to benefit from these arrangements so that it can trade with the EU alongside the UK. In order to do this Guernsey will need to be able to move quickly to implement legislation that gives effect to any new partnerships agreed between the UK and the EU (or any individual countries within the EU). This will enable Guernsey to achieve its objectives on trade. Furthermore, the new UK-EU partnership may impact on customs matters and trade between Guernsey and the UK as well as between Guernsey and the rest of the world. This means there may also be a need to move quickly to preserve or enhance Guernsey's longstanding trading arrangements with the UK and to embrace new opportunities.
- 4.14. Security considerations include the island's co-operation on law enforcement, information sharing, cybersecurity and the application of foreign policy, such as through the application of international sanctions. Security co-operation is also a matter which relates to the UK's constitutional role in defence.
- 4.15. In order to achieve Guernsey's Brexit objectives it is desirable to ensure that the States have the necessary legislative powers in place. As many of the same challenges and opportunities will also exist in Alderney and Sark, these proposals are intended to ensure that the Bailiwick is well placed as a whole.

5. The Withdrawal

- 5.1. The European Communities (Bailiwick of Guernsey) Law 1973 (as amended) ('the

¹⁴ <https://www.gov.uk/government/publications/future-customs-arrangements-a-future-partnership-paper>

1973 Law’¹⁵), which is similar to the UK’s European Communities Act, 1972 (‘the 1972 Act’), was enacted primarily to give effect within the Bailiwick to the rights and obligations set out in Protocol 3. The 1973 Law, amongst other things:

- Provides that EC Regulations within the scope of Protocol 3 have force in the Bailiwick and, where there is doubt, for a certificate to be issued by the relevant UK Secretary of State which would be conclusive as to its effect.
- Deals with the treatment and proof of the treaties and community instruments in legal proceedings in the Bailiwick.
- Provides for the collection of customs duties at community rate and the introduction of community customs procedures.
- Provides for the collection of agricultural levies at community rates.
- Makes it a criminal offence, punishable in the Bailiwick, to give false evidence on oath before the European Court of Justice.

5.2. The UK’s European Union (Withdrawal) Bill (‘the UK Withdrawal Bill’¹⁶) will, in effect, convert existing EU law into domestic law, wherever practical and appropriate. The purpose of the Bill is to ensure that the UK’s domestic statute book is ready in advance of the exit from the EU and to end the supremacy of European Union (EU) law in UK law. The UK is a ‘dualist’ state, meaning that a treaty ratified by the Government does not alter the laws of the state unless and until it is incorporated into domestic law by legislation. This means that the UK Parliament has to pass legislation before the rights and obligations in a treaty can have effect domestically. The UK Parliament must repeal the same legislation to remove that treaty’s domestic effect. The UK Withdrawal Bill repeals the 1972 Act on the day the UK leaves the EU. This will remove the mechanism that allows for the automatic flow of EU law into UK law and remove the power to implement EU obligations. It reflects the fact that the UK will no longer be a member of the EU and will, therefore, cease to have obligations under EU law. A similar exercise will need to be carried out in the Bailiwick.

5.3. In addition to the 1973 Law, the States enacted the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 (‘the 1994 Law’¹⁷) to allow

¹⁵ Order in Council No. XI of 1973 (in Ordres en Conseil Vol. XXIV, p87)

Original text can be found at:

<http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=71407&p=0>

Consolidated text can be found at:

<http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=71408&p=0>

¹⁶ This was formerly referred to as the Great Repeal Bill. The text of the European Union (Withdrawal) Bill 2017-19 can be found at:

<http://services.parliament.uk/bills/2017-19/europeanunionwithdrawal.html>

¹⁷ Order in Council No. III of 1994 (in Ordres en Conseil Vol. XXXV(1), p65)

Original text can be found at: <http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=71415&p=0>

Consolidated text can be found at:

<http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=71411&p=0>

the implementation of any necessary EU measures by Ordinance, whenever it was necessary or expedient to do so and not just when it was required to do so by virtue of the Bailiwick's obligations under Protocol 3. Various measures have been implemented using the 1994 Law, including matters relating to customs, EU international sanctions, food supplements and the Euro. As noted at paragraph 1(d) of the "Legislative proposals" section of the letter from HM Procureur included in paragraph 7.1 of this Policy Letter, it is desirable to retain the 1994 Law in order to enable flexibility in the Bailiwick's legislative response to the UK's withdrawal from the EU.

- 5.4. There are also other laws and agreements in Guernsey which refer to certain EU directives and regulations and there is likely to be a need to identify these and to consider whether relevant EU references should remain, be amended or be replaced.
- 5.5. In order to ensure that all necessary EU measures remain in force in Guernsey on the UK's exit day, the States will need to legislate to provide the certainty necessary for individuals and businesses. The steps required are laid out in paragraph 1 of the "Legislative proposals" section of the letter from HM Procureur included in paragraph 7.1 of this Policy Letter.
- 5.6. The UK Withdrawal Bill will ensure that the EU '*acquis*' – the body of European law – is implemented in UK domestic law at the moment the UK repeals the European Communities Act. The UK has been clear that it needs to ensure a smooth and orderly transition from being a European Member State to a Non-Member State, in a way that supports the move to the freest possible future economic relationship. The UK intends that this approach will provide maximum certainty as the UK leaves the EU. The same rules and laws will therefore apply on the day after exit as on the day before. The UK Parliament will then decide any subsequent changes to that domestic law. This will provide an added benefit for any future trading partnership because it will ensure that the UK has a regulatory standard equivalent to EU standards. The same principle will apply in relation to any EU regulatory matters that apply in Guernsey before exit day by virtue of Protocol 3. This includes food standards, sanitary and phytosanitary measures as well as quality and marketing standards that apply by virtue of EU Regulation 706/73, concerning trade in agricultural products.

6. Areas of priority

- 6.1. The Crown Dependencies have established four main priorities: Customs and Trade; Free Movement of People (including Immigration and the Common Travel Area); Fisheries and Agriculture; and Financial Services. In addition, work has been undertaken in the fields of Transport, Energy Supply, and Communications. The States may need to legislate quickly in some of these

areas to ensure that appropriate provision is made in a timely fashion. Therefore, it is recommended that the States enact a series of *Projets de Loi* which provides for general enabling provisions to ensure it can legislate in the limited time available before the UK leaves the EU (see paragraph 3 of the "Legislative proposals" section of the letter from HM Procureur included in paragraph 7.1 of this Policy Letter).

- 6.2. **Customs and Trade** – The UK Government's current position is that the UK will be withdrawing from the EU Single Market. This presents an unprecedented issue for the Bailiwick. The islands rely on the relationship established by Protocol 3 for the free trade in goods with the EU, whilst also maintaining the historic right of free trade with the UK. The future trading arrangements with both the UK and EU will depend on the terms of the exit negotiations. One of the possible options could include the extension of the UK's membership of the WTO to the Bailiwick. The benefits for Guernsey joining the UK's WTO Membership would be to ensure that Guernsey has access to other WTO Member markets using WTO trading rules and access to the dispute resolution services. Guernsey may also benefit from any new free trade agreements established between the UK and any other WTO member country. The States will need to consider the necessary infrastructure to retain its trading borders and to support trans-border shipments, which may include the provision of IT to monitor goods in transit. Guernsey will need to have the ability to act swiftly as the future shape of the UK and EU position on customs and trading matters becomes clear. It will be necessary to ensure that the States can enact any necessary provisions quickly. This means a general Ordinance making power relating to customs and trade is desirable. The States may also need to implement any international agreement relating to trade to ensure that the islands can accede to the UK's membership of the WTO if requested.
- 6.3. **Immigration** – In July 2017, the UK and the EU set out their respective proposals to protect the rights of EU and British Citizens in the UK and EU on exit day. This matter is subject to ongoing negotiations between the UK and the EU. The UK's proposals include provisions about the 'settled status' of EU nationals who are resident in the UK. If these proposals are agreed, Guernsey should seek to extend that concept to the Bailiwick. The Policy & Resources Committee is working with the Committee *for* Home Affairs to engage with the UK Government so that Bailiwick residents who are British nationals are considered when the UK's exit agreement is agreed (between the UK and EU). This is particularly important if they happen to be resident in the EU on exit day. This includes those islanders defined as "Channel Islanders" in accordance with Protocol 3. The Bailiwick's immigration regime is based on UK legislation which has been modified and extended to the islands. Currently any citizens who are not from the UK/EEA (i.e. non UK or non EEA citizens) need to comply with immigration legislation before they can take employment in Guernsey or the other islands of the Bailiwick. The Bailiwick has close constitutional links

with the UK and is part of the Common Travel Area for Britain and Ireland (see paragraph 6.5 below).

- 6.4. Guernsey will need to continue to consult closely with HM Government on developments in relation to immigration matters, to ensure that the Bailiwick's interests continue to be taken into account. Following the UK's exit from the EU, it is anticipated that any new immigration legislation made in the UK will also be extended to the Bailiwick. The legislation will need to be modified to ensure that it meets the specific requirements of the Bailiwick while satisfying the considerations of the Common Travel Area. Any relevant rules will then be made domestically. This reflects the way that the immigration system currently works. However, in the current circumstances, it would not be desirable to restrict the ability to move quickly by other means should it become necessary. Significant work, led by the Committee *for* Home Affairs, will need to be undertaken to implement a new immigration regime. This will require close working with the UK Government, the other Crown Dependencies, the Law Officers and the wider States of Guernsey.
- 6.5. The UK has clearly stated that one of its high level objectives is to maintain the existing Common Travel Area ('CTA') and associated arrangements which, in part, uphold the Belfast ('Good Friday') Agreement, including the principles of continued North South and East West (Ireland/ Northern Ireland) cooperation. The CTA ensures continuation of the longstanding constitutional arrangement relating to the free movement of people between the Crown Dependencies and the UK. The immigration rules state that the UK, the Channel Islands, the Isle of Man and the Republic of Ireland collectively form the CTA. The States shares the UK's commitment to ensuring that the CTA is maintained, which will require Guernsey to maintain a very similar immigration regime to that in the UK. This has been reiterated on a number of occasions through the States' engagement with the UK and is noted in written material produced by the UK, including a letter from the UK Prime Minister to the President of Policy & Resources (Appendix 2).
- 6.6. The UK's negotiations will not have any direct impact on the Island's Population Management Law ('PML') which came into force on 3rd April 2017. The PML requires each person (aged 16 or over) who lives and/or works in the Island to hold a certificate or permit to show that they are allowed to live and/or work in the Island. The PML does not recognise, or have any need to recognise, the nationality of those applying for a certificate or permit to work in Guernsey. Therefore, the PML is separate to any existing or new immigration legislation. Consideration will need to be given to the relationship between the PML and any new immigration rules.
- 6.7. **Fisheries and Agriculture** – On 2nd July 2017, the UK Government announced its

intention to withdraw from the 1964 London Fisheries Convention. This will take effect two years after the notification of the intention to withdraw. One of the purposes of the Convention is to provide for access rights for certain EU Member State vessels to commercially fish within the 6-12 nautical mile limit of the UK's coastal waters. The extension of this convention to the Bailiwick included fisheries access rights for all French vessels within the 6-12 nautical mile limits of the Bailiwick. This means that the UK's decision to withdraw from the Convention will have an impact in Bailiwick waters. The States will work closely with the UK to ensure that any unintended consequences are mitigated. One option is to consider the extension of the Bailiwick's territorial seas from 3 to 12 nautical miles. The States, working in partnership with the States of Alderney and Chief Pleas of Sark, will also continue to engage with the Normandy fishermen who have a particular interest in commercial fishing within Bailiwick waters. Consideration will need to be given to any necessary measures to manage the fisheries and to facilitate trade in fisheries products with the EU. It is unclear how the UK and EU will trade in agricultural and fisheries products after the UK has left the EU. In order to act swiftly as the negotiations on fisheries and agricultural matters progress the States may need to be able to make relevant provisions quickly. This means a general Ordinance making power would be desirable to facilitate this.

- 6.8. **Financial services** – The Bailiwick is a third country to the EU in respect of certain financial services. It has successfully negotiated its own limited access to EU financial markets as a non-EU jurisdiction. These relationships are not expected to change directly, but Guernsey will need to be ready to respond to the terms of the new UK/EU partnership particularly in relation to market access for services. The UK has set out its objective of achieving a deep and special partnership with the EU and is seeking to enter into a comprehensive free trade agreement with the EU as part of this relationship. It is also seeking free trade agreements with other jurisdictions. A free trade agreement would further liberalise trade from the baseline of WTO standards. Guernsey will be looking to explore the benefits and opportunities which arise by being within the WTO for financial services, as well as being open to any benefits which may flow from any new free trade agreements secured by the UK. In order to act swiftly if any market opportunities emerge during the negotiations (or beyond), the States will need to be able to make relevant provisions by Ordinance. This should enable Guernsey to respond to those opportunities, including possible participation in any free trade agreements which the UK might negotiate (including any with the EU). A general Ordinance making power relating to financial services and trade would be desirable to facilitate this¹⁸. The States may also need to implement any international agreement relating to trade to ensure that the island can accede to the UK membership of the WTO if

¹⁸ In making any changes to financial services legislation, it remain the firm intention of the States of Guernsey that all such changes should be fully compatible with the relevant international standards.

requested.

- 6.9. **Transport** – The Bailiwick is dependent on transport links to move people and goods to and from the islands. The Channel Islands' airspace (The Channel Island Control Zone – 'CICZ') is layered. The lower layers are managed locally and then centrally from Jersey. The airspace above this (from 19,500ft) falls within the jurisdiction of harmonised European Air Traffic Control Management ('Eurocontrol') and within the French functional airspace block ('FABEC'). All air traffic movements and operations are required to meet the relevant EU harmonised standards. The future relationship between the UK and EU could impact the management of the airspace adjacent to the Channel Islands. Air transportation, aircraft maintenance and aviation security are regulated in accordance with Bailiwick, UK and European regulations together with the Civil Aviation Authority ('CAA'), and European Aviation Safety Agency ('EASA'). Sea transport is regulated, in accordance with Bailiwick, UK and international regulations together with the Marine Coastguard Agency ('MCA') and the International Maritime Organisation ('IMO'). The maintenance of continued mutual recognition of driving licences and other road transport issues are also considerations. The importance of maintaining effective transport links amidst the uncertainty means that a general Ordinance making power relating to transport would be desirable to facilitate this.
- 6.10. **Energy** – Whilst Guernsey is able to generate enough electricity on-island to supply the island's needs, the majority of the supply is imported from EDF in France through the Channel Islands Electricity Grid ('CIEG') submarine cables. Guernsey Electricity Limited is investigating the possibility of laying an additional cable to connect directly into the French grid. Whilst this supply contract with EDF is not expected to be directly impacted by the future of the UK's participation in the EU energy market, that participation may be important to the island's supply of electricity as well as other forms of energy. It is recommended that any Ordinance making powers rest with the States to enable it to mitigate against any uncertainty in the status of this critical infrastructure as a result of the UK's exit from the EU.
- 6.11. **Communications** – Communications are an essential part of the Bailiwick's infrastructure and inherently include matters that are inter-jurisdictional. Any changes to the UK-EU relationship which affect communications are likely to affect Guernsey due to its business links and geographical proximity. The UK Office of Communications ('OFCOM') manages and licences spectrum for use in the Bailiwick and represents Guernsey's interests internationally in these matters. The issue of cyber security is increasingly important and the States is developing its cyber security strategies to respond to evolving global threats. There are businesses within Guernsey which rely on the trade in digital goods and services which is known collectively as the digital sector. The access to these markets will form part of Guernsey's aspiration to take part in any trading

arrangement between the UK and the EU. In order to continue to exchange data with the EU and trade with the Single Market, work has begun on a *Projet de Loi* to implement the necessary measures of the General Data Protection Regulation ('GDPR'). Taking this into account, it is not expected that any general Ordinance making powers will be required for communication matters.

- 6.12. In order to ensure that the States can be nimble and act swiftly, it is recommended that the States be able to act quickly by Ordinance in a range of areas that will not be covered by any withdrawal provision envisaged under section 5 of this Policy Letter. In addition, the States may need to implement international agreements related to trade to ensure the Bailiwick can accede to the UK membership of the WTO. The steps required are laid out in paragraphs 2 and 3 of the "Legislative proposals" section of the letter from HM Procureur included in paragraph 7.1 of this Policy Letter.

7. Legislative requirements

- 7.1. On 13th September 2017, HM Procureur wrote to the Policy & Resources Committee to set out the rationale for legislation that will be required in light of Brexit:

Dear Sir,

Brexit – introduction

Since the triggering of Article 50 by the United Kingdom in March 2017, which began the 2 year timescale for Brexit, HM Government has been slow to set out its negotiating position and has not provided the clarity expected. This lack of detail has not permitted the Bailiwick (as a whole and as separate jurisdictions) to consider how it might be affected by Brexit and therefore how best to plan ahead.

This means that, more than ever, the Bailiwick's legislation giving effect to and otherwise in response to Brexit needs to provide for quick and flexible responses to an uncertain and swiftly changing political and legal situation, while providing as much stability as possible. The need to provide for speedy and appropriate legislative action is especially pronounced in relation to Guernsey as much of the necessary legislation will need to be enacted on a Bailiwick-wide basis, requiring the approval of three separate legislatures, and (in the absence of the enabling powers recommended below) by *Projet de Loi*, which would require the sanction of Her Majesty in Council.

Legislative proposals

In my view, to give effect to the Resolution of the States of 8th March 2017, while ensuring that the interests of the Bailiwick and its residents are protected and promoted in these challenging circumstances, the following

legislative steps need to be taken.

1. The enactment of a Bailiwick-wide *Projet de Loi* ("the Withdrawal Law"), broadly equivalent in scope and content to the United Kingdom's European Union (Withdrawal) Bill, which will –
 - (a) repeal the European Communities (Bailiwick of Guernsey) Law, 1973 ("the 1973 Law"),
 - (b) preserve the effect in domestic law of the EU measures which are directly effective or otherwise binding in the Bailiwick on the date the United Kingdom leaves the European Union ("exit day") by virtue of Protocol 3 ("retained EU law"), which will (subject to express agreement to the contrary of the remaining member states) be the 29th March, 2019,
 - (c) provide powers to amend, repeal, adapt or modify by statutory instrument –
 - (i) retained EU law (whether by reference to specific provisions, classes of provision, or otherwise),
 - (ii) Ordinances in force on exit day giving effect to EU measures under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 ("the Implementation Law"), and
 - (iii) any other Bailiwick legislation (including *Projets*), where necessary or expedient in consequence of Brexit. Such amendments, etc, may be required for practical reasons – for example, the legislation in question may make provision for reciprocal arrangements which no longer exist, refer to bodies that no longer have functions in respect of the Bailiwick or be otherwise deficient in the post-Brexit world (effectively, what one might describe as statutory house-keeping). These powers must be subject to appropriate democratic scrutiny while providing the necessary flexibility and speed of implementation. To that end the powers should, in my view, take the form of regulations made by the relevant Committees which would subsequently be laid before the States of Deliberation. Equivalent powers will need to be granted to the States of Alderney and the Chief Pleas of Sark in respect of Alderney-only or Sark-only legislation,

- (d) make any necessary consequential amendments to the Implementation Law. I consider that it is desirable that this Law, which provides a simple mechanism to give effect by Ordinance to EU measures in domestic law, should continue in force, as should Ordinances made under it and in force on exit day (subject to any amendment, repeal, adaptation or modification by regulation as described above). This proposal would not oblige the States (or the States of Alderney or Chief Pleas of Sark) to make any Ordinances under the Implementation Law after exit day, but the continued ability so to do would, in my view, provide further valuable flexibility to the Bailiwick's legislative Brexit armoury,
- (e) make appropriate provision in relation to extant applicable jurisprudence of the Court of Justice of the European Union ("the European Court") on exit day on a similar basis to the proposed position in the United Kingdom under the Withdrawal Bill, whereby such jurisprudence is to be recognised within domestic law, but that the courts should not be bound by any principles laid down or decisions made by the European Court after exit day, and
- (f) contain any necessary incidental, supplemental and saving provisions or powers (for example, ancillary and transitional arrangements in respect of rights, powers, liabilities and duties currently available in domestic law under the 1973 Law).

2. The enactment of a Bailiwick-wide enabling Law empowering the States by Ordinance to make strategic, substantive and policy amendments to retained EU law and Ordinances made under the Implementation Law which cannot be dealt with by the regulation-making powers proposed at 1 above.

Such is the state of the United Kingdom's negotiations and policy development at the time of writing that it is not possible to provide a comprehensive list of the legislation, or even the policy areas, to which these powers may need to apply. They are likely to include customs and trade, financial services, transport, energy, agriculture and fisheries. However, there would, in the current circumstances, be an unacceptable risk to the fundamental interests of the Bailiwick were this

power to be restricted to particular provisions or areas. Incidental, supplemental and saving provision will also need to be made.

3. The UK no doubt intends, by exit day, to have made arrangements (including transitional arrangements) in a wide range of areas including (but not restricted to) trade, tariffs, the common customs area and access to the single market, whether with the EU or other sovereign states and international organisations. There may also be arrangements and agreements to be made with the World Trade Organisation ("WTO"). However, at the moment it is impossible to predict what those arrangements and agreements will be and who they will be made with. It is essential that the Bailiwick is able to accede, where appropriate, to whatever arrangements are made and agreements are struck so as to preserve its own trading position. Accession to such international agreements and other instruments may be subject to our demonstrating compliance with whatever restrictions and obligations are incumbent on the signatories. If the Bailiwick cannot demonstrate compliance (a task which, incidentally, may throw a considerable burden onto government), it may find itself excluded from the arrangement to its substantive economic detriment. To demonstrate compliance the insular authorities may in many cases need to show that they have the necessary implementing legislation on the statute book: they must be in a position to enact it quickly if that is not the case.

I therefore recommend the enactment of another enabling *Projet de Loi* for the purpose of the implementation of any international agreement relating to trade, etc. This *Projet* would be based on the Implementation Law but of course would refer to international trading agreements and other instruments and associated materials rather than European Union provisions.

Implementation would be by means of an Ordinance of the States (or, in the case of Alderney or Sark, of the States of Alderney or Chief Pleas of Sark).

Conclusion

Brexit presents a significant challenge to the Bailiwick in legislative terms. In my view, the enactment of *Projets de Loi* making the provision described above would give the necessary flexibility in responding to that challenge, while ensuring an appropriate and effective level of democratic scrutiny and oversight. We would be grateful therefore if you could make arrangements to put this letter and our legislative recommendations before the States.

I must emphasise that the proposed *Projets de Loi* have not yet been the

subject of any discussion with the UK authorities and in particular the Ministry of Justice. It is quite possible that they will take the view that some of the legislation being proposed is far-reaching and may wish to explore the terms of the proposed drafts. However, in addition to the Implementation Law, there is precedent for such legislation in the form of the Human Rights (Implementation and Amendment) (Bailiwick of Guernsey) Law, 2004, the Income Tax (Guernsey) Law, 1975 (section 75CC - implementation of approved international agreements relating to tax) and the Privileges and Immunities (Bailiwick of Guernsey) Law, 2004 (power to implement international agreements relating to diplomatic privileges and immunities).

I will therefore be communicating with the Ministry of Justice and its legal team as to the scope of the drafts and I will of course keep the Committee apprised of any developments. However, it is essential that these proposals and other associated workstreams proceed concurrently rather than sequentially as I anticipate that it may take at least 12 months for the necessary *Projets de Loi* to proceed through the three insular parliaments and the Privy Council and (at the date of this letter) exit day is only, approximately, 19 months away.

Finally, further legislation might be required depending on the outcome reached as a result of the negotiations between the UK and the EU. In addition, some areas of law within the Bailiwick are dealt with by UK legislation, the terms of which have been extended by Order in Council. The Bailiwick has not to the best of my knowledge experienced significant difficulties with this legislation or the manner of its enactment to date, but it is at least conceivable that issues may emerge in the light of Brexit.

In either of these events the Law Officers may have to consider making further proposals to the Policy and Resources Committee for submission to the States (should it agree).

Yours faithfully,
[signed]

Megan Pullum QC
HM Procureur

8. Resource and implementation plan

- 8.1. In accordance with Rule 4(5) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the proposal to approve the legislation outlined in paragraph 7.1 of this Policy Letter is strategically aligned to the objectives of the States of Guernsey. Phase One of the Policy &

Resource Plan¹⁹ set out the vision for Guernsey in 20 years' time and the priority areas for the next five years. It was approved on 16th November 2016. 'Our Place in the World' is one of four key themes and is supported by the measures outlined in this Policy Letter. The underlying priorities of this theme are for Guernsey to maintain its reputation as a "*centre of excellence and innovation*" and to develop further its "*mature international identity*". The 'Our Economy' and 'Our Quality of Life' themes are also significant in regard to this Policy Letter.

- 8.2. Phase Two of the Plan²⁰, which sets out the Committees' policy plans, was approved on 30th June 2017. Phase Two focusses on the work that Principal Committees need to do to move towards achieving the vision set out in Phase One. In response to the "mature international identity" priority, the Policy & Resources Committee's policy plan recognises that a significant focus of the Committee's work in the short to medium term will be on the protection of the island's interests in the aftermath of Brexit. One of the objectives identified within Phase Two is to "*ensure our interests are taken into account in the UK/EU exit agreement and seek new opportunities where possible*". The Committee considers this work to be one of its top priorities to support the Policy & Resource Plan.
- 8.3. The mandate of the Policy & Resources Committee includes responsibilities to, "*advise the States and to develop and implement policies and programmes relating to: (a) leadership and co-ordination of the work of the States*" and "*(c) external relations and international and constitutional affairs, which includes: 2. relations with the United Kingdom and other jurisdictions; 3. relations with the European Union and other supranational organisations; 4. relations with the other islands of the Bailiwick ...; [and] representing, or overseeing the representation of, and negotiating for, the Island; ...*" The Committee considers that the measures outlined in this Policy Letter touch on all those aspects of its mandate.
- 8.4. In regard to Rule 4(3) of the Rules of Procedure of the States of Deliberation and their Committees, part of the Policy & Resources Committee's Brexit Group's²¹ activity includes regularly monitoring the resources dedicated to

¹⁹ The 'Future Guernsey' document was amended by and then approved by the States on 16th November 2016. The final version is available at <https://gov.gg/CHttpHandler.ashx?id=105052&p=0>. (The final version includes the amendments made by the States. An earlier version was published in Billet d'État XXVIII of 2016.) The Resolutions of 16th November 2016 can be found at:

<https://gov.gg/CHttpHandler.ashx?id=104885&p=0>

²⁰ Billet d'État XII of 2017: <https://www.gov.gg/CHttpHandler.ashx?id=107774&p=0>

The Resolutions of 30th June 2017 can be found at: <https://gov.gg/CHttpHandler.ashx?id=108566&p=0>

²¹ The Policy & Resources Committee's Brexit Group is a strategic group which includes politicians and officials from its own Committee, the Committee for Home Affairs and the Committee for Economic Development along with the Law Officers and representatives from the Guernsey Financial Services Committee and industry where appropriate.

managing the implications of Brexit and to assessing the opportunities that may arise. Significant resources may be required to prepare the necessary legislation so that the States can act swiftly to mitigate and respond to any uncertain and changing political and legal situations that may arise during the exit negotiations. The use of resources across the organisation will also be kept under review as details emerge of the negotiations, the exit process and the future arrangements. The discussion papers that have been published on citizen's rights and customs matters suggest that technology and IT systems will play an important role in the UK's immigration and border controls. Provisions may be required to ensure that the island's own systems are able to work alongside those that are implemented in the UK.

9. Engagement and consultation on these proposals

- 9.1. The Policy & Resources Committee's Brexit Group meets fortnightly to ensure that the Committees which are directly engaged in work responding to Brexit are well briefed. It helps to co-ordinate the work of the Policy & Resources Committee with the Committees *for* Home Affairs and *for* Economic Development and to align the work with the States-approved strategy. The Policy & Resources Committee leads on co-ordinating policy and draft legislation required as a result of the UK's withdrawal from the EU and co-ordinates the cross-Committee decision-making process. This huge amount of work will have to be dealt with both effectively and flexibly and, in some cases, very quickly to keep pace with the UK-EU negotiations. The Group will also ensure that any opportunities for the Bailiwick created by any extension of the UK's future relationship with the EU are seized upon and maximised where possible. The Group has been consulted on the proposals contained in this Policy Letter. This includes representatives from the Committee *for* Home Affairs and the Committee *for* Economic Development.
- 9.2. The Law Officers of the Crown have advised on the legislative changes that will be necessary to achieve the objectives agreed by the States following consideration of the second Brexit Policy Letter (in March 2017). The Law Officers have outlined the legislative proposals, as shown in paragraph 7.1/section 7 of this Policy Letter.
- 9.3. Discussions have been held with the UK Government in relation to the UK's Withdrawal Bill. The UK Government is aware that the Bailiwick will require analogous legislation (the proposed Withdrawal Law) to perform a similar function as the UK's Withdrawal Bill, to the extent that is required because of the ending of Protocol 3.
- 9.4. The Policy & Resources Committee continues to work with the States of Alderney and the Chief Pleas of Sark to ensure that both those islands are fully informed and engaged in this process. The proposals in this Policy Letter have

also been discussed in meetings of the Bailiwick Council.

- 9.5. The Committee will also continue to work closely with counterparts in Jersey and the Isle of Man. The Crown Dependencies stand to gain more by sharing a unified approach, wherever there are shared interests, during this process. The States of Jersey and the Isle of Man Government are working on similar legislation to Guernsey's proposed Withdrawal Law. The Law Officers of the Crown are also working closely with their counterparts in Jersey and the Isle of Man.

10. Propositions

The States are asked to decide whether they are of the opinion:-

1. To approve the legislative proposals set out in paragraphs 6.4 and 7.1 (particularly paragraphs numbered 1, 2 and 3 of the letter from Her Majesty's Procureur reproduced therein) of the Policy Letter.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

11. Committee support for Proposition(s)

- 11.1. 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

G A St Pier
President

L S Trott
Vice-President

A H Brouard
J P Le Tocq
T J Stephens

UK Prime Minister's letter to the President of the European Council triggering Article 50²²

On 29th March 2017, the UK Prime Minister, The Rt Hon Theresa May MP, wrote to the President of the European Council, His Excellency Mr Donald Tusk, to formally commence the exit process from the EU under Article 50 of the Treaty on European Union:

Dear President Tusk

On 23 June last year, the people of the United Kingdom voted to leave the European Union. As I have said before, that decision was no rejection of the values we share as fellow Europeans. Nor was it an attempt to do harm to the European Union or any of the remaining member states. On the contrary, the United Kingdom wants the European Union to succeed and prosper. Instead, the referendum was a vote to restore, as we see it, our national self-determination. We are leaving the European Union, but we are not leaving Europe – and we want to remain committed partners and allies to our friends across the continent.

Earlier this month, the United Kingdom Parliament confirmed the result of the referendum by voting with clear and convincing majorities in both of its Houses for the European Union (Notification of Withdrawal) Bill. The Bill was passed by Parliament on 13 March and it received Royal Assent from Her Majesty The Queen and became an Act of Parliament on 16 March.

Today, therefore, I am writing to give effect to the democratic decision of the people of the United Kingdom. I hereby notify the European Council in accordance with Article 50(2) of the Treaty on European Union of the United Kingdom's intention to withdraw from the European Union. In addition, in accordance with the same Article 50(2) as applied by Article 106a of the Treaty Establishing the European Atomic Energy Community, I hereby notify the European Council of the United Kingdom's intention to withdraw from the European Atomic Energy Community. References in this letter to the European Union should therefore be taken to include a reference to the European Atomic Energy Community.

This letter sets out the approach of Her Majesty's Government to the discussions we will have about the United Kingdom's departure from the European Union and about the deep and special partnership we hope to enjoy – as your closest friend and neighbour – with the European Union once we leave. We believe that these objectives are in the interests not only of the United Kingdom but of the European Union and the wider world too.

It is in the best interests of both the United Kingdom and the European Union that we should use the forthcoming process to deliver these objectives in a fair and orderly manner, and with as little disruption as possible on each side. We want to

²² <https://www.gov.uk/government/publications/prime-ministers-letter-to-donald-tusk-triggering-article-50>

make sure that Europe remains strong and prosperous and is capable of projecting its values, leading in the world, and defending itself from security threats. We want the United Kingdom, through a new deep and special partnership with a strong European Union, to play its full part in achieving these goals. We therefore believe it is necessary to agree the terms of our future partnership alongside those of our withdrawal from the European Union.

The Government wants to approach our discussions with ambition, giving citizens and businesses in the United Kingdom and the European Union – and indeed from third countries around the world – as much certainty as possible, as early as possible.

I would like to propose some principles that may help to shape our coming discussions, but before I do so, I should update you on the process we will be undertaking at home, in the United Kingdom.

The process in the United Kingdom

As I have announced already, the Government will bring forward legislation that will repeal the Act of Parliament – the European Communities Act 1972 – that gives effect to EU law in our country. This legislation will, wherever practical and appropriate, in effect convert the body of existing European Union law (the “acquis”) into UK law. This means there will be certainty for UK citizens and for anybody from the European Union who does business in the United Kingdom. The Government will consult on how we design and implement this legislation, and we will publish a White Paper tomorrow. We also intend to bring forward several other pieces of legislation that address specific issues relating to our departure from the European Union, also with a view to ensuring continuity and certainty, in particular for businesses. We will of course continue to fulfil our responsibilities as a member state while we remain a member of the European Union, and the legislation we propose will not come into effect until we leave.

From the start and throughout the discussions, we will negotiate as one United Kingdom, taking due account of the specific interests of every nation and region of the UK as we do so. When it comes to the return of powers back to the United Kingdom, we will consult fully on which powers should reside in Westminster and which should be devolved to Scotland, Wales and Northern Ireland. But it is the expectation of the Government that the outcome of this process will be a significant increase in the decision-making power of each devolved administration.

Negotiations between the United Kingdom and the European Union

The United Kingdom wants to agree with the European Union a deep and special partnership that takes in both economic and security cooperation. To achieve this, we believe it is necessary to agree the terms of our future partnership alongside those of our withdrawal from the EU.

If, however, we leave the European Union without an agreement the default position is that we would have to trade on World Trade Organisation terms. In

security terms a failure to reach agreement would mean our cooperation in the fight against crime and terrorism would be weakened. In this kind of scenario, both the United Kingdom and the European Union would of course cope with the change, but it is not the outcome that either side should seek. We must therefore work hard to avoid that outcome.

It is for these reasons that we want to be able to agree a deep and special partnership, taking in both economic and security cooperation, but it is also because we want to play our part in making sure that Europe remains strong and prosperous and able to lead in the world, projecting its values and defending itself from security threats. And we want the United Kingdom to play its full part in realising that vision for our continent.

Proposed principles for our discussions

Looking ahead to the discussions which we will soon begin, I would like to suggest some principles that we might agree to help make sure that the process is as smooth and successful as possible.

i. We should engage with one another constructively and respectfully, in a spirit of sincere cooperation

Since I became Prime Minister of the United Kingdom I have listened carefully to you, to my fellow EU Heads of Government and the Presidents of the European Commission and Parliament. That is why the United Kingdom does not seek membership of the single market: we understand and respect your position that the four freedoms of the single market are indivisible and there can be no “cherry picking”. We also understand that there will be consequences for the UK of leaving the EU: we know that we will lose influence over the rules that affect the European economy. We also know that UK companies will, as they trade within the EU, have to align with rules agreed by institutions of which we are no longer a part – just as UK companies do in other overseas markets.

ii. We should always put our citizens first

There is obvious complexity in the discussions we are about to undertake, but we should remember that at the heart of our talks are the interests of all our citizens. There are, for example, many citizens of the remaining member states living in the United Kingdom, and UK citizens living elsewhere in the European Union, and we should aim to strike an early agreement about their rights.

iii. We should work towards securing a comprehensive agreement

We want to agree a deep and special partnership between the UK and the EU, taking in both economic and security cooperation. We will need to discuss how we determine a fair settlement of the UK’s rights and obligations as a departing member state, in accordance with the law and in the spirit of the United Kingdom’s

continuing partnership with the EU. But we believe it is necessary to agree the terms of our future partnership alongside those of our withdrawal from the EU.

iv. We should work together to minimise disruption and give as much certainty as possible

Investors, businesses and citizens in both the UK and across the remaining 27 member states – and those from third countries around the world – want to be able to plan. In order to avoid any cliff-edge as we move from our current relationship to our future partnership, people and businesses in both the UK and the EU would benefit from implementation periods to adjust in a smooth and orderly way to new arrangements. It would help both sides to minimise unnecessary disruption if we agree this principle early in the process.

v. In particular, we must pay attention to the UK's unique relationship with the Republic of Ireland and the importance of the peace process in Northern Ireland

The Republic of Ireland is the only EU member state with a land border with the United Kingdom. We want to avoid a return to a hard border between our two countries, to be able to maintain the Common Travel Area between us, and to make sure that the UK's withdrawal from the EU does not harm the Republic of Ireland. We also have an important responsibility to make sure that nothing is done to jeopardise the peace process in Northern Ireland, and to continue to uphold the Belfast Agreement.

vi. We should begin technical talks on detailed policy areas as soon as possible, but we should prioritise the biggest challenges

Agreeing a high-level approach to the issues arising from our withdrawal will of course be an early priority. But we also propose a bold and ambitious Free Trade Agreement between the United Kingdom and the European Union. This should be of greater scope and ambition than any such agreement before it so that it covers sectors crucial to our linked economies such as financial services and network industries. This will require detailed technical talks, but as the UK is an existing EU member state, both sides have regulatory frameworks and standards that already match. We should therefore prioritise how we manage the evolution of our regulatory frameworks to maintain a fair and open trading environment, and how we resolve disputes. On the scope of the partnership between us – on both economic and security matters – my officials will put forward detailed proposals for deep, broad and dynamic cooperation.

vii. We should continue to work together to advance and protect our shared European values

Perhaps now more than ever, the world needs the liberal, democratic values of Europe. We want to play our part to ensure that Europe remains strong and prosperous and able to lead in the world, projecting its values and defending itself from security threats.

The task before us

As I have said, the Government of the United Kingdom wants to agree a deep and special partnership between the UK and the EU, taking in both economic and security cooperation. At a time when the growth of global trade is slowing and there are signs that protectionist instincts are on the rise in many parts of the world, Europe has a responsibility to stand up for free trade in the interest of all our citizens. Likewise, Europe's security is more fragile today than at any time since the end of the Cold War. Weakening our cooperation for the prosperity and protection of our citizens would be a costly mistake. The United Kingdom's objectives for our future partnership remain those set out in my Lancaster House speech of 17 January and the subsequent White Paper published on 2 February.

We recognise that it will be a challenge to reach such a comprehensive agreement within the two-year period set out for withdrawal discussions in the Treaty. But we believe it is necessary to agree the terms of our future partnership alongside those of our withdrawal from the EU. We start from a unique position in these discussions – close regulatory alignment, trust in one another's institutions, and a spirit of cooperation stretching back decades. It is for these reasons, and because the future partnership between the UK and the EU is of such importance to both sides, that I am sure it can be agreed in the time period set out by the Treaty.

The task before us is momentous but it should not be beyond us. After all, the institutions and the leaders of the European Union have succeeded in bringing together a continent blighted by war into a union of peaceful nations, and supported the transition of dictatorships to democracy. Together, I know we are capable of reaching an agreement about the UK's rights and obligations as a departing member state, while establishing a deep and special partnership that contributes towards the prosperity, security and global power of our continent.

Yours sincerely

Theresa May

Exchange of letters with the UK Prime Minister in relation to Article 50²³

On 17th February 2017, the President of the Policy & Resources Committee, Deputy Gavin St Pier, wrote to the UK Prime Minister, The Rt Hon Theresa May MP.

Dear Prime Minister

I welcomed the commitment made in your letter of 26th July 2016 to engage with the government of Guernsey following the Referendum on the UK's Membership of the EU. Since that time, the effort put in by your government, in particular Robin Walker MP, Parliamentary Under Secretary of State at the Department for Exiting the EU, must be recognised and commended. This engagement has been moved forward by officials concentrating on our priority areas of interest, to ensure that the UK Government understands and is cognisant of the impact of the UK's exit on Guernsey. The challenge will be maintaining this level of engagement when the negotiations commence.

At this stage in the process, before the UK Government formally notifies the European Council of its intention to leave the EU, the government of Guernsey would like to ensure that this formal process respects the constitutional relationship it has with the Crown and the UK. The act of leaving the EU will have an impact upon our own relationship with the EU and our domestic law, including individual rights insofar as Protocol 3 to the UK's Act of Accession applies.

Given the unique constitutional relationship with the Crown deriving from our Royal Charters, in contrast to the devolved administrations, it is essential that the island's parliamentary assembly, the States of Deliberation, takes its own steps to ensure that these changes are recognised, just as it did at the time of the UK's accession to the EU. Consequently, the States of Deliberation will soon be considering a proposition to acknowledge the UK's decision in respect of the notification under Article 50 of the Treaty on European Union. This motion is not only constitutionally appropriate, but it also respects and highlights the international identity of the islands, which is an identity the UK is responsible for representing, even where these interests diverge.

In 1971, when the UK was preparing to join the EU, it provided a formal assurance that it had no "intention of seeking in any way to impose upon the Bailiwick [of Guernsey] a change in its constitutional relationship with the Crown or unilaterally to abrogate any of the rights and privileges enjoyed by its inhabitants". In this regard, it is worth noting that an effective customs union and common travel area between the UK and Guernsey long pre-date the EU and are among the rights and privileges enjoyed by the inhabitants of the islands as a result of the ancient constitutional relationship with the

²³ <https://gov.gg/article/159077/The-Policy--Resources-Committee-welcomes-assurances-from-the-UK-Prime-Minister-before-the-triggering-of-Article-50>

Crown. It is therefore important this commitment stands equally as the UK leaves the EU and your confirmation in this regard would be greatly appreciated.

The UK Government's recent White Paper entitled "The United Kingdom's exit from and new partnership with the European Union" demonstrates that the UK's objectives are aligned to Guernsey's in the key areas of: access to markets; maintaining the Common Travel Area; controlling immigration; and seeking to respect the rights of EU nationals resident in these islands. These objectives align with our own and provide a solid basis on which we can, in the language of the White Paper, "strengthen the bonds between us as we forge a new relationship with the EU and look outward into the world". Sharing access to markets for financial services, forging new customs arrangements for goods and aligning our status in respect of the WTO will all be an important part of this process. We believe that these objectives can be met while respecting our interests.

Continued close engagement during the exit process will be vital to ensure that the UK does not unintentionally act contrary to Guernsey's interests. I look forward to working with your Government as the negotiations commence after you notify the European Council of its intention to leave the EU, an act which will apply to Guernsey in respect of Protocol 3 of the UK Act of Accession, and an act which will have been acknowledged by Guernsey's parliamentary assembly.

Accordingly, I would be grateful if you would formally confirm that the language of the notification under Article 50 will be fully compatible with the constitutional relationship between the United Kingdom and the Bailiwick of Guernsey.

Yours sincerely,

Deputy Gavin A St Pier Chief Minister of Guernsey/Le Prumier de Giernes

cc. The Rt Hon Sir Oliver Heald QC MP; Mr Robin Walker MP

On 22nd March 2017, the President of the Policy & Resources Committee, Deputy Gavin St Pier received a letter of reply from the UK Prime Minister, The Rt Hon Theresa May MP:

Dear Deputy St Pier,

Thank you for your letter of 17 February about engagement with Guernsey during the UK's negotiations on leaving the European Union (EU).

I am pleased to hear the positive feedback on the UK Government's engagement with the Governments of the Crown Dependencies since the Referendum, in particular your engagement with Parliamentary Under-Secretary of State, Robin Walker. As I set out in my letter of 26 July, it is right that the Crown Dependencies are kept informed as we prepare to leave the EU, and that they are offered the opportunity to contribute where it is appropriate to do so.

The constitutional relationship between the United Kingdom and the Crown Dependencies is a valued, historical and special one, and I want to take this opportunity to assure you that the Referendum result will not change this relationship. I would also like to assure you that throughout the process of leaving the EU we will ensure that our actions are compatible with the constitutional relationship.

Our White Paper, published on 2 February, confirms the commitment that our governments share to maintaining the Common Travel Area (CTA). These arrangements long pre-date that UK's accession to the EU and we want to ensure they are preserved.

As the White Paper makes clear, we will work with the Crown Dependencies, alongside the Northern Ireland Executive and Irish Government, to deliver a practical solution that allows for the maintenance of the CTA, while protecting the integrity of the UK's immigration system. The White Paper also confirms our continued commitment to respecting the interests of the Crown Dependencies, strengthening the bonds between us as we forge a new relationship with the EU and with the wider world.

Thank you for writing to update me on the work of the States of Deliberation in relation to recognising the UK's plans to trigger Article 50. We recognise that our exit from the EU will have implications for the Crown Dependencies and fully acknowledge your desire to ensure that these changes are recognised by your Parliamentary Assembly.

I look forward to building on the positive working relationships between the Crown Dependencies and the UK as we move into the next phase of this process, including discussions on customs and trade, immigration, agriculture and fisheries, financial services, and a range of other issues. We remain committed to engaging with Guernsey to ensure that your interests are properly taken into account.

Yours sincerely
Theresa May

On 28th March 2017, the President of the Policy & Resources Committee, Deputy Gavin St Pier, replied to the UK Prime Minister, The Rt Hon Theresa May MP:

Dear Prime Minister

Thank you for your letter dated 22 March 2017 and for your reassurances that the Bailiwick of Guernsey will continue to be kept informed and engaged in the process as the UK prepares to leave the EU. I am grateful too for your reaffirmation of the UK's commitment to the preservation of the Common Travel Area, your confirmation that our unique constitutional position will be respected and the rights of islanders will not be abrogated without consent.

I also wanted to take this opportunity to provide an update in relation to the debate in our parliament that took place on 8 March and to which I referred to in my letter on 17 February, regarding the triggering of Article 50. Guernsey's parliament unanimously approved the propositions subject to two amendments. The first amendment is in recognition of the wide reaching resource implications on Guernsey's government. The second amendment, which it was requested should be formally brought to the UK Government's attention, is self-explanatory in relation to the rights of EU nationals resident in Guernsey, namely that:

"... the rights of EU nationals resident and economically active in Guernsey should be a priority area in any negotiations with Her Majesty's Government and to direct that [the Guernsey government] impress on all relevant representatives of the Government, the States' wish to see those rights assured as soon as possible and not delayed as part of any extended negotiation process over the terms of the British exit from the EU."

I have also read with interest the recent Brexit reports in respect of the Crown Dependencies from the European Union Committee of the House of Lords and the Justice Committee of the House of Commons. We welcome both reports, which reiterate our objectives and the importance of respecting the interests of the Crown Dependencies. Further the reports recommend that there should be no change to the current constitutional relationships between Guernsey and the UK. We look forward to the UK Government's response to these reports in due course and hope that their recommendations can be fully endorsed.

Finally, as the process of exiting the EU is formally initiated by you this week, I wish you every success with the negotiations which are about to begin. I look forward to our governments working together as part of the British family to achieve the objectives which both have set out.

Yours sincerely,

Deputy Gavin St Pier Chief Minister of Guernsey/Le Prumier de Giernes

cc. The Rt Hon Sir Oliver Heald QC MP; Mr Robin Walker MP

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

REFERENDUM ON GUERNSEY'S VOTING SYSTEM – VOTER TURNOUT

The States are asked to decide whether, after consideration of the attached policy letter, they are of opinion:-

1. To agree to introduce the electoral system which is the most favoured in the referendum on the method of electing People's Deputies to the States of Deliberation provided that the number of persons voting in the referendum is at least 40% of those persons inscribed on the Electoral Roll who are eligible to vote on the day of the referendum; and to agree that, in the event that turnout at the referendum is less than 40%, the States' Assembly & Constitution Committee should within three months of the date of the referendum submit a policy letter to the States setting out any recommendations for reform to the electoral system which it considers necessary, having taken into account the results of the referendum.

OR, only if Proposition 1 shall have been defeated,

2. To agree, irrespective of turnout, to introduce the electoral system which is the most favoured in the referendum on the method of electing People's Deputies to the States of Deliberation.

OR, only if Propositions 1 & 2 shall have been defeated,

3. That in advance of the referendum the States shall make no commitment to implement the results of the referendum; and to direct the States' Assembly & Constitution Committee to submit a policy letter to the States setting out any recommendations for reform to the electoral system which it considers necessary, having taken into account the results of the referendum.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

REFERENDUM ON GUERNSEY'S VOTING SYSTEM – VOTER TURNOUT

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

29 September, 2017

Dear Sir

1 Executive Summary

- 1.1 In June, 2017, further to consideration of Billet d'État XIV, 2017 and the States' Assembly & Constitution Committee's ("the Committee") policy letter, 'Referendum on Guernsey's Voting System', the States agreed to hold a multi-option referendum in 2018 on the method of electing People's Deputies to the States of Deliberation. However, on a tied vote, the States rejected the Committee's proposal to commit themselves to accepting the results of the referendum if turnout is at least 40% of those on the Electoral Roll.
- 1.2 It is therefore unclear how the results of the referendum will be treated by the States. The Committee believes it is essential that the States establish absolute clarity in advance of the referendum whether the results will definitely be implemented or treated as consultative.

2 Previous debate on voter turnout

- 2.1 In its policy letter dated 19th May, 2017 (P.2017/49), the Committee recommended that the States should resolve to implement the winning option in the referendum – provided that voter turnout was at least 40% of those inscribed on the Electoral Roll and eligible to vote on the day.
- 2.2 The Committee also proposed that, should the turnout be less than 40%, it would submit a policy letter to the States within three months of the date of the referendum setting out any recommendations for reform to the electoral system which it considered necessary, having first taken into account how far short of 40% the turnout was, the number of votes cast for each outcome and

the share of the vote obtained by each of the five options A to E, and, in particular, the margin between the option which placed first and the other options.

- 2.3 One amendment was lodged (P.2017/49 Amdt 5) to alter the turnout threshold: *"In Propositions 5 and 6 for "40%", wherever it appears, to substitute "50%".* The vote to amend the relevant Propositions was lost.
- 2.4 Propositions 4, 5 and 6 were voted on simultaneously. On a tied vote, the States rejected the Committee's proposals and therefore the States did not determine how they would treat the results of the referendum.

3 The status of the referendum

- 3.1 In June, 2017, the States reconfirmed their commitment to holding a referendum on the method of electing People's Deputies.
- 3.2 The purpose of the referendum is to empower the people of Guernsey to determine their future electoral system. The Committee firmly believes the public needs an assurance, in advance of the vote, of the circumstances in which the will of the people shall be carried into effect.
- 3.3 Uncertainty as to how the results of the referendum will be treated could lead to disenfranchisement, poor voter turnout and undermine public faith in, and the whole reason for, the referendum. If the States do not provide certainty on how the referendum results will be treated, they risk the referendum being viewed as little more than an elaborate and expensive consultation exercise with no meaningful outcome.
- 3.4 The Committee firmly believes the States need to make a political commitment, in advance of polling day, as to whether the results of the referendum will be implemented - either by a threshold being met or by simple majority - or will be treated as consultative.

4 Setting a voter threshold

- 4.1 Significant change to the electoral system should not be undertaken lightly. Setting a threshold for voter turnout – beyond which the States would commit to implement the option which wins the referendum – is proportionate and reasonable. A threshold may encourage public engagement with the process and increase voter turnout as it requires more people to vote to ensure the results are implemented. It also protects the electorate from having an electoral system imposed on them which reflects the wishes of only a small number of passionate supporters of one option but which does not reflect the balance of opinion in the whole community.

- 4.2 The Committee believes it is important that the States approve a turnout threshold to make the results of the referendum decisive and legitimate. As recognised in the Committee's previous policy letter, there is no 'right' or 'wrong' threshold, and the Committee proposed the figure of 40% as a pragmatic compromise between the differing views of the Committee's members.
- 4.3 The Committee has again suggested a threshold of 40% for consideration by the States. The clear advantage of setting this threshold is that it will demonstrate that any change to the electoral system will be introduced because it has substantial support and would demonstrate the breadth of opinion among the population generally.
- 4.4 Setting the threshold lower than 40%, or dispensing with a threshold altogether, could draw the subsequent electoral system's legitimacy into question, as it has the potential to reflect the will of only a small minority of the electorate. If only a small percentage of those on the Electoral Roll vote in the referendum, there may be no clear direction from the electorate generally about how or even whether the voting system should be changed.
- 4.5 As explained in the Committee's previous policy letter, turnout thresholds are common in referendums, especially so for those which concern constitutional amendments or changes to the electoral system. For example, in Denmark a referendum to amend the constitution is considered valid only if the proposed amendment is supported by 40% of the eligible electorate; in Italy, Portugal, Sweden and some other European countries the results of a referendum are considered valid only if turnout reaches 50% of the eligible electorate; in the Netherlands even advisory referendums require turnouts of at least 30% to be considered valid; although it should be noted that for the past 20 years the UK has decided against turnout thresholds in referendums, albeit all such referendums in the UK have been advisory only.
- 4.6 The proposed threshold level is also reasonable in comparison to referendums on electoral systems in other jurisdictions. As set out in the previous policy letter, the turnout for the past three referendums about the electoral system in New Zealand were 55%, 85% and 73% respectively. In 2011, the United Kingdom's referendum on the electoral system had a turnout of 42%. The turnout figures for the two referendums which Jersey has held regarding membership of their States' Assembly were as follows: in the 2013 referendum about the voting system turnout was 26% and in the 2014 referendum about Parish Constables' seats in the States turnout was 39%. In Jersey turnout for island-wide senatorial elections is normally in the region of 45%. In Guernsey's 2016 General Election turnout was 72%. The Committee therefore believes that 40% is a reasonable and achievable threshold for the referendum on Guernsey's voting system.

- 4.7 It remains open for any Member, who is unsatisfied with the threshold option presented in this policy letter, to lodge an amendment inserting a further Proposition proposing an alternative turnout threshold for consideration by the States.

5 Implementing the results regardless of turnout

- 5.1 Whilst the Committee believes a turnout threshold is necessary, during the June debate some Members of the States suggested that the results of the referendum should be implemented, regardless of voter turnout.
- 5.2 Whilst the Committee does not share this view, having reflected on the debate it has included this option as Proposition 2, should the States resolve not to set a threshold by rejecting Proposition 1.

6 Consultative referendum

- 6.1 The Committee believes the method of electing People's Deputies to the States of Deliberation is a fundamental constitutional issue. The States have decided, by committing to holding a referendum on the method of electing People's Deputies, that it should be for the people to determine what reforms are made to the voting system and that the States should seek the explicit approval from the electorate for such a change.
- 6.2 If the States believe that no commitment should be given in advance to implement the outcome of the referendum, they should formally agree this. Proposition 3 provides the States with that option.
- 6.3 If a threshold is set, but voting turnout falls short, there needs to be certainty as to what this will mean in practice. The Committee recommends that such results would be treated as consultative.
- 6.4 In either case – whether the referendum is organised with no commitment from the States to implement the outcome from the beginning or the voter threshold is not met – the Committee should report to the States within three months of the date of the referendum with any recommendations for reform to the electoral system which it considers necessary, having taken into account the results of the referendum.
- 6.5 The Committee reiterates the need for the people of Guernsey to have absolute clarity in advance of the referendum as to how the results will be treated, and advises that the most unsatisfactory outcome would be for the States to provide no direction to the public.

7 Compliance with Rule 4

- 7.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 7.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications. She has advised that there is no reason in law why the Propositions should not be put into effect.
- 7.3 In accordance with Rule 4(4), it is confirmed that the Committee is unanimous in recommending that the States approve Proposition 1 which would mean that Propositions 2 and 3 would fall automatically.
- 7.4 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee *"to advise the States and to develop and implement policies in relation to the constitution...of the States of Deliberation [and]...elections to the office of People's Deputy"*.

Yours faithfully

M. J. Fallaize
President

P. J. Roffey
Vice-President

M. H. Dorey
M. K. Le Clerc
H. L. de Sausmarez