



# BILLET D'ÉTAT

WEDNESDAY, 6<sup>th</sup> JUNE, 2018

XVI  
2018

## LEGISLATIVE BUSINESS

### *Legislation Laid Before the States*

The Regulation of Investigatory Powers (Bailiwick of Guernsey) (Amendment) Ordinance, 2018

The Liquor Licensing (Fees) Regulations, 2018

The Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No.3) Regulations, 2018

### *Legislation for Approval*

1. Policy & Resources Committee - The European Union (Brexit) (Bailiwick of Guernsey) Law, 2018, P.2018/38
2. Policy & Resources Committee - The International Trade Agreements (Implementation) (Bailiwick of Guernsey) Law, 2018, P.2018/39
3. Committee *for* Employment & Social Security - The Income Support (Implementation) (Amendment) Ordinance, 2018, P.2018/40
4. Committee *for* Employment & Social Security - The Alderney (Application of Legislation) (Income Support) Ordinance, 2018, P.2018/41
5. Policy & Resources Committee - The Income Tax (Guernsey) (Approval of Agreement with San Marino) Ordinance, 2018, P.2018/42
6. States' Assembly & Constitution Committee - The Electoral System Referendum (Guernsey) Law, 2018 (Commencement) Ordinance, 2018, P.2018/43

CONTINUED OVERLEAF

*OTHER BUSINESS*

7. States' Trading Supervisory Board – Replacement Cremator and Emissions Equipment, P.2018/31
8. States' Trading Supervisory Board - Optimising the Use of the States Land and Property Portfolio, P.2018/37
9. Schedule for future States' business, P.2018/44

*APPENDIX*

1. Responsible Officer for the Bailiwick of Guernsey – Under “The Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015” - Annual Report for the Year 2017

# BILLET D'ÉTAT

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

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I hereby give notice that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY**, the **6<sup>th</sup> June, 2018** immediately after the Meeting of the States of Election convened for **9.30 a.m.**, to consider the items listed in this Billet d'État which have been submitted for debate.

R. J. COLLAS  
Bailiff and Presiding Officer

The Royal Court House  
Guernsey

18<sup>th</sup> May, 2018

***ORDINANCE LAID BEFORE THE STATES***

**THE REGULATION OF INVESTIGATORY POWERS (BAILIWICK OF GUERNSEY)  
(AMENDMENT) ORDINANCE, 2018**

In pursuance of the provisions of the proviso to Article 66A(1) of The Reform (Guernsey) Law, 1948, as amended, "The Regulation of Investigatory Powers (Bailiwick of Guernsey) (Amendment) Ordinance, 2018", made by the Policy & Resources Committee on the 27<sup>th</sup> March, 2018, is laid before the States.

**EXPLANATORY MEMORANDUM**

This Ordinance amends section 55 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003 ("the Law"). Section 55 provides that a person may be appointed as an Assistant Commissioner by the Bailiff to assist the Commissioner appointed under section 53; however, under section 55(2), a person may not be appointed as an Assistant Commissioner unless he or she holds or has held one of several specified judicial offices. The amendment made by the Ordinance will permit the Bailiff, at the request of the Commissioner, to appoint a person as an Assistant Commissioner if that person does not satisfy section 55(2), if the Bailiff considers that the person is otherwise a fit and proper person to be an Assistant Commissioner. The power to amend the Law by Ordinance is at section 65(1) of the Law.

The Ordinance was made by the Policy & Resources Committee in exercise of its powers under Article 66A(1) of the Reform (Guernsey) Law, 1948, and came into force on the 28<sup>th</sup> March, 2018. Under the proviso to Article 66A(1) of the Reform (Guernsey) Law, 1948, the States of Deliberation have the power to annul the Ordinance.

## **STATUTORY INSTRUMENT LAID BEFORE THE STATES**

No. 14 of 2018

### **THE LIQUOR LICENSING (FEES) REGULATIONS, 2018**

In pursuance of Section 84(4) of the Liquor Licensing Ordinance, 2006, The Liquor Licensing (Fees) Regulations, 2018, made by the Committee *for* Home Affairs on 3<sup>rd</sup> April 2018, is laid before the States.

#### **EXPLANATORY NOTE**

These Regulations amend Schedule 4 of the Liquor Licensing Ordinance, 2006 which sets the relevant fees for liquor licences etc. These Regulations come into force on 1<sup>st</sup> June 2018.

No. 16 of 2018

### **THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL BENEFIT) (AMENDMENT NO.3) REGULATIONS, 2018**

In pursuance of section 35 of the Health Service (Benefit) Law, 1990, the Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No.3) Regulations, 2018 made by the Committee *for* Employment & Social Security on 17<sup>th</sup> April, 2018, are laid before the States.

#### **EXPLANATORY NOTE**

These Regulations add to the list of drugs that may be prescribed as pharmaceutical benefit.

These Regulations came into operation on 18<sup>th</sup> April, 2018.

The full text of the statutory instruments and other legislation included in this document can be found at <http://www.guernseylegalresources.gg/article/163343/2018>

## **THE EUROPEAN UNION (BREXIT) (BAILIWICK OF GUERNSEY) LAW, 2018**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The European Union (Brexit) (Bailiwick of Guernsey) Law, 2018", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

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

### **EXPLANATORY MEMORANDUM**

This Law is broadly equivalent in scope and purpose to the UK's European Union (Withdrawal) Bill. Because so much about the process of Brexit is still unsure and undecided, the Law has been drafted to provide as much legislative flexibility as possible for the Bailiwick. It has four primary purposes:

1. to repeal the European Communities (Bailiwick of Guernsey) Law, 1973 ("the 1973 Law"), and thus turn off the flow of European legislation which is directly applicable in the Bailiwick pursuant to Protocol 3 (see section 1);
2. to preserve in domestic law that directly applicable EU legislation which had effect in the Bailiwick immediately before exit day ("Preserved EU law") (see section 2), to avoid a legal black hole on exit day;
3. to provide a suitable mechanism to amend and repeal both Preserved EU law and other enactments at short notice where that is necessary and expedient in consequence of the repeal of the 1973 Law or otherwise in consequence of Brexit (see the regulation making power at section 5); and
4. to make appropriate provision in relation to the interpretation, and status, of EU law after exit (see sections 6 to 8).

In all of this, and in the transitional provision it makes in Schedule 1, it is broadly consistent with provision within the UK Withdrawal Bill.

The Law does not require the preparation of what purports to be a comprehensive list of Preserved EU law. Instead, at section 3(2) there is a more general power for the Policy & Resources Committee (after consultation with HM Procureur) to publish information relating to Preserved EU law. In this way, key examples of Preserved EU law can be published, and more comprehensive information could be published if that were thought appropriate.

In addition to the foregoing, the Law makes provision in respect of any Withdrawal Agreement that the UK may enter into with the EU and which has application in the Bailiwick. In this, it differs from the Withdrawal Bill; the UK has made clear that its intent is to legislate separately in respect of the Withdrawal Agreement once that Agreement has been finalised, in October or November. It would not be prudent for the Bailiwick to rely on taking the same approach, as it is likely that there would be insufficient time for a Projet to be prepared, passed through the three Island legislatures, and approved by the UK before Brexit day. Accordingly, the Law provides both for the possibility of a Withdrawal Agreement, with a transition period during which EU law continues to apply, and for there to be no such Agreement or period at all. In respect of circumstances in which there is a transition period under such an Agreement, the Law also provides a mechanism for providing that EU law which comes on stream in the Bailiwick during that transition period is Preserved EU law for the purposes of the Law.

Section 1 repeals the 1973 Law on exit day (defined as 11pm on 29 March 2019, or such other day as the Policy & Resources Committee may appoint by regulations) but also provides that regulations under section 5 can amend the 1973 Law before exit day. Section 2 preserves EU provisions (another defined term) in domestic law on exit day, subject to amendment by section 5 regulations and to the provisions of any enactment coming into force on or after exit day. Section 3 provides that such saved EU provisions are Preserved EU law. Section 4 is a 'for the avoidance of doubt' provision, making clear that Ordinances under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 ("the Implementation Law") and other enactments implementing EU provisions continue to have effect, notwithstanding the repeal of the 1973 Law.

Section 5 gives power to amend or repeal Preserved EU law and other enactments by regulation where that is necessary and expedient in consequence of the repeal of the 1973 Law or otherwise in consequence of Brexit. To provide for enhanced scrutiny and protection in respect of the exercise of this wide power, it sets out a process of certification by HM Procureur at subsection (3); this regulation making power sits with the relevant Alderney and Sark Committees where exercised solely in respect of those Islands. Sections 6 and 7 deal with the interpretation of legislation and other related matters after 'the designated day', which day is to be appointed by regulations made by the Policy & Resources Committee. If there is a transition period during which EU law continues to have effect, it is intended that the designated day will be the end of that transition period; if there is not, the designated day will simply be the same as exit day. Section 6 provides that a court may take account of relevant EU law on and after the designated day, but is not obliged to do so, and is not bound by that law, and makes some further specific provision. Section 7 provides that there is no right on or after the designated day to challenge any Preserved EU law on the grounds that before the designated day, the corresponding EU provision was invalid. Section 8 deals with the status of Preserved EU law in the context of the Human Rights (Bailiwick of

Guernsey) Law, 2000 and the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016.

Section 9 gives power to the States to make provision in relation to any Withdrawal Agreement (a defined term – see section 12), including provision equivalent to provision in the 1973 Law, thus enabling the States to provide for EU law to continue to have effect during a transition period. It also allows for such an Ordinance to provide that EU law which comes into force and is applicable in the Bailiwick during that period to be Preserved EU law. Section 10 deems the EU Charter of Fundamental Rights to be an EU provision for the purposes of the Implementation Law and thus susceptible to implementation by Ordinance under that Law. Section 11 makes provision in respect of Ordinances and regulations made under the Law; subsections (6) to (10) are concerned with regulations made under section 5. Section 12 is the interpretation section, section 13 gives effect to the two Schedules, and sections 14 and 15 deal with citation and commencement.

Schedule 1 contains consequential, transitional and saving provisions, including amendments to the 1973 Law and the 1994 Law. The amendments to the 1994 Law (paragraph 4) are consequential on provision made in this Law; the inserted definition of "EU provision" provides both for EU provisions (whether or not directly applicable in or binding upon the Bailiwick during any transition period) and items of Preserved EU law to be implemented by Ordinance under the 1994 Law, which will continue to be relevant in respect of items of Preserved EU law. The amendment to the 1973 Law (paragraph 3 and Schedule 2) is to bring the definition of the Treaties in that Law up to date, in order for there to be clarity on the face of the statute book in this regard. Paragraph 1 is concerned with ambulatory references ("...as amended from time to time") in EU provisions and how they should be read after exit day. Paragraph 2 makes provision in respect of how powers to make subordinate legislation should be read as applying in respect of Preserved EU law. Paragraph 5 is concerned with things being done (eg licences being issued) during the exit period, and paragraph 6 makes protective provision in respect of court and tribunal proceedings begun, and conduct which gives rise to any criminal liability occurring, before the designated day.

Schedule 2 contains the updated definition of "the EU Treaties".



# PROJET DE LOI

ENTITLED

## **The European Union (Brexit) (Bailiwick of Guernsey) Law, 2018**

### ARRANGEMENT OF SECTIONS

1. Repeal of the European Communities Law, 1973.
2. Saving for EU provisions on exit day.
3. Preserved EU law.
4. Status of Implementation Law and other enactments implementing EU provisions.
5. Power to disapply, amend etc. Preserved EU law and other provisions.
6. Interpretation of Preserved EU law, etc.
7. Challenges to validity of Preserved EU law.
8. Status of Preserved EU law.
9. Provision in respect of the withdrawal agreement.
10. Provision in respect of the EU Charter of Fundamental Rights.
11. General provisions as to Ordinances and regulations.
12. Interpretation.
13. Amendments to enactments and other consequential, transitional etc. provision.
14. Citation.
15. Commencement.

SCHEDULE 1: Consequential, transitional and saving provision.

SCHEDULE 2: Meaning of "the EU Treaties".

# PROJET DE LOI

ENTITLED

## **The European Union (Brexit) (Bailiwick of Guernsey) Law, 2018**

**THE STATES**, in pursuance of their Resolution of the 8<sup>th</sup> day of November, 2017<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### **Repeal of the European Communities Law, 1973.**

1. (1) The European Communities (Bailiwick of Guernsey) Law, 1973<sup>b</sup> ("**the 1973 Law**") is repealed on exit day.

(2) For the avoidance of doubt, regulations under section 5 may be made in respect of the 1973 Law before exit day.

### **Saving for EU provisions on exit day.**

2. Notwithstanding the repeal of the 1973 Law, any EU provision that

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<sup>a</sup> Article III of Billet d'État No. XXI of 2017.

<sup>b</sup> Ordres en Conseil Vol. XXIV, p. 87; amended by Vol. XXVII, p. 242; Vol. XXIX, pp. 127 and 419; Vol. XXXI, p. 278; Order in Council No. XXV of 2002; Recueil d'Ordonnances Tome XXVI, p. 316; Tome XXVIII, p. 79; Ordinance No. XLVII of 2001; No. XVIII of 2003; No. XXXIII of 2003; No. II of 2007; No. XIX of 2014; No. IX of 2016.

was directly applicable or otherwise had effect in, or was binding upon, the Bailiwick or any part thereof immediately before exit day continues so to have effect in the same way as immediately before exit day -

- (a) unless and until disapplied by regulations under section 5,
- (b) subject to such exceptions, adaptations and modifications as may be prescribed by regulations under section 5, and
- (c) subject to the provisions of any enactment coming into force on or after exit day.

**Preserved EU law.**

3. (1) In this Law, "**Preserved EU law**" means –

- (a) EU provisions which continue to have effect in the Bailiwick or any part thereof under section 2, and
- (b) EU provisions which have effect in the Bailiwick or any part thereof by virtue of an Ordinance made under section 9.

(2) The Policy & Resources Committee may from time to time, and after consultation with Her Majesty's Procureur, publish information (in such form as the Policy & Resources Committee thinks fit) relating to Preserved EU law, including (but not limited to) examples of Preserved EU law.

**Status of Implementation Law and other enactments implementing EU provisions.**

4. (1) Notwithstanding the repeal of the 1973 Law by section 1, and for the avoidance of doubt, the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994<sup>c</sup> ("**the Implementation Law**") continues to have effect.

(2) Accordingly -

(a) sections 1 and 4 of the Implementation Law (implementation of EU provisions and general provisions as to Ordinances) continue to have effect, and

(b) any Ordinance made under those sections and in force immediately before exit day, continues to have effect in the same way as immediately before exit day -

(i) unless and until amended or repealed by -

(A) a further Ordinance under that Law,

(B) regulations under section 5, or

(C) an Ordinance under the European Union (Amendment of Legislation) (Bailiwick of Guernsey) Law, 2018<sup>d</sup>,

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<sup>c</sup> Ordres en Conseil Vol. XXXV(1), p. 65.

<sup>d</sup> Order in Council No. \* of 2018.

- (ii) subject to such exceptions, adaptations and modifications as may be prescribed by regulations under section 5, and
- (iii) subject to the provisions of any enactment coming into force on or after exit day.

(3) Notwithstanding the repeal of the 1973 Law by section 1, and for the avoidance of doubt, any enactment other than the Implementation Law in force immediately before exit day which implemented any EU provision in the Bailiwick, or any part thereof, continues to have effect, in the same way as immediately before exit day -

- (a) unless and until amended or repealed by regulations under section 5,
- (b) subject to such exceptions, adaptations and modifications as may be prescribed by regulations under section 5, and
- (c) subject to the provisions of any enactment coming into force on or after exit day.

**Power to disapply, amend etc. Preserved EU law and other provisions.**

5. (1) For the purpose set out in subsection (2), and subject to subsection (3), the relevant Committee may by regulation -

- (a) provide for the disapplication of any Preserved EU law,
- (b) provide that any Preserved EU law shall have effect subject to such exceptions, adaptations and modifications as may be prescribed by the regulations,
- (c) amend or repeal any enactment (including this Law), or
- (d) provide that any enactment shall have effect subject to such exceptions, adaptations and modifications as may be prescribed by the regulations.

(2) The purpose is to make provision which is necessary or expedient in consequence of the repeal of the 1973 Law or otherwise in consequence of the withdrawal of the United Kingdom from the EU.

(3) The relevant Committee has no power to make regulations under this section unless Her Majesty's Procureur has certified that -

- (a) their enactment satisfies the purpose set out in subsection (2), and is necessary or expedient in the public interest, and
- (b) they are compatible with Convention rights, and do not otherwise contravene any international obligation of the United Kingdom binding on the Bailiwick (or any part thereof).

(4) The "**relevant Committee**" means, in relation to -

(a) Preserved EU law, or

(b) an enactment,

applying -

(i) in Alderney only, the Alderney Committee,

(ii) in Sark only, the Sark Committee, and

(iii) in any other case, the Policy & Resources Committee.

**Interpretation of Preserved EU law, etc.**

6. (1) On and after the designated day, the principle of the supremacy of EU law shall not apply to any Preserved EU law, enactment or rule of law including, for the avoidance of doubt, any enactment or rule of law approved or made before the designated day.

(2) On or after the designated day, a court, tribunal or other public authority may take account of –

(a) principles laid down or decisions made by the European Court, and

(b) general principles of EU law,

which are relevant to the proper interpretation of Preserved EU law, but is not bound by those principles or decisions.

(3) Without prejudice to subsection (2) -

- (a) no right of action accrues in domestic law on or after the designated day based on a failure to comply with any of the general principles of EU law,
- (b) no liability to damages based on the decision of the European Court in *Francovich v. Italy*<sup>e</sup> (or any other decision of the European Court specified for this purpose in regulations made by the Policy & Resources Committee) shall be incurred by the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, or by any of their respective committees, members, officers or servants, for any loss or damage arising or suffered on or after the designated day, and
- (c) no court or tribunal or other public authority may, on or after the designated day -
  - (i) disapply or quash any enactment or other rule of law, or,

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<sup>e</sup> *Francovich and Bonifaci v Republic of Italy* (Cases C-6/90 and C-9/90) [1991] ECR I-05357.

- (ii) quash any conduct or otherwise decide that it is unlawful,

on the ground that it is incompatible with any of the general principles of EU law.

**Challenges to validity of Preserved EU law.**

7. (1) Subject to subsection (2), there is no right on or after the designated day to challenge any Preserved EU law on the basis that, immediately before the designated day, the corresponding EU provision was invalid.

(2) Subsection (1) does not apply so far as -

- (a) the European Court has decided that the provision was invalid, or
- (b) the challenge is of a kind provided for in regulations made by the Policy & Resources Committee.

**Status of Preserved EU law.**

8. (1) An item of Preserved EU law is deemed to be primary legislation for the purposes of sections 3, 4 and 6 of the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>f</sup>.

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<sup>f</sup> Order in Council No. XIV of 2000; amended by Order in Council No. I of 2005; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. XX of 2015; No. IX of 2016; and G.S.I. No. 27 of 2006.

(2) An item of Preserved EU law is deemed to be an enactment for the purposes of the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016<sup>8</sup>.

**Provision in respect of the withdrawal agreement.**

9. (1) The States of Deliberation may by Ordinance make such provision as they see fit in connection with the withdrawal agreement including, without limitation, any provision corresponding to that made in the 1973 Law.

(2) For the avoidance of doubt, an Ordinance made under subsection (1) may provide that EU provisions coming into force in the EU after exit day, which are directly applicable or otherwise have effect in or are binding upon the Bailiwick, or any part thereof, in consequence of the withdrawal agreement, are also Preserved EU law for the purposes of this Law.

**Provision in respect of the EU Charter of Fundamental Rights.**

10. Without prejudice to section 2, the EU Charter of Fundamental Rights shall be deemed to be an EU provision, and section 1 of the Implementation Law applies to it accordingly.

**General provisions as to Ordinances and regulations.**

11. (1) An Ordinance or regulations under this Law -

- (a) may be amended or repealed by a subsequent Ordinance or regulations hereunder (as the case may be),

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<sup>8</sup> Order in Council No. \* of 2018.

(b) may contain such consequential, incidental, supplementary, transitional, savings and other ancillary provisions as may appear to be necessary or expedient, including (without limitation) -

- (i) provision as to the creation and punishment of offences in respect of contraventions of the Ordinance or regulation and as to the creation of new duties, obligations, liabilities, remedies, penalties, sanctions and other consequences (but subject to the provisions of subsection (2)),
- (ii) provision amending, or applying exceptions, adaptations and modifications to, any of the provisions of this Law or any other enactment,
- (iii) provision repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law.

(2) The power conferred by subsections (1)(b)(i) and (4)(g) and by any other provision of this Law to make provision as to the creation and punishment of offences does not include power -

- (a) to provide for offences to be triable only on indictment,
- (b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being

imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008<sup>h</sup>, or

- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

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

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases, and
- (b) so as to make, as respects the cases in relation to which it is exercised -
  - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
  - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

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<sup>h</sup> Order in Council No. XVIII of 2009; amended by Ordinance No. XXII of 2009; No. IX of 2016.

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

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

- (a) may empower any committee of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, and any other body (including, without limitation, the Royal Court and any other court of the Bailiwick), to make or issue orders, rules, regulations, codes or guidance, for the purposes of this Law or any Ordinance or regulations made under it,
- (b) may provide that no liability shall be incurred by any specified person or body in respect of anything done or omitted to be done in the discharge or purported discharge of any of their functions under the Ordinance or regulations unless the thing is done or omitted to be done in bad faith (but may not prevent an award of damages in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000),
- (c) may make provision for the purpose of dealing with matters arising out of or related to any EU provision or Preserved EU law,

- (d) may direct that any EU provision or any enactment shall extend to or otherwise have effect in the part of the Bailiwick to which the Ordinance or regulations apply with such exceptions, adaptations and modifications as may be specified in the Ordinance or regulations,
- (e) without prejudice to the provisions of paragraph (d), may make provision by reference to, and may adopt or incorporate (by reference, annexation or otherwise), any provision or enactment described in paragraph (d), which provision shall (subject to any exceptions, adaptations and modifications specified in the Ordinance or regulations) thereupon have the same force and effect as an Ordinance or regulations under this Law,
- (f) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force,
- (g) may in the case of an Ordinance of the States of Deliberation or regulations of the Policy & Resources Committee specify penalties, in relation to offences tried before the Court of Alderney or the Court of the Seneschal, exceeding the limits of jurisdiction for the time being imposed on those courts by section 13 of the

Government of Alderney Law, 2004<sup>i</sup> or (as the case may be) section 11 of the Reform (Sark) Law, 2008<sup>j</sup>,

- (h) where it is an Ordinance of the States of Alderney or the Chief Pleas of Sark, may not specify a penalty in respect of an offence triable summarily or on indictment which exceeds the maximum penalty specified by Ordinance of the States of Deliberation in respect of that offence when tried summarily or, as the case may be, on indictment, or the limits of jurisdiction for the time being imposed upon the Court of Alderney by section 13 of the Government of Alderney Law, 2004 or (as the case may be) the Court of the Seneschal by section 11 of the Reform (Sark) Law, 2008, whichever is greater, and
- (i) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by Projet de Loi other than any provision which imposes or increases taxation or which takes effect from a date earlier than that of the making of the Ordinance or regulations.

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<sup>i</sup> Order in Council No. III of 2005; amended by No. XXII of 2010; No. XI of 2012; No. V of 2014; Alderney Ordinance No. IX of 2016.

<sup>j</sup> Order in Council No. V of 2008; amended by Nos. VI and XXVII of 2008; No. XIV of 2010; No. XII of 2011; No. XI of 2014; No. IX of 2016; No. II of 2018; Sark Ordinance Nos. II and VI of 2015; No. XI of 2017.

(5) For the purposes of paragraphs (d) and (e) of subsection (4) only, "**enactment**" includes an Act of Parliament and an Order in Council.

(6) Where the Policy & Resources Committee proposes to make regulations under section 5 applying in Alderney or Sark, it shall consult -

(a) the Alderney Committee, or

(b) the Sark Committee,

as the case may be; but, subject to subsection (7), a failure to comply with this subsection shall not invalidate any regulations made under this section.

(7) Regulations made under section 5 by the Policy & Resources Committee applying in Alderney or Sark cease to have effect -

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

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

(8) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of regulations in accordance with subsection (7), the regulations cease to have effect in Alderney or (as the case may be) Sark, but without prejudice to -

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

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

(9) In subsection (7), "**approval date**", in relation to regulations, means the date of their enactment by the Policy & Resources Committee.

(10) Regulations of the relevant Committee under section 5 shall be laid before a meeting of -

(a) the States of Deliberation, where the regulations are made by the Policy & Resources Committee,

(b) the States of Alderney, where the regulations are made by the Alderney Committee, or

(c) the Chief Pleas of Sark, where the regulations are made by the Sark Committee,

as soon as possible after being made; and if at that or the next meeting the States of Deliberation, the States of Alderney or (as the case may be) the Chief Pleas of Sark resolve that the regulations be annulled, the regulations shall cease to have effect but without prejudice to anything done under them or to the making of new regulations.

**Interpretation.**

12. (1) In this Law, unless the contrary intention appears -

**"the 1973 Law"** : see section 1(1),

**"the Alderney Committee"** means the Policy and Finance Committee of the States of Alderney or such other Committee as the States of Alderney may appoint by Ordinance for the purposes of this Law,

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

**"committee"** of the States of Guernsey, States of Alderney or Chief Pleas of Sark means any committee, council, department, authority, board or like body thereof, however called,

**"Convention rights"** has the meaning given in section 1 of the Human Rights (Bailiwick of Guernsey) Law, 2000,

**"the designated day"** means such day and time as the Policy & Resources Committee may by regulations appoint,

**"enactment"** includes any Law, Ordinance and any subordinate legislation,

**"the EEA"** means the European Economic Area,

**"the EU"** means the European Union, being the Union established by the Treaty on European Union signed at Maastricht on 7<sup>th</sup> February 1992 (as amended by any later Treaty),

**"the EU Charter of Fundamental Rights"** means the Charter of Fundamental Rights of the European Union of 7<sup>th</sup> December 2000, as adapted at Strasbourg on 12<sup>th</sup> December 2007,

**"EU instrument"** means any instrument issued by the EU or by an institution of the EU,

**"EU provision"** means -

- (a) any provision contained in or arising under the EU Treaties or any EU instrument, and
- (b) any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under the EU Treaties,

and is deemed to include the EU Charter of Fundamental Rights,

**"the EU Treaties"** has the meaning given in Schedule 2 to this Law,

**"Euratom"** means the European Atomic Energy Community, being the Community established by the Treaty establishing the European Atomic Energy Community signed at Rome on 25<sup>th</sup> March 1957 (as amended by any later Treaty),

**"the European Court"** means the Court of Justice of the European Union,

**"exit day"** means 11pm on 29<sup>th</sup> March, 2019, or such other day and time as the Policy & Resources Committee may by regulations appoint,

**"Her Majesty's Procureur"** includes Her Majesty's Comptroller,

**"implementation"**, in relation to an EU provision, includes the enforcement or enactment of the provision, and the securing of the administration, execution, recognition, exercise or enjoyment of the provision, in or under domestic law, and **"implement"** and related expressions shall be construed accordingly,

**"the Implementation Law"** : see section 4(1),

**"the Policy & Resources Committee"** means the Policy & Resources Committee of the States of Guernsey or such other Committee as the States of Deliberation may appoint by Ordinance for the purposes of this Law,

**"Preserved EU law"** : see section 3,

**"public authority"** has the meaning given in section 6 of the Human Rights (Bailiwick of Guernsey) Law, 2000,

**"relevant Committee"** : see section 5(4),

**"the Sark Committee"** means the Policy and Performance Committee of the Chief Pleas of Sark or such other Committee as the Chief Pleas of Sark may appoint by Ordinance for the purposes of this Law,

**"subordinate legislation"** means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance, and

**"the withdrawal agreement"** means -

- (a) an agreement (whether or not ratified) between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union<sup>k</sup> which sets out the arrangements for the United Kingdom's withdrawal from the EU,
- (b) an agreement (whether or not ratified) between the United Kingdom and the EU in respect of the withdrawal of the United Kingdom from the European Atomic Energy Community,
- (c) any other arrangements that may be agreed in respect of the withdrawal of the United Kingdom from the EU or the European Atomic Energy Community (including without limitation any arrangements having effect during, or giving effect to, any transitional or implementation period of that withdrawal).

(2) Any reference in this Law to an enactment -

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<sup>k</sup> The Treaty on European Union signed at Maastricht on 7<sup>th</sup> February 1992, as amended by the Treaty signed at Amsterdam on 2<sup>nd</sup> October 1997, the Treaty signed at Nice on 26<sup>th</sup> February 2001 and the Treaty signed at Lisbon on 13<sup>th</sup> December 2007.

(a) is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied, and

(b) includes a provision or portion of that enactment.

(3) References in this Law to the Alderney Committee and to the Sark Committee are references to the committees for the time being exercising the functions conferred by or under this Law on the Alderney Committee or (as the case may be) on the Sark Committee.

**Amendments to enactments and other consequential, transitional etc. provision.**

13. Schedule 1 (Consequential, transitional and saving provision), including the amendments set out there to the 1973 Law and the Implementation Law, and Schedule 2 (Meaning of "the EU Treaties"), have effect.

**Citation.**

14. This Law may be cited as the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018.

**Commencement.**

15. This Law shall come into force on the day appointed by Ordinance of the States of Deliberation; and different days may be appointed for different provisions of this Law or for different purposes.

## SCHEDULE 1

### Section 13

#### CONSEQUENTIAL, TRANSITIONAL AND SAVING PROVISION

##### *General consequential provision*

##### **Existing ambulatory references.**

1. (1) Any reference which, immediately before exit day -
  - (a) exists in any enactment or any EU provision which is to form part of Preserved EU law, and
  - (b) is a reference to any EU provision (as it has effect from time to time) which is to form part of Preserved EU law,

is to be read, on and after exit day, as a reference to the EU provision as it forms part of Preserved EU law and, unless the contrary intention appears, as modified or amended from time to time by an enactment or an item of Preserved EU law.

- (2) Any reference which, immediately before exit day -
  - (a) exists in any enactment or any EU provision which is to form part of Preserved EU law, and
  - (b) is a reference to any EU provision (as it has effect from time to time) which is not to form part of Preserved EU law,

is to be read, on and after exit day, as a reference to the EU provision as it has effect immediately before exit day.

(3) Subparagraphs (1) and (2) are subject to any other provision made by or under this Law or any other enactment.

**Powers to make subordinate legislation.**

2. (1) Any power to make or approve subordinate legislation which was conferred before exit day is to be read, on or after exit day, and so far as the context permits or requires, as being capable of being exercised to amend (or, as the case may be, result in the amendment of) any Preserved EU law.

(2) Any power to make or approve subordinate legislation which, immediately before exit day, is subject to an implied restriction that it is exercisable only compatibly with EU law is to be read on and after exit day without that restriction or any corresponding restriction in relation to compatibility with Preserved EU law.

(3) Any power to make or approve subordinate legislation which is conferred on or after exit day may, so far as the context permits or requires, be exercised so as to amend any Preserved EU law.

(4) Subparagraphs (1) to (3) are subject to any other provision made by or under this Law or any other enactment.

*Specific consequential provision*

**The 1973 Law.**

3. (1) The 1973 Law is amended as follows.

(2) In section 1(1), in the definition of ""**the Treaties**" or "**the Community Treaties**""", for paragraph (a) to the end substitute subparagraphs (a) to (u) of paragraph 1 of Schedule 2.

#### **The Implementation Law.**

4. (1) The Implementation Law is amended as follows.

(2) In the heading of section 1, for "Community provisions" substitute "EU provisions", and in section 1 for "Community provision" substitute "EU provision".

(3) Section 2 (Power to amend European Communities Law) is repealed.

(4) In section 3(1), for the definition of "Community provision", substitute -

""**EU provision**" has the meaning given in the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018, and includes an item of Preserved EU law within the meaning of that Law,"

and in the definition of "implementation", for "Community provision" substitute "EU provision".

#### *Transitional and saving provision*

#### **Continuation of existing acts, etc.**

5. (1) Anything done -

- (a) in connection with anything which continues to be, or forms part of, domestic law by virtue of –
  - (i) section 2 or an Ordinance made under section 9 (Preserved EU law), or
  - (ii) section 4,
- (b) for the purpose mentioned in section 1 of the Implementation Law, or
- (c) for a purpose otherwise related to the EU, the EEA or Euratom,

if in force or effective immediately before exit day, continues to be in force or effective on or after exit day in the same way as immediately before exit day.

(2) Anything in the process of being lawfully done immediately before exit day in connection with anything mentioned in subparagraph (1)(a), or for the purposes mentioned in subparagraph (1) (b) and (c), may continue to be done on or after exit day in the same way as immediately before exit day.

(3) Subparagraphs (1) and (2) are subject to any other provision made by or under this Law or any other enactment.

(4) References in this paragraph to things being done include references to anything omitted to be done.

**Existing EU Law.**

6. (1) Sections 6(3) and 7 do not apply in relation to -
- (a) any proceedings begun, but not finally decided, before a court or tribunal in the Bailiwick before the designated day, and
  - (b) any conduct which occurred before the designated day which gives rise to any criminal liability.

(2) Section 6(3)(b) does not apply in relation to any decision of a court or tribunal, or other public authority, on or after the designated day which is a necessary consequence of any decision of a court or tribunal made before the designated day.

## SCHEDULE 2

### Section 13

#### MEANING OF "THE EU TREATIES"

1. In this Law, "**the EU Treaties**" means, subject to paragraph 2, the pre-accession treaties described in paragraph 4, taken with -

- (a) the treaty relating to the accession of the United Kingdom to the European Economic Community and to the European Atomic Energy Community, signed at Brussels on the 22<sup>nd</sup> January 1972, and
- (b) the decision, of the same date, of the Council of the European Communities ("**the Council**") relating to the accession of the United Kingdom to the European Coal and Steel Community, and
- (c) the treaty relating to the accession of the Hellenic Republic to the European Economic Community and to the European Atomic Energy Community, signed at Athens on 28<sup>th</sup> May 1979, and
- (d) the decision, of 24<sup>th</sup> May 1979, of the Council relating to the accession of the Hellenic Republic to the European Coal and Steel Community, and
- (e) the decisions of the Council of 7 May 1985, 24<sup>th</sup> June 1988, 31<sup>st</sup> October 1994, 29<sup>th</sup> September 2000 and 7<sup>th</sup> June 2007 on the Communities' system of own resources, and the decision

of the Council of 26<sup>th</sup> May 2014 on the EU's system of own resources, and

- (f) the treaty relating to the accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community and to the European Atomic Energy Community, signed at Lisbon and Madrid on 12<sup>th</sup> June 1985, and
- (g) the decision, of 11<sup>th</sup> June 1985, of the Council relating to the accession of the Kingdom of Spain and the Portuguese Republic to the European Coal and Steel Community, and
- (h) the following provisions of the Single European Act signed at Luxembourg and The Hague on 17<sup>th</sup> and 28<sup>th</sup> February 1986, namely Title II (amendment of the treaties establishing the Communities) and, so far as they relate to any of the Communities or any Community institution, the preamble and Titles I (common provisions) and IV (general and final provisions), and
- (i) Titles II, III and IV of the Treaty on European Union signed at Maastricht on 7<sup>th</sup> February 1992, together with the other provisions of the Treaty so far as they relate to those Titles, and the Protocols adopted at Maastricht on that date and annexed to the Treaty establishing the European Community with the exception of the Protocol on Social Policy on page 117 of Cm 1934, and

- (j) the decision, of 1<sup>st</sup> February 1993, of the Council amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20<sup>th</sup> September 1976, and
- (k) the Agreement on the European Economic Area signed at Oporto on 2<sup>nd</sup> May 1992 together with the Protocol adjusting that Agreement signed at Brussels on 17<sup>th</sup> March 1993, and
- (l) the treaty concerning the accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union, signed at Corfu on 24<sup>th</sup> June 1994, and
- (m) the following provisions of the Treaty signed at Amsterdam on 2<sup>nd</sup> October 1997 amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts -
  - (i) Articles 2 to 9,
  - (ii) Article 12, and
  - (iii) the other provisions of the Treaty so far as they relate to those Articles,

and the Protocols adopted on that occasion other than the Protocol on Article J.7 of the Treaty on European Union, and

(n) the following provisions of the Treaty signed at Nice on 26<sup>th</sup> February 2001 amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts -

(i) Articles 2 to 10, and

(ii) the other provisions of the Treaty so far as they relate to those Articles,

and the Protocols adopted on that occasion; and any other treaty entered into by the EU (except in so far as it relates to, or could be applied in relation to, the Common Foreign and Security Policy), with or without any of the member States, or entered into, as a treaty ancillary to any of the Treaties, by the United Kingdom, and

(o) the treaty concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union, signed at Athens on 16<sup>th</sup> April 2003, and

(p) the treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union, signed at Luxembourg on 25<sup>th</sup> April 2005, and

- (q) the Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community signed at Lisbon on 13<sup>th</sup> December 2007 (together with its Annex and protocols), excluding any provision that relates to, or in so far as it relates to or could be applied in relation to, the Common Foreign and Security Policy, and
- (r) the Protocol amending the Protocol (No 36) on transitional provisions annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community, signed at Brussels on 23<sup>rd</sup> June 2010, and
- (s) the treaty concerning the accession of the Republic of Croatia to the European Union, signed at Brussels on 9<sup>th</sup> December 2011,
- (t) the Protocol on the concerns of the Irish people on the Treaty of Lisbon, adopted at Brussels on 16<sup>th</sup> May 2012, and
- (u) any other treaty specified by Ordinance of the States of Deliberation.

2. If Her Majesty by Order in Council made in accordance with the provisions of section 1(3) of the European Communities Act 1972 declares that a treaty specified in the Order is to be regarded as one of the EU Treaties as defined in that Act, the Order shall be conclusive that it is to be regarded as one of the EU Treaties as herein defined; but a treaty entered into by the United Kingdom after the

22<sup>nd</sup> January 1972, other than a pre-accession treaty to which the United Kingdom acceded on terms settled on or before that date, shall not be regarded as one of the EU Treaties as herein defined unless it is so specified.

3. For the purposes of paragraphs 1 and 2, "**treaty**" includes any international agreement, and any protocol or annex to a treaty or international agreement.

4. The pre-accession treaties are -

- (a) the "E.C.S.C. Treaty", that is to say, the Treaty establishing the European Coal and Steel Community, signed at Paris on the 18<sup>th</sup> April 1951,
- (b) the "E.E.C. Treaty", that is to say, the Treaty establishing the European Economic Community, signed at Rome on the 25<sup>th</sup> March 1957,
- (c) the "Euratom Treaty", that is to say, the Treaty establishing the European Atomic Energy Community, signed at Rome on the 25<sup>th</sup> March 1957,
- (d) the Convention on certain Institutions common to the European Communities, signed at Rome on the 25<sup>th</sup> March 1957,
- (e) the Treaty establishing a single Council and a single Commission of the European Communities, signed at Brussels on the 8<sup>th</sup> April 1965,

- (f) the Treaty amending certain Budgetary Provisions of the Treaties establishing the European Communities and of the Treaty establishing a single Council and a single Commission of the European Communities, signed at Luxembourg on the 22<sup>nd</sup> April 1970,
- (g) any treaty entered into before the 22<sup>nd</sup> January 1972 by any of the Communities (with or without any of the member States) or, as a treaty ancillary to any treaty included in this Part of this Schedule, by the member States (with or without any other country).

**THE INTERNATIONAL TRADE AGREEMENTS (IMPLEMENTATION)  
(BAILIWICK OF GUERNSEY) LAW, 2018**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The International Trade Agreements (Implementation) (Bailiwick of Guernsey) Law, 2018", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

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

**EXPLANATORY MEMORANDUM**

As a result of the UK's withdrawal from the European Union, the Bailiwick of Guernsey requires a suitable mechanism to implement any international trade agreements to which it is a party, whether due to its inclusion by the UK or in its own right. It may also wish to implement such agreements in the future where there is no connection with the UK's withdrawal. The purpose of this enabling Law is to provide that mechanism.

Section 1 of the Law permits the States of Deliberation (in relation to Guernsey and the Bailiwick as a whole) and the States of Alderney and the Chief Pleas of Sark (in relation to their respective islands) to enact Ordinances where it is necessary or expedient for the purpose of implementing any international trade agreement or resolving trade disputes arising from an international trade agreement. Section 2 makes general provision in respect of Ordinances made under section 1, and the remaining sections deal with interpretation, citation and commencement.

The Law defines an "international trade agreement" as a free trade agreement, any other international agreement that relates to trade, and the Agreement on Government Procurement of the World Trade Organisation.



# PROJET DE LOI

ENTITLED

## **The International Trade Agreements (Implementation) (Bailiwick of Guernsey) Law, 2018**

**THE STATES**, in pursuance of their Resolution of the 8<sup>th</sup> day of November, 2017<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### **Implementation of international trade agreements.**

1. (1) The States may by Ordinance make such provision as they consider necessary or expedient for the purpose of -

(a) the implementation of any international trade agreement or any provision thereof, and

(b) the resolution of trade disputes arising under international trade agreements.

(2) In this Law, "**international trade agreement**" means -

(a) a free trade agreement,

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<sup>a</sup> Article III of Billet d'État No. XXI of 2017.

- (b) any other international agreement that relates to trade, whether or not acceded to or ratified by the United Kingdom on behalf of the Bailiwick, specified for the purposes of this Law by Ordinance of the States, or
- (c) the Agreement on Government Procurement signed at Marrakesh on 15<sup>th</sup> April 1994 (as modified from time to time).

**General provisions as to Ordinances.**

- 2. (1) An Ordinance under this Law -
  - (a) may be amended or repealed by a subsequent Ordinance hereunder,
  - (b) may contain such consequential, incidental, supplementary, transitional, savings and other ancillary provisions as may appear to be necessary or expedient, including (without limitation) -
    - (i) provision as to the creation and punishment of offences in respect of contraventions of the Ordinance and as to the creation of new duties, obligations, liabilities, remedies, penalties, sanctions and other consequences (but subject to the provisions of subsection (2)),
    - (ii) provision amending, or applying exceptions,

adaptations and modifications to, any of the provisions of this Law or any other enactment,

- (iii) provision repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law.

(2) The power conferred by subsection (1)(b)(i) and (4)(g) does not include power -

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

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

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<sup>b</sup> Order in Council No. XVIII of 2009; amended by Ordinance No. XXII of 2009; No. IX of 2016.

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

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

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

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

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

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

(a) may empower any committee of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, and any other body (including, without limitation, the Royal Court and any other court of the Bailiwick), to make or issue orders, rules, regulations, codes or guidance, for the purposes of this Law or any

Ordinance or regulations made under it,

- (b) may provide that no liability shall be incurred by any specified person or body in respect of anything done or omitted to be done in the discharge or purported discharge of any of their functions under the Ordinance unless the thing is done or omitted to be done in bad faith (but may not prevent an award of damages in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>c</sup>),
- (c) may make provision for the purpose of dealing with matters arising out of or related to any international trade agreement or any provision thereof,
- (d) may direct that any international trade agreement or any provision thereof, or any enactment, shall extend to or otherwise have effect in the part of the Bailiwick to which the Ordinance applies with such exceptions, adaptations and modifications as may be specified in the Ordinance,
- (e) without prejudice to the provisions of paragraph (d), may make provision by reference to, and may adopt or

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<sup>c</sup> Order in Council No. XIV of 2000; amended by Order in Council No. I of 2005; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. XX of 2015; No. IX of 2016; G.S.I. No. 27 of 2006.

incorporate (by reference, annexation or otherwise), any international trade agreement or any provision thereof, or any enactment, which agreement, provision or enactment shall (subject to any exceptions, adaptations and modifications specified in the Ordinance) thereupon have the same force and effect as an Ordinance under this Law,

- (f) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force,
- (g) may, in the case of an Ordinance of the States of Deliberation, specify penalties, in relation to offences tried before the Court of Alderney or the Court of the Seneschal, exceeding the limits of jurisdiction for the time being imposed on those courts by section 13 of the Government of Alderney Law, 2004<sup>d</sup> or (as the case may be) section 11 of the Reform (Sark) Law, 2008<sup>e</sup>,
- (h) where it is an Ordinance of the States of Alderney or the Chief Pleas of Sark, may not specify a penalty in respect of an offence triable summarily or on

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<sup>d</sup> Order in Council No. III of 2005; amended by No. XXII of 2010; No. XI of 2012; No. V of 2014; Alderney Ordinance No. IX of 2016.

<sup>e</sup> Order in Council No. V of 2008; amended by Nos. VI of 2008 and XXVII of 2008; No. XIV of 2010; No. XII of 2011; No. XI of 2014; No. IX of 2016; No. II of 2018; Sark Ordinance Nos. II and VI of 2015; No. XI of 2017.

indictment which exceeds the maximum penalty specified by Ordinance of the States of Deliberation in respect of that offence when tried summarily or, as the case may be, on indictment or the limits of jurisdiction for the time being imposed upon the Court of Alderney by section 13 of the Government of Alderney Law, 2004 or (as the case may be) the Court of the Seneschal by section 11 of the Reform (Sark) Law, 2008, whichever is greater, and

- (i) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by Projet de Loi other than any provision which imposes or increases taxation or which takes effect from a date earlier than that of the making of the Ordinance.

(5) For the purposes of paragraphs (d) and (e) of subsection (4) only, "**enactment**" includes an Act of Parliament and an Order in Council.

(6) An Ordinance made under this Law by the States of Deliberation applying in Alderney or Sark ceases to have effect -

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

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

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

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

(8) In subsection (6), "**approval date**", in relation to an Ordinance, means the date of its approval by the States of Deliberation.

### **Interpretation.**

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

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

"**committee**" of the States of Guernsey, States of Alderney or Chief Pleas of Sark means any committee, council, department, authority, board or like body thereof, however called,

"**enactment**" means any Law, Ordinance or subordinate legislation,

**"free trade agreement"** means an agreement that is or was notifiable under -

- (a) paragraph 7(a) of Article XXIV of GATT, or
- (b) paragraph 7(a) of Article V of GATS,

**"GATS"** means the General Agreement on Trade in Services, part of Annex 1B to the WTO Agreement (as modified from time to time),

**"GATT"** means the General Agreement on Tariffs and Trade, part of Annex 1A to the WTO Agreement (as modified from time to time),

**"implementation"** of an international trade agreement or any provision thereof includes the enforcement or enactment of the agreement or provision, and the securing of the administration, execution, recognition, exercise or enjoyment of the agreement or provision, in or under domestic law, and without limitation includes any step that is preparatory to implementation,

**"international agreement"** means any convention, treaty, protocol, memorandum or other international instrument,

**"international trade agreement"** : see section 1(2),

**"provision"** of an international trade agreement includes -

- (a) any provision contained in or arising under the agreement, and

- (b) any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under the agreement,

**"the States"** means -

- (a) in relation to an Ordinance having effect in Alderney only, the States of Alderney,
- (b) in relation to an Ordinance having effect in Sark only, the Chief Pleas of Sark, and
- (c) in any other case, the States of Deliberation,

**"subordinate legislation"** means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance, and

**"the WTO Agreement"** means the agreement establishing the World Trade Organisation signed at Marrakesh on 15<sup>th</sup> April, 1994.

(2) Any reference in this Law to an enactment -

- (a) is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied, and

- (b) includes a provision or portion of that enactment.

**Citation.**

4. This Law may be cited as the International Trade Agreements (Implementation) (Bailiwick of Guernsey) Law, 2018.

**Commencement.**

5. This Law shall come into force on the day appointed by Ordinance of the States of Deliberation; and different days may be appointed for different provisions of this Law or for different purposes.

**THE INCOME SUPPORT (IMPLEMENTATION) (AMENDMENT) ORDINANCE, 2018**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Support (Implementation) (Amendment) Ordinance, 2018", and to direct that the same shall have effect as an Ordinance of the States.

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

**EXPLANATORY MEMORANDUM**

This Ordinance amends the Supplementary Benefit (Implementation) Ordinance, 1971, which is to be renamed as the Income Support (Implementation) Ordinance, 1971, from 6<sup>th</sup> July, 2018. The amendments implement the main changes to supplementary benefit (renamed income support) approved by the States in March, 2016 and February, 2018 as part of the package of reforms originally proposed by the Social Welfare Benefits Investigation Committee in 2016.

New short term and long term weekly requirement rates for the assessment of income support are set out in inserted Tables 2 and 3 in the Schedule to the Ordinance. In general terms short term rates are decreased but long term rates, for longer term claimants, are increased and allowances, related to the calculation of a claimant's requirements, are generally increased.

The Ordinance also makes amendments affecting those entitled to have their claims assessed under the higher long term requirement rates. It allows claimants who have reached pensionable age or who are disabled and deemed to be acting in compliance with all work requirements relating to them by reason of their disability to have their claims assessed under the higher long term requirement rates from the date of their claim rather than only after claiming benefit for 6 months (section 7(b)). Persons whose income and other resources are in excess of their short term requirement rates (so that they would receive no income support) but whose income and other resources are less than their long term requirement rates, will also be entitled to be paid at the long term rate 6 months after the date of their claim (section 7(c)). At present there is only a power for such persons to be paid supplementary benefit.

Other amendments are made in relation to allowances which affect the calculation of a claimant's requirement rates. Where a claimant is a non-dependant adult living in the household of another person, their rent allowance is increased from a maximum of £15 to a maximum of £75 (section 8(a)) and where the claimant is a householder the rent allowance provisions are amended to provide for an assumed contribution from

non-dependent adults living in the household of the claimant of £75 a week (section 8(c)).

The maximum rent allowances for householders are also extended to cover categories of person with children (section 8(d) and the new maximum weekly rent allowances for the extended categories in Table 4 in the Schedule to the Ordinance).

Capital allowances are significantly increased so that amounts are disregarded in calculating resources unless they exceed the amounts in Table 6 in the Schedule to the Ordinance (see also section 10). However, a person shall be treated as having no requirements where their capital resources exceed those amounts (section 4). The provisions treating income derived from capital resources as equivalent to weekly income are repealed (section 11).

Provision is made for a new extra-needs allowance, adding additional costs for energy, laundry or clothing or food or diet, in calculating the requirement rates for disabled persons not in receipt of severe disability benefit (section 9 and new Table 5 in the Schedule to the Ordinance).

The Ordinance raises the amount of earnings per week which are disregarded for the purposes of calculating the resources of claimants from £30 to £35 per week (section 12). Other consequential amendments are made to other parts of the 1971 Ordinance.

The opportunity has also been taken to repeal certain amending Ordinances the provisions of which have now being wholly replaced by later amending Ordinances (section 15).

# **The Income Support (Implementation) (Amendment) Ordinance, 2018**

**THE STATES**, in pursuance of their Resolutions of the 16<sup>th</sup> March, 2016 and the 28<sup>th</sup> February, 2018<sup>a</sup>, and in exercise of the powers conferred on them by sections 3(2) and (4), 15 and 15B of the Income Support (Guernsey) Law, 1971<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

## **Amendment of the Income Support (Implementation) Ordinance, 1971.**

1. The Income Support (Implementation) Ordinance, 1971<sup>c</sup> is amended as follows.

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<sup>a</sup> Article IX of Billet d'État No. VII of 2016 and Article V of Billet d'État No. VIII of 2018.

<sup>b</sup> Ordres en Conseil Vol. XXIII, p. 26; as amended by Vol. XXVI, p. 292; Vol. XXXI, p. 278; Vol. XXXIX, p. 107; Order in Council No. XIII of 2014; No. VII of 2015; No. VI of 2016; the Income Support (Guernsey) Law, 2017; Recueil d'Ordonnances Tome XXVI, p. 177; Ordinance No. XXXIII of 2003; No. XXXIX of 2009; No. VII of 2010; No. IX of 2016; and No. XIII of 2017. The Law is applied to Alderney by Recueil d'Ordonnances Tome XVII, p. 168; as amended by Tome XXVI, p. 462; Ordinance Nos. XXVI and XLIX of 2014. The Income Support (Guernsey) Law, 2017 (Order in Council No. IV of 2018) is applied to Island of Alderney by the Alderney (Application of Legislation) (Income Support) Ordinance, 2018.

<sup>c</sup> Recueil d'Ordonnances Tome XVII, p. 139; as amended by Order in Council No. IV of 2014; the Income Support (Guernsey) Law, 2017; Recueil d'Ordonnances Tome XVIII, p. 119; Tome XXIV, pp. 471 and 495; Tome XXV, p. 49; No. XXXV of 2004; Nos. VIII and XXV of 2005; No. XLVII of 2006; No. XLV of 2007; Ordinance Nos. XXVI and XLI of 2012; No. XXXIX of 2013; Nos. XXV and XLVIII of 2014; No. XLVIII of 2015; Nos. IX, XXX and XLII of 2016; No. XIII of 2017 and the Income Support (Implementation) (Amendment) Ordinance, 2017. The Ordinance is applied to the Island of Alderney by Recueil d'Ordonnances Tome XVII, p. 168.

2. In section 24A(1) (suspension or reduction of payment of income support in respect of a relevant applicant) –

- (a) the definition of "**work requirements**" is repealed, and
- (b) after the definition of a "**relevant dependant**" a full stop is substituted for ", and".

3. In section 26(1) (interpretation), insert the following definitions in the appropriate places –

""**child**" has the same meaning as in section 2(1) of the Children (Guernsey and Alderney) Law, 2008 and related expressions shall be construed accordingly,"

""**child dependant**" means a child who is a dependant of an applicant,"

""**work requirements**" has the same meaning as in section 1 of the Law,".

4. In paragraph 1(a) (amount of income support and calculation of requirements and resources) of the First Schedule, for the hyphen and all the text thereafter to the end of item (a) substitute "shall be nil where the person's capital resources exceed the amount of capital resources which may be wholly disregarded under paragraph 13, and".

5. In paragraph 3 (limitation on amount of income support payable) of the First Schedule –

- (a) in subparagraph (3)(a), for "paragraphs 11, 13 or 14" substitute "paragraph 11", and
- (b) in subparagraph (4), for "paragraph" substitute "subparagraph".

6. In paragraph 4 (application of paragraphs 5 and 6) of the First Schedule –

- (a) for the heading substitute –

**"Application of paragraphs 5, 6 and 6A."**

- (b) in subparagraphs (1) and (2), for each reference to "paragraphs 5 and 6" substitute "paragraphs 5, 6 and 6A",
- (c) in subparagraph (1), after "paragraphs 7," insert "7A,", and
- (d) in subparagraph (2), after "paragraph 7", insert ", 7A,".

7. In paragraph 5 (normal requirements) of the First Schedule –

- (a) in subparagraphs (1) and (3), at the beginning insert "Subject to subparagraph (2A),",
- (b) after subparagraph (2) insert the following

subparagraphs –

"(2A) A person who falls within subparagraph (2B) shall, starting from the relevant date set out in subparagraph (2C), be treated for the purposes of subparagraph (2) as a person –

- (a) to whom income support has been payable for a continuous period of six months or more, and
- (b) whose requirements shall be, in respect of the relevant description of person set out in the first column of Table 3, the amount specified in the second column of Table 3,

provided that, for the avoidance of doubt, the claimant would otherwise meet all other applicable requirements under the Law for eligibility to income support.

(2B) A person falls within this subparagraph if the person or any other person with whom their requirements are aggregated in accordance with paragraph 2(1) -

- (a) is of pensionable age, or
- (b) is a disabled person who is deemed to be acting in compliance with all work requirements relating to them for the purposes of section 1(1)(b)(ii) of the Law by reason of their disability.

(2C) The relevant date referred to in subparagraph (2A) is –

(a) in the case of a person of pensionable age, the date that person attains pensionable age, or

(b) in the case of a person falling within subparagraph (2B)(b), the date of the determination made by the Administrator under the Law that it is appropriate that the person is deemed to be acting in compliance with all work requirements relating to them.", and

(c) in subparagraph (4), for all the words following item (b) substitute –

"the Administrator shall deem the claimant to be a person to whom income support has been payable for a continuous period of 6 months provided that, for the avoidance of doubt, the claimant would otherwise meet all other applicable requirements under the Law for eligibility to income support.".

8. In paragraph 6 (rent) of the First Schedule –

(a) in subparagraph (1)(b), for "£15" substitute "£75",

(b) in subparagraph (2), for all the words following item (b) substitute –

"but excludes rent payable by a householder in occupation of a dwelling inscribed in Part A of the Open Market Housing Register required to be maintained under the Open Market Register (Guernsey) Law, 2016.", and

(c) after subparagraph (2) insert -

"(2A) In this paragraph the expression "**net rent**" means the rent less -

(a) an assumed contribution of £75 per week for each person aged 18 years or over living in the household who is not a dependant of the householder, and

(b) any proceeds of sub-letting any part of the premises in respect of which rent is paid or outgoings incurred as referred to in subparagraph (2)(b).", and

(d) for subparagraphs (3) and (4) substitute –

"(3) The amount of any increase under this paragraph for a person falling within subparagraph (1)(a) shall not exceed the maximum amount of rent determined, in accordance with subparagraph (4), for the relevant person by reference to the following descriptions of person –

(a) married couple or other persons falling within paragraph 2(1) ("**Couple**") with no child dependants,

- (b) person not falling within paragraph 2(1) who is directly responsible for household necessities and rent ("**Single householder**") with child dependants,
- (c) Couple or Single householder with one child dependant,
- (d) Couple or Single householder with two child dependants,
- (e) Couple or Single householder with three or more child dependants, or
- (f) person living in shared accommodation,

and where a person falls within item (f) and any other description of person by virtue of having one or more child dependants, a person making a determination under subparagraph (4) may determine which description is the most appropriate having regard to what is considered just in the circumstances of the particular case.

(4) The maximum amount of rent for the purposes of subparagraph (3) shall be –

- (a) the amount specified in the second column of Table 4 for the relevant description of person,  
or

- (b) such other amount as the Administrator may, if he considers it just in the circumstances of the particular case, determine."

9. After paragraph 6, insert –

**"Extra needs allowance.**

6A. (1) The amounts applicable under paragraph 5 shall, subject to the following provisions of this paragraph, be increased as set out in subparagraph (3), where a person applying for or in receipt of income support or whose requirements are aggregated with such a person under paragraph 2(1), is a disabled person who –

- (a) is not in receipt of severe disability benefit granted under the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984, and
- (b) has been assessed by the Administrator, having regard to the circumstances of that person, as having a disability which has reasonably resulted in that person incurring additional expenditure compared to a person without a disability in relation to –
  - (i) energy,
  - (ii) laundry or clothing, or

(iii) food or diet.

(2) For the purposes of this paragraph -

(a) **"expenditure in relation to energy"** means expenditure reasonably incurred on –

(i) electricity, gas, heating oil or solid fuel,

(ii) renewable energy or heat generated from a domestic renewable energy installation, or

(iii) such other form of energy or heat generation as the Administrator may determine for the purpose of this paragraph,

(b) **"expenditure in relation to laundry or clothing"** means expenditure reasonably incurred on –

(i) the cleaning of clothes,

(ii) the repair or replacement of clothes,

(iii) specialist or adapted clothing, or

(iv) such other expenditure in relation to

laundry or clothing as the Administrator may determine for the purposes of this paragraph, and

(c) **"expenditure in relation to food or diet"** means expenditure reasonably incurred on –

(i) nutritional supplements, particular food or a dietary regime, or

(ii) such other expenditure in relation to food or diet as the Administrator may determine for the purposes of this paragraph,

except that it does not include expenditure on an item supplied on presentation of a medical prescription within the meaning of the Health Service (Benefit) (Guernsey) Law, 1990.

(3) The amount of the increase shall be determined by the Administrator on the following basis and in accordance with the allowance per week for the points in question set out in Table 5 -

(a) all assessed additional expenditure in relation to energy-2 points,

(b) all assessed additional expenditure in relation to food or clothing-1 point, and

- (c) all assessed additional expenditure in relation to food or diet-1 point,

but subject to a maximum weekly additional increase of £20 a week."

10. For paragraph 13 of the First Schedule, substitute -

"13. If the value of the capital resources taken into account under this Part would not exceed the amount set out in the second column of Table 6 for the description of person set out in the first column of Table 6, they shall be wholly disregarded."

11. Paragraph 14 (calculation of income from capital resources) of the First Schedule is repealed.

12. In Paragraph 15(1) (earnings) of the First Schedule, for "£30" substitute "£35".

13. For Tables 2 and 3 set out in the Appendix to the First Schedule, substitute the Tables 2 to 6 set out in the Schedule to this Ordinance.

**Interpretation.**

14. (1) In this Ordinance -

"**enactment**" includes a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation, and

"**subordinate legislation**" means any regulation, rule, order, rule of

court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance.

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(3) The Interpretation (Guernsey) Law, 1948<sup>d</sup> applies to the interpretation of this Ordinance throughout the Islands of Guernsey, Alderney, Herm and Jethou.

**Repeals.**

15. (1) Section 1(3) of the Income Support (Implementation) (Amendment) Ordinance, 2016<sup>e</sup> is repealed.

(2) The following Ordinances are repealed –

(a) the Income Support (Implementation) (Amendment) Ordinance, 1989<sup>f</sup>,

(b) the Income Support (Implementation) (Amendment) (No. 2) Ordinance, 2000<sup>g</sup>,

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<sup>d</sup> Ordres en Conseil Vol. XIII, p. 355.

<sup>e</sup> Ordinance No. XLII of 2016.

<sup>f</sup> Recueil d'Ordonnances Tome XXV, p. 49.

<sup>g</sup> Ordinance No. XVII of 2000.

- (c) the Income Support (Implementation) (Amendment) Ordinance, 2001<sup>h</sup>,
- (d) the Income Support (Implementation) (Amendment) Ordinance, 2002<sup>i</sup>,
- (e) the Income Support (Implementation) (Amendment) Ordinance, 2003<sup>j</sup>,
- (f) the Income Support (Implementation) (Amendment) (No. 2) Ordinance, 2003<sup>k</sup>, and
- (g) the Income Support (Classes of persons to whom the Law applies) (Amendment) Ordinance, 2013<sup>l</sup>.

**Extent.**

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

**Citation.**

17. This Ordinance may be cited as the Income Support (Implementation) (Amendment) Ordinance, 2018.

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<sup>h</sup> Ordinance No. XVII of 2001.

<sup>i</sup> Ordinance No. XXIV of 2002.

<sup>j</sup> Ordinance No. VIII of 2003.

<sup>k</sup> Ordinance No. XXIV of 2003.

<sup>l</sup> Ordinance No. XIX of 2013.

**Commencement.**

18. This Ordinance shall come into force on the 6th July, 2018.

# SCHEDULE

Section 13

"Table 2 (Paragraph 5(1) and (2))

Short-term Weekly Requirements as from week commencing  
6<sup>th</sup> July 2018

<i>Description</i>	<i>Amount</i>
Married couple or other persons falling within paragraph 2(1) (" <b>Couple</b> ")	£180.19
Person not falling within paragraph 2(1) who is directly responsible for household necessities and rent (if any) (" <b>Single householder</b> ")	£102.96
Person who is not a householder (" <b>Non-householder</b> ")	£78.84
Member of a household -	
Aged 11 years or over;	£73.59
Aged 5 years or over but less than 11;	£55.19
Aged less than 5 years	£36.80

Table 3 (Paragraph 5(2) and (2A))

Long-term Weekly Requirements as from week commencing  
6<sup>th</sup> July 2018

<i>Description</i>	<i>Amount</i>
Married couple or other persons falling within paragraph 2(1) (" <b>Couple</b> ")	£296.84
Person not falling within paragraph 2(1) who is directly responsible for household necessities and rent (if any) (" <b>Single householder</b> ")	£179.17
Person who is not a householder (" <b>Non-householder</b> ")	£135.02
Member of a household -	
Aged 11 years or over;	£105.14
Aged 5 years or over but less than 11;	£78.85
Aged less than 5 years	£52.57

Table 4 (Paragraph 6(4))

Maximum Rent Allowances as from week commencing  
6<sup>th</sup> July 2018

<i>Description</i>	<i>Amount</i>
Married couple or other persons falling within paragraph 2(1) (" <b>Couple</b> ") with no child dependants	£217.50
Person not falling within paragraph 2(1) who is	£217.50

directly responsible for household necessities and rent (if any) (" <b>Single householder</b> ") with no child dependants	
Couple or Single householder with one child dependant	£260.14
Couple or Single householder with two child dependants	£332.40
Couple or Single householder with 3 or more child dependants	£407.17
Person living in shared accommodation	£174.97

Table 5 (Paragraph 6A)

Proposed Extra needs allowance as from week commencing 6<sup>th</sup> July 2018

<i>Points</i>	<i>Allowance per week</i>
1	£10
2	£15
3 plus	£20

Table 6 (Paragraph 13)

Proposed capital allowances to be wholly disregarded as from week commencing 6<sup>th</sup> July 2018

<i>Description</i>	<i>Allowance</i>
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Person not falling within paragraph 2(1) who is directly responsible for household necessities and rent (if any) (" <b>Single householder</b> ") with no child dependants	£13,000
Married couple or other persons falling within paragraph 2(1) (" <b>Couple</b> ") with no child dependants	£15,000
Couple or single householder with one child dependant	£17,000
Couple or single householder with two child dependants	£21,000
Couple or single householder with three or more child dependants	£23,000".

**THE ALDERNEY (APPLICATION OF LEGISLATION) (INCOME SUPPORT) ORDINANCE,  
2018**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Alderney (Application of Legislation) (Income Support) Ordinance, 2018", and to direct that the same shall have effect as an Ordinance of the States.

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

**EXPLANATORY MEMORANDUM**

This Ordinance applies the Income Support (Guernsey) Law, 2017, ("the Income Support Law") to Alderney under the Alderney (Application of Legislation) Law, 1948. The Income Support Law amends the titles and citation clauses of supplementary benefit legislation to give effect to the policy that supplementary benefit is renamed as income support; the Income Support Law was given Royal Sanction in February, 2018 and registered in the Royal Court on the 12<sup>th</sup> March, 2018. The Ordinance will come into force on the 6<sup>th</sup> July, 2018 (the same date as the Income Support Law and the Income Support (Amendment) Ordinance, 2018).



# **The Alderney (Application of Legislation) (Income Support) Ordinance, 2018**

**THE STATES**, in pursuance of their Resolution of the 8<sup>th</sup> November, 2017<sup>a</sup>, and in exercise of the powers conferred on them by section 1 of the Alderney (Application of Legislation) Law, 1948<sup>b</sup>, and all other powers enabling them in that behalf, hereby order:-

## **Income Support Law to have effect in Alderney.**

1. The Income Support (Guernsey) Law, 2017<sup>c</sup> shall have effect in the Island of Alderney as it has effect in the Island of Guernsey.

## **Interpretation.**

2. Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

## **Citation.**

3. This Ordinance may be cited as the Alderney (Application of Legislation) (Income Support) Ordinance, 2018.

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<sup>a</sup> Article II of Billet d'État No. XXI of 2017.

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

<sup>c</sup> Order in Council No. IV of 2018.

**Commencement.**

4. This Ordinance shall come into force on the 6<sup>th</sup> July, 2018.

**THE INCOME TAX (GUERNSEY) (APPROVAL OF AGREEMENT WITH SAN MARINO)  
ORDINANCE, 2018**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Guernsey) (Approval of Agreement with San Marino) Ordinance, 2018", and to direct that the same shall have effect as an Ordinance of the States.

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

**EXPLANATORY MEMORANDUM**

This Ordinance specifies, as an approved international agreement, an agreement providing for the obtaining, furnishing and exchanging of information in relation to tax, made for the purposes of the Income Tax (Guernsey) Law, 1975.

The agreement specified was made between the States of Guernsey and the Republic of San Marino, contained in a Protocol signed on the 19<sup>th</sup> December, 2017 and the 14<sup>th</sup> December, 2017 on behalf of Guernsey and San Marino respectively (which amends the agreement between the States of Guernsey and the Republic of San Marino providing for the exchange of information relating to tax matters signed on the 29<sup>th</sup> September, 2010).



# **The Income Tax (Guernsey) (Approval of Agreement with San Marino) Ordinance, 2018**

**THE STATES**, in exercise of the powers conferred on them by section 75C of the Income Tax (Guernsey) Law, 1975 as amended<sup>a</sup> and all other powers enabling them in that behalf, hereby order:-

## **Approval of Agreement.**

1. (1) Pursuant to section 75C of the Income Tax (Guernsey) Law, 1975, as amended, the agreement in subsection (2) providing for the obtaining, furnishing and exchanging of information in relation to tax is specified for the purposes of that Law.

(2) The agreement made between the States of Guernsey and the Republic of San Marino contained in a Protocol signed on the 19<sup>th</sup> December, 2017 and the 14<sup>th</sup> December, 2017 on behalf of Guernsey and San Marino respectively (which amends the agreement between the States of Guernsey and the Republic of San Marino providing for the exchange of information relating to tax matters signed on the 29<sup>th</sup> September, 2010<sup>b</sup>).

## **Citation.**

2. This Ordinance may be cited as the Income Tax (Guernsey) (Approval of Agreement with the San Marino) Ordinance, 2018.

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<sup>a</sup> Ordres en Conseil Vol. XXV, p. 124; section 75C was inserted by section 5 of Order in Council No. XVII of 2005, and section 75C has subsequently been amended by Ordinance No. XVI of 2012; No. I of 2014; and No. XXXI of 2014.

<sup>b</sup> Ordinance No. I of 2011.

**Commencement.**

3. This Ordinance shall come into force on the 7<sup>th</sup> June, 2018.

**THE ELECTORAL SYSTEM REFERENDUM (GUERNSEY) LAW, 2018  
(COMMENCEMENT) ORDINANCE, 2018**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Electoral System Referendum (Guernsey) Law, 2018 (Commencement) Ordinance, 2018", and to direct that the same shall have effect as an Ordinance of the States.

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

**EXPLANATORY MEMORANDUM**

This Ordinance commences the Electoral System Referendum (Guernsey) Law, 2018, which will come into force on 11<sup>th</sup> June, 2018.



# **The Electoral System Referendum (Guernsey) Law, 2018**

## **(Commencement) Ordinance, 2018**

**THE STATES**, in exercise of the powers conferred on them by section 33 of the Electoral System Referendum (Guernsey) Law, 2018<sup>a</sup>, hereby order:-

### **Commencement of the Electoral System Referendum Law.**

1. The Electoral System Referendum (Guernsey) Law, 2018 shall come into force on 11<sup>th</sup> June, 2018.

### **Citation.**

2. This Ordinance may be cited as the Electoral System Referendum (Guernsey) Law, 2018 (Commencement) Ordinance, 2018.

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<sup>a</sup> Order in Council No. [ ] of 2018.

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

**STATES' ASSEMBLY & CONSTITUTION COMMITTEE**

THE ELECTORAL SYSTEM REFERENDUM (GUERNSEY) LAW, 2018  
(COMMENCEMENT) ORDINANCE, 2018

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

26<sup>th</sup> April, 2018

Dear Deputy St Pier,

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

In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, the States' Assembly & Constitution Committee requests that the Proposition be considered at the States' meeting to be held on 6<sup>th</sup> June, 2018.

The referendum on Guernsey's voting system is scheduled for Wednesday 10<sup>th</sup> October, 2018. *The Electoral System Referendum (Guernsey) Law, 2018* received Royal Sanction on 24<sup>th</sup> April, 2018 and it is anticipated that the Law will be registered before the 14<sup>th</sup> May, 2018 sitting of the Full Court.

It is intended that *The Electoral System Referendum (Guernsey) Law, 2018* will come into force on 11th June, 2018 therefore the Proposition needs to be presented to the States of Deliberation on 6<sup>th</sup> June, 2018.

Yours sincerely,

Deputy P. J. Roffey  
President

Deputy H. L. de Sausmarez  
Vice-President

Deputy M. H. Dorey  
Deputy N. R. Inder  
Deputy M. K. Le Clerc

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

**STATES' TRADING SUPERVISORY BOARD**

**REPLACEMENT CREMATOR AND EMISSIONS EQUIPMENT**

The States are asked to decide:-

Whether, after consideration of the policy letter entitled 'Replacement Cremator and Emissions Equipment' of the States' Trading Supervisory Board dated 16 March 2018 they are of the opinion:-

1. To approve Option 1 as the preferred option for the replacement of Cremator and Emissions Equipment and to authorise the States' Trading Supervisory Board to appoint the preferred equipment supplier at a cost not exceeding £867k, to be funded by a capital vote charged to the Capital Reserve.
2. To authorise the States' Trading Supervisory Board to approve tenders for the other works required to deliver the preferred option, subject to prior approval of a full business case by the Policy & Resources Committee and to authorise the Policy & Resources Committee, upon its approval of such a full business case and the approval of the relevant tenders by the States' Trading Supervisory Board, to increase the Capital Reserve vote to a maximum of £3.88m.

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

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

**STATES' TRADING SUPERVISORY BOARD**

**REPLACEMENT CREMATOR AND EMISSIONS EQUIPMENT**

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

16<sup>th</sup> March, 2018

Dear Sir

**1 Executive Summary**

- 1.1 Guernsey's only crematorium is owned and operated by the States of Guernsey. The States' Trading Supervisory Board (STSB) has political responsibility for administering and operating the cremation service. The crematorium is located within the Foulon Vale Cemetery (in St Peter Port) and both the cemetery and the crematorium are operated by Property Services on behalf of the STSB.
- 1.2 The existing Cremator plant fitted at Foulon crematorium is fast becoming obsolete and the risk of prolonged breakdowns due to the expensive and lengthy manufacture of "special" spare parts or even permanent breakdown has and continues to increase significantly. The cremator process plant is therefore scheduled for replacement by the summer of 2019.
- 1.3 Based on the findings of the Outline Business Case (OBC) the project team recommends that the Option 1 – Do minimum (Le Foulon) be taken forward as the preferred option to enable the replacement of the existing cremator plant. The Le Foulon facility can be adapted to provide a functional crematorium service which meets the project objectives and has been shown to provide the best value for money option with acceptable risk. The project team further recommends based on the outputs of the cost benefit analysis that two bariatric cremators are installed as part of this project together with additional parking on site.

## 2 Background

- 2.1 The States agreed to provide a cremation service in the 1920s<sup>1</sup> as an alternative to earth burial for human remains and to lessen, “the strain on cemeteries”. The original legislation is the Loi relative à la Crémation (1928). Cremations are also regulated by The Cremation Ordinance, 1972. Only the States of Guernsey is permitted to establish and administer a crematorium facility in this Island. The current cremator at Le Foulon is the only on-island facility specifically designed to cremate human remains. The STSB is now the States of Guernsey Committee responsible for operating the cremation service in Guernsey.
- 2.2 The existing J G Shelton “Diamond” 2000EF Cremator fitted at Foulon crematorium is now 16 years old, and approaching the end of its projected working life. The cremator is also no longer in production as the original manufacturer went into liquidation in the spring of 2014 as a result spare parts are also becoming harder to source. The design also dates back over 20 years, thus increasing the risk of prolonged breakdowns due to the expensive and lengthy manufacture of “special” spare parts or even permanent breakdown. It is currently being maintained by a third party, IFZW (UK Maintenance) Ltd. Given its age and the fact that it is no longer in production and of a design which is not as energy efficient as modern cremator designs, this unit is scheduled for replacement by the summer of 2019.
- 2.3 In the 2013 Billet D’Etat XIX the Treasury & Resources Department categorised this project as a Category A project – ‘must do’ recommended to progress to the next stage. In the 2014 Billet D’Etat XVI the project was an approved Pipeline Project. However following a review of all projects, in the 2015 Billet D’Etat XIX Treasury & Resources recommended that the project continue to develop so that a further request for Capital funding could be made as part of the 2017 – 2020 capital priorities. Finally in the 2016 Billet D’Etat XXVI whilst the Cremator and Emissions equipment was not identified it formed one of the twenty four proposals in the ‘maintain’ category and this has been carried over in the 2017 Billet D’Etat XX.
- 2.4 Additionally the new design cremator will be fitted with emissions abatement equipment which “cleans” the emissions from the cremation process of mercury molecules, dioxins and other pollutants, which will comply with the new Guernsey Environmental Pollution regulations when enacted.
- 2.5 Due to the specialised nature of the project and the complexities of maintaining a working facility until such a time as a new cremator is operational specialist cremator consultants including project managers and architects have

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<sup>1</sup> Billet d’État XII of 1928 (July 1928) and Billet d’État XV of 1926 ( July 1926)

been appointed to provide technical advice on the project.

- 2.6 The recommendation based on the output of cost benefit analysis is to install two new cremators in place of the single existing unit. This will provide improved resilience and greater capacity in the event of an emergency. The additional capacity will ensure future full continuity of service in the event of a mechanical failure of the equipment with the provision of a backup unit, which can be brought into service at very short notice. Because Guernsey only has one crematorium, it is not viable to economically re-route cremations to another nearby facility due to logistical, geographical and legal reasons. Such practices are common on the UK mainland where there are nearby facilities to call on in the event of failure. The cost of transportation and associated paperwork at either end render this an option of last resort.
- 2.7 Because of the mechanical nature of cremators, and the requirement to regularly manage extremes of temperatures from cold to up to 1000 degrees centigrade on a regular basis, breakdowns associated with these thermal stresses are inevitable and unavoidable and can result in extended periods of critical service interruption – hence the strong recommendation to fit two units in the new facility.
- 2.8 The decision to install two cremators has been standard practice on other similar island locations where there is only one crematorium present, as shown below:
- Isle of Wight – 2 x Shelton cremators (installed in 2012) – abated
  - Isle of Man – 2 x FT cremators (installed in 2015) – abated
  - Jersey – 2 x FT cremators (installed in 2005) – unabated. It is anticipated that these will be abated when next replaced.
- 2.9 The cremation equipment proposed will replace the existing cremator which is at the end of its useful and economic life. The new emissions equipment, which will be a statutory requirement, is to reduce emissions to the atmosphere from the cremator flue. Very early in this project it became obvious that the proposed equipment replacement was not as simple as removing the existing cremator equipment and installing new equipment in the same position. Even a single new cremator will not fit in the existing position with no scope for any abatement. Consideration has been given to the likely size of the new equipment and the buildings to house it. The design of which will facilitate the future cremator equipment replacement once it has reached its end of life with the minimum of service disruption and minimal builders work in order to avoid a repeat of the current situation necessitating a new build.. The operation and location of the cremation service has also been considered.

- 2.10 The benefits of the replacement cremator and emissions equipment has been considered in detail as the main function of this project is to replace the existing plant, however as highlighted above there is physically insufficient space to remove the existing cremator and install a new cremator in the same space. This leads to the requirement to build a new building for the cremator plant and a comprehensive investigation of the possible options with their benefits and dis-benefits compared to the identified preferred solution.
- 2.11 In addition to the appointment of specialist consultants the tender for the cremator plant, including visits to operational sites, has been progressed with tender responses undergoing final due diligence, the first phase of this cremator plant appointment will be to provide consultative services to inform the overall design.
- 2.12 The main project aim is to replace the existing cremator equipment by the summer of 2019 with a resilient cremation service.
- 2.13 The investment objectives for this project are as follows:

Investment objectives for the replacement cremator project

1. To provide a cremation service for residents of the Bailiwick of Guernsey to comply with the Loi relative à la Crémation, 1928. The facility (building and equipment) must be able to process 600 cremations per year for the first 15 years.
2. To provide a cremation facility that can accommodate coffins up to 2500mm (L) x 1050mm (W) x 850mm (H) and 300kg each <sup>2</sup> . (Bariatric Coffin size).
3. To replace the existing cremator equipment by the Summer of 2019 to eliminate the risk of a complete failure of service.
4. To deliver a cremation service that promotes operational efficiency and reduces the risks associated with a single facility in an island location.
5. To provide a cremation facility that can meet the proposed air quality emissions regulations in Guernsey (as considered by the States of Deliberation in February 2017).

- 2.14 The project team undertook an Island wide review of potential alternative sites both in States and private ownership for a replacement facility and identified close to 100 sites of an appropriate size from which a shortlist of 36 was identified for more detailed evaluation including a number of options at the existing Foulon site. Each of these sites was comprehensively reviewed against

<sup>2</sup> Weight is for coffin and body together.

key criteria including, scoping, service solution, service delivery implementation and funding. Consultations were also undertaken with key stakeholders including funeral directors along with full benefits and risk workshops run by external specialists.

2.15 The following short list of options emerged:

- **Option 0 – Response to Critical Failure (Existing)**
  - Capital Cost Estimate £3.99m
- **Option 1 – Do minimum (Le Foulon)**
  - Capital Cost Estimate £3.63m
- **Option 2 – New Site**
  - Capital Cost Estimate £7.00m

2.16 Option appraisal conclusions:

- **Option 0 – Response to Critical Failure (Existing)**

This option ranks 3<sup>rd</sup> (the most risky)

It provides only a temporary provision of cremation in Guernsey. It is a short term approach as the plant will fail at some point and, if no alternative has been put in place, cremation will no longer be available in Guernsey. Replacement of the plant will be required at some point and the impact of the risks is only delayed until the failure of the existing plant event occurs. At the failure point the Disaster Recovery plan will be implemented which is a costly approach to the Cremation of bodies off Island which is also undesirable.
- **Option 1 – Do Minimum (Le Foulon)**

This option ranks 1<sup>st</sup> (the least risky)

This option provides for a new building to be constructed to the west of the existing chapel which complements its existing form and will have a minimum predicted life span of 50 years. It can be implemented relatively quickly at a lower capital cost (than alternative sites) with reduced risk and uncertainty. Certain drawbacks relating to the Foulon site remain in regards to the existing limitations of the chapel, access, memorialisation and car parking however it will provide a functional crematorium service which meets the project brief. The existing chapel, which originally was the primary non-denominational facility on the island, has sufficient capacity for the majority of services held locally. There is no obligation to use the chapel prior to cremation, with numerous Churches and a much increased provision of community facilities now available in the island for non-denominational services or when attendance capacity dictates the

need for a larger facility. The availability of these facilities provides viable alternatives to the Foulon in terms of both capacity and accessibility for services if these are primary concerns.

- Option 2 – New Site

This option ranks 2<sup>nd</sup>.

It provides all the facilities that a UK Crematorium would be expected to have but with a longer time to implement it, significant planning risk and the increased capital and running costs of two sites. This option provides the most non cashable benefits at the highest cost.

### **3 Conclusion**

- 3.1 Based on the findings of the OBC the project team recommends that the Option 1 – Do minimum (Le Foulon) be taken forward as the preferred option to enable the replacement of the existing cremator. Le Foulon can be adapted to provide a functional crematorium service which meets the project objectives and has been shown to provide the best value for money option with acceptable risk.
- 3.2 The project team further strongly recommends based on the outputs of the cost benefit analysis that two bariatric, abated cremators are installed as part of this project together with additional parking on site. The total Capital vote requested will be the £3.63m plus the £250K seed funding to give a total of £3.88m.
- 3.3 A copy of the full OBC is available in the Member's room at Sir Charles Frossard House. The OBC details how the States' Trading Supervisory Board has determined the preferred best value for money option and how it will procure and deliver the project. It also outlines how it has ascertained the affordability and funding requirement for the project and the services.

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

- 4.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 4.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications. She has advised that there is no reason in law why the Propositions should not to be put into effect.

- 4.3 In accordance with Rule 4(3), the Committee has included Propositions which request the States to approve funding of £3.88m. Further details about the financial implications of the Propositions are provided in paragraphs 2.15 and 3.2.
- 4.4 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of States' Trading Supervisory Board.
- 4.5 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee to provide a cremation service. The original legislation is the Loi relative à la Crémation (1928). Cremations are also regulated by The Cremation Ordinance, 1972. The Policy & Resources Committee has confirmed that this proposal has been reviewed in accordance with the approved assurance pathway and that the recommended investment is affordable within the Capital Portfolio and represents best value for money.

Yours faithfully

C N K Parkinson  
President

J C S F Smithies  
Vice-President

S J Falla MBE  
Non-States Member

J C Hollis  
Non-States Member

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

**STATES' TRADING SUPERVISORY BOARD**

**OPTIMISING THE USE OF THE STATES LAND AND PROPERTY PORTFOLIO**

The States are asked to decide:-

Whether, after consideration of the policy letter entitled 'Optimising the Use of the States Land and Property Portfolio' of the States' Trading Supervisory Board dated 26 April 2018 they are of the opinion:-

1. To agree that the future operating model for the management and administration of States land and property shall be such that the States' Trading Supervisory Board acts as Landlord (unless there is a good reason for it not to do so) and the Policy & Resources Committee the Tenant, on behalf of itself and other Committees of the States as Occupiers.
2. To note the intent of the States' Trading Supervisory Board, over the course of a two year transitional period, to develop and adopt a new operating model for land and property (to include that described in Proposition 1) within its Estates Plan, with the purpose of rationalising and optimising the management and administration of land and property owned and leased by the States.
3. To note in particular the intent of the States' Trading Supervisory Board in connection with the foregoing, to clarify the distinct roles and responsibilities, in respect of property services, of the States' Trading Supervisory Board, the Policy & Resources Committee, and other States Committees.
4. To delegate authority to the Policy & Resources Committee to approve funding from the Transformation and Transition Fund of up to £1million to facilitate the work set out in Propositions 1 to 3.
5. To note the intent of the States' Trading Supervisory Board to return to the States of Deliberation at the end of the two year transitional period to-
  - (a) update the States on progress achieved, and
  - (b) seek approval for any mandate changes that are necessary as a result of the foregoing Propositions and that cannot be made by other means.

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

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

**STATES' TRADING SUPERVISORY BOARD**

**OPTIMISING THE USE OF THE STATES LAND AND PROPERTY PORTFOLIO**

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

26<sup>th</sup> April, 2018

Dear Sir

**1 Executive Summary**

- 1.1 The States must strive for good stewardship and where appropriate to maximise value, not necessarily financial, from its substantial and diverse land and property portfolio, improve the way that internal property services are delivered and enable and support the States' policy priorities. In order to achieve this there needs to be considerable change in the way the States manages, operates and services the properties across the States.
- 1.2 The proposals in this Policy Letter, if implemented, will mean that the necessary changes can be made for the maximum benefit of the organisation and the island as a whole. This will be achieved through greater definition and clarity of the roles and responsibilities regarding the States' Estate, coupled with better management information to ensure that considerably improved and informed decision making can take place. The changes are far reaching, touching all Committees, and including organisations outside of the States. The proposals must not be seen as a simple reorganisation of the current Property Services and Estates organisations.
- 1.3 The changes will include refined data and systems and the implementation of tools and techniques for prioritising and establishing the optimum use of properties. Also holding those properties which are returned over time for future generations to enjoy across the organisation and potentially setting up a land and property trading entity, called Guernsey Real Estate, within the States' Trading Supervisory Board. Delivery of operational activities required to align the objectives for the States' estate with the States of Guernsey's vision, objectives, policies and strategies have been set out in an Estates Plan

([www.gov.gg/estatesplan](http://www.gov.gg/estatesplan)).

- 1.4 Exploratory work will be undertaken to examine the feasibility of corporate Facilities Management<sup>1</sup> services across the States, to the greatest extent possible. In addition currently Project Management responsibilities sit partly in Policy & Resources, partly in user Committees and partly in the States' Trading Supervisory Board. An investigation as to whether these would be more effective in being served by a more unified function is also included in the remit of this work. If the States' Trading Supervisory Board were to take on responsibility for these areas, it would need to be resourced appropriately. It is intended to make progress on the transformation of the methods of delivery for these services ideally for the start of the next States' term.
- 1.5 The programme of work contains a number of defined work streams to examine, design and optimise the delivery of the required services through a new Target Operating Model for property. For the programme to achieve full design and implementation will take a number of years and will be challenging, given the need to continue to provide existing services at minimal cost and disruption.

## **2 Introduction**

- 2.1 The States' Trading Supervisory Board is responsible for the efficient management, operation and maintenance of property and real estate owned or leased by the States of Guernsey ("the Estate"), together with many other duties, powers and operational functions required by its mandate. The property functions are currently discharged by the States' Trading Supervisory Board's Property Section, which also delivers the States' *'corporate engineering and architectural services.'* The States' Trading Supervisory Board has examined the efficiency and effectiveness of the services delivered, and found that the current arrangements are not generally best fit for purpose. More effective use of our resources would better support the States' policies, strategies and plans, improve the corporate management of States' assets and relieve the burden of dealing with routine accommodation issues from the Committees, enabling them to focus limited resources on their prioritised service delivery.
- 2.2 To obtain maximum value from the Estate the property objectives need to be aligned to the corporate vision, objectives, goals and policies of the States of

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<sup>1</sup> For the purpose of this policy letter, Facilities Management is the organisation and delivery (either in-house or outsourced) of the property and housekeeping services necessary for the optimum running of a building to improve quality of use and productivity of the core business. Examples of tasks include cleaning, lift servicing and organising minor repairs. It also covers actions to ensure compliance with legal requirements in the provision of accommodation, such as legionella testing, asbestos management and the maintenance of fire alarms and equipment.

Guernsey. The current property arrangements and practices are inconsistent with these and tend to be responsive, ad hoc and provide shorter term returns rather than within the framework of a strategic Estates Plan.

- 2.3 The States' property portfolio includes many pieces of land which are held for public amenity reasons, and not for any commercial motive. The States' Trading Supervisory Board recognises its responsibilities as guardians of these unique assets. The assets of the States of Guernsey include a small number of properties in Alderney to which this report applies equally.
- 2.4 To recognise the potential for economic development offered by amenity areas and their contribution to the quality of life within our community, specific consideration is proposed for Amenity Development Areas (ADA's). With master-planning input from the States' work with third parties will enable focus and co-ordination of effort to promote these opportunities.
- 2.5 The States' Trading Supervisory Board has worked with the Policy & Resources Committee, within a Joint Steering Group, to design a solution to support service delivery. The States' Trading Supervisory Board has also developed an Estates Plan to align the property and corporate objectives and has set out the transition work streams, to be developed over a minimum period of two years, necessary to deliver this Plan. The changes will affect the operation of the property functions, the roles and responsibilities of the management of the States property assets, reduce the amount of space used for service delivery and identify financial savings. The transformation work will include investigation into the setting up of a trading entity, Guernsey Real Estate, to act in a commercial manner, as one of the trading assets of the States' Trading Supervisory Board.
- 2.6 Achieving service transformation will require resources to develop the work streams required over a two year period to ensure certain corporate services are based where they can best function, and to set up the structure and operation of a more commercially based property business. Several options for this entity were examined, including:
  - (a) Maintain Property Services as currently structured, but introduce recharging for all services provided, developing a more centralised Estates Management for other States' Committees to enable increase in commercial use of the assets and maximise economies of scale.
  - (b) Separate the unit into its present three distinct service areas (Estates Management, Facilities and Resources and Project Services). This would allow Estates Management to be developed as a more commercially focussed management entity.

- (c) Outsource all or any of the current functions, retaining a small core team to manage and monitor the delivery of the outsourced services.

Having considered the research and reviews carried out, the States' Trading Supervisory Board concluded that option (b) would be of greatest value to the States. This was because option (a) did not create a different environment for change to be introduced, and option (c) would only be possible once the services were organised so that outsourcing would be beneficial, which was not the case at this time.

- 2.7 The development of the Target Operating Model for the potential commercial entity of Guernsey Real Estate will be a priority for the transition work streams. The resources required to develop the necessary work streams will be funded from the Transition and Transformation Fund. The transfer of responsibilities for some areas of service delivery may require minor changes to mandates between the Policy & Resources Committee and the States' Trading Supervisory Board.

### **3 Reasons for Change**

- 3.1 There are four major issues that are apparent in trying to increase the contribution that the Estate can make to achieving States' policies, in particular those relating to the Public Service Reform commitments for Estates Optimisation. These relate to reducing the number and cost of operating and managing public buildings ensuring they support the delivery of value for money, facilitate modern ways of working and help improve customer service.
- 3.2 Firstly, emerging commercial, property management and construction related opportunities are being delayed, side lined, or missed, as operational business as usual consumes the limited resources within the current property section's workload. The prioritisation and managed progression of these opportunities is important if the States of Guernsey is to expand its capacity to increase capital and revenue returns from the assets and support economic growth.
- 3.3 Secondly, in order to support the States strategic plans, the management, maintenance and administration of the Estate should be focussed on supporting the Committees to deliver their mandates. Currently the majority of Committees spend a significant amount of their resources dealing with land, property maintenance, accommodation and, in some cases, construction issues. Public Service Reform requires the most effective use of our buildings, island wide, and the best possible customer access. The objectives of the proposed new entity, Guernsey Real Estate, support this allowing Committees to concentrate limited resources on service delivery, rather than property and property related matters. Additionally, the more the estate of generic office and non-specialist buildings can generate in income or capital, the less pressure

there will be on Committees on the reduction of annual operational budgets.

- 3.4 Thirdly, the organisation of the States of Guernsey's public sector, such as Human Resources, Procurement and Information Systems and Services have been evolving, bringing together corporate functions that provide internal services across the organisation. The one function that has not yet been consolidated under a single organisation is the internal property function.
- 3.5 Lastly, although the States' Trading Supervisory Board provides Facilities Management services for thirteen States buildings (including Sir Charles Frossard House, the Old States Office and the Police Station amongst others) some Committees choose to manage these services themselves. Facilities Management is one of the areas defined in the Medium Term Financial Plan procurement theme as having major opportunities for cross cutting savings, efficiencies and economies of scale. Better value in the procurement of these services could be achieved if Facilities Management obtained economies of scale, which would be enabled by these services being procured and run as a corporate resource. Examination of the practices of other comparable UK authorities and private companies revealed that to achieve efficiencies in services and costs, common practice was to amalgamate common Facilities Management generally, then competitively tender to evaluate the merit of outsourcing various functions to Facilities Management companies.
- 3.6 These concerns and their associated issues were taken by the States' Trading Supervisory Board to the Policy & Resources Committee early in 2017. Following this meeting a Joint Steering Group, made up of Members of the Policy & Resources Committee and the States' Trading Supervisory Board, plus Deputy Victoria Oliver (a qualified Chartered Surveyor), has been defining the work streams that would be required, over a two year implementation period, to plan and implement the changes. Work streams have been designed to define, structure and implement the proposed changes in roles, responsibilities and service delivery associated with the setting up of a commercial real estate entity within the States' Trading Supervisory Board. The Joint Steering Group has also been involved in progressing an Estates Plan which translates the proposals for the management and administration of the States' land and property portfolio into a framework of operational detail for a new trading entity.

#### **4 Outline of the Proposals – Proposed New Operating Model, Roles and Responsibilities and Key Delivery Features**

- 4.1 The new operational focus is set out in the Estates Plan ([www.gov.gg/estatesplan](http://www.gov.gg/estatesplan)). Setting up the proposed Guernsey Real Estate, and consolidating property responsibilities where they are best placed to be most effective will require a number of work streams to be progressed within a two

year transition period. This timescale is regarded as reasonable and flexible, given the varied programme of diverse areas of work which need to be examined, trialled, adjusted where necessary and then implemented. The areas where development work will be focussed cover improving property performance, underpinned by better data, systems, processes and organisation providing:

- Better Working Locations
- Improved Professional Practices
- Improved Value and return from the Estate
- Better Public Amenities

The proposals will encompass the potential of setting up of a more commercially focussed land and property trading entity run by the States' Trading Supervisory Board. This will require the development of a Target Operating Model to delineate service areas and the structure that will deliver these services.

- 4.2 Implementing a new operating model will need changes to current delivery structures. It will also require greater clarification of the roles and responsibilities of the landlord, tenant and user/occupier of States properties. The functions need to be set out clearly for each party and can be flexed according to which services are required. Within a new commercially focussed property management system the main actors in general would be:

#### **PROPERTY LANDLORD – STATES' TRADING SUPERVISORY BOARD**

Responsibilities:

- Operationally provide and manage non-specialist properties<sup>2</sup> and land.
- Manage the process for maximising the value of the States' estate.
- Manage reinvestment in properties (refurbishments, developments, partnerships etc.) such as surplus to requirement vacant buildings.
- Invest/divest assets in line with States' defined cash needs, set by the States through the Policy & Resource Plan.
- Manage the estates potentially through a new trading entity.

#### **PROPERTY TENANT - POLICY & RESOURCES COMMITTEE**

Responsibilities:

- Establish policies for overall service delivery and property location policies.

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<sup>2</sup> Specialist properties are those which are integral to the delivery of a unique core service (Hospitals, prison, schools etc).

- Determine space requirements.
- Monitor lease commitment costs and terms.
- Set standards of services' accommodation.

#### **PROPERTY USER/OCCUPIER - STATES COMMITTEES**

Responsibilities:

- Agree space and facility needs to deliver operational services provided by the Occupier.
- Occupy allocated property and comply with lease/occupancy agreement terms.

- 4.3 For the transformation of the service delivery operational functions to be a success, it is fundamental to the changes in operational practice that the relevant parties recognise and understand their specific roles and responsibilities as set out. There will be sharpened property management roles, supported by framework decision trees for all key decisions, such as property sales, acquisitions, investments and refurbishments carried out under a scheme of delegation.
- 4.4 The Policy & Resources Committee, as Tenant, will be responsible for the policies applying to standards for States accommodation, such as workstation sizes, density, required levels of decoration etc., and the Landlord, the States' Trading Supervisory Board, would supply advice on acceptable standards, legal requirements and the suitability of available buildings. Where the Tenant (P&RC) and the Occupier/User Committee do not agree on issues, such as space standards for service delivery, then the matter will be taken to the States of Deliberation for their decision.
- 4.5 The Policy & Resources Committee may have the responsibility for the corporate delivery of Facilities Management to support the occupiers of the buildings (States Committees), under its authority and responsibility as the Tenant of States Properties.
- 4.6 The major responsibilities of the three parties are summarised below, and show the roles that will be clarified, and the relevant parties responsible for the individual actions to be carried out. The chart, called a RACI chart, shows a responsibility assignment matrix which describes the roles and responsibilities of parties in the task delivery for property usage.

#### Clarity of Responsibilities – Partial RACI\* Chart

		STSB Landlord Role	P&RC Tenant	Occupying Dept./User
1.	Define SoG space needs & standards	I	R/A	C
2.	Adhere to SoG space needs & standards	I	A	R
3.	Plan timing for surplus property release	I	A	R
4.	Achieve occupied property rationalisation	C	R/A	R
5.	Define property use after release by SoG	R/A	I	I
6.	Manage property portfolio value	R/A	C	I
7.	Inspect property for lease compliance	R	I/A	C
8.	Draft sound property leases	R/A	C	C
9.	Define lease length & maintenance terms	R	A	C
10.	Comply with lease & maintenance terms	A	R	R
11.	Propose property usage opportunities	R/A	C	I
12.	Sales and purchase of land and property	R/A	C	I

\*R = Responsible (performs); A = Accountable (has veto);  
C = Consulted (contributes & feedback); I = Informed (needs to know).

- 4.7 The trading entity (potentially Guernsey Real Estate) will initially continue to manage and maintain their current portfolio responsibilities (approximately 200 properties and land parcels) whilst developing their commercial role through implementation of the Opportunities Register. There may be certain types of specialist buildings (such as Hospitals and Schools) which remain long-term within the remit of the occupying Committee. No property or land should be transferred to the trading entity without a clear individual property decision, based upon a Property Performance Report<sup>3</sup> having been produced and agreed, including a condition survey etc. and the valuation attributable to the property.
- 4.8 There may be cases where the Landlord, Tenant, User/Occupier agree areas of responsibility within a building and in other cases the Tenant, User/Occupier may prefer to have the Landlord provide all services and maintenance. There are many models for the provision of accommodation that could be facilitated including:
- The Landlord providing the shell of a building and the Tenant, User/Occupier fitting out the building for their specific use and fully maintaining and repairing the whole building themselves;
  - The Landlord providing fully serviced accommodation, taking all repair, maintenance and facility management responsibility;
  - A combination of areas within the two models above.

<sup>3</sup> A Property Performance Report details the data and property information for individual properties performance regarding operating costs and facility standards. An example is appended to the Estates Plan.

- 4.9 Accommodation and provision of buildings can be negotiated so as to facilitate the efficient use of resources and capabilities within the States and will be subject to availability of appropriate resources to meet the needs of Committees.

Examples of how the roles would work are set out below:

**Use of Sir Charles Frossard House as an office block for States' Committees**

**Tenant** – Policy & Resources Committee (P&RC). Under a Service Level Agreement with the Landlord, the P&RC can be responsible for the procurement and administration of the Facilities Management contract delivering the required services to the extent and standards determined by the P&RC, who will be advised by the Project Services section on the legal requirements for using the building.

**Landlord** - States' Trading Supervisory Board (STSB) will be informed by the P&RC, and will have an overview to ensure that all legal requirements are being met for the functioning of the building. If required, the Landlord could continue to look after the envelope of the building (and indeed the Facilities Management contract if needed), ensuring that capital works necessary are carried out (subject to resources being made available). The Landlord will be responsible for all major repairs to the fabric of the building. The Landlord can also be responsible for refurbishments, fixtures and fittings and their renewals, such as providing new carpets and blinds (subject to resources).

As there are several **Users/ Occupiers** in Sir Charles Frossard House, these Committees will be consulted, by P&RC, as to the Facilities Management processes, their needs and the standards required.

**Leased in residential properties used for key workers (eg teachers, nurses)**

All legal arrangements regarding property acquisitions and disposals have to be actioned through States' Trading Supervisory Board, by current States Resolution. This includes leasing in properties and this will continue within the structure of Guernsey Real Estate, if created, as it ensures that property arrangements and liabilities are centrally recorded and professionally overseen. The Committee that requires use of the properties for their staff act as the user, and agree the level of responsibilities for the upkeep and maintenance of the property direct with their staff in occupation and in compliance with the lease terms and conditions.

**Construction of a new building, such as a school or office block as a capital project.**

The Policy & Resources Committee are responsible for the Capital Portfolio and its progression, following States' decisions on capital priorities and funding. Assistance from central Project Services in developing briefs, outsourcing and providing project management advice to the sponsoring Committee. This will be provided either in house, if resources are available, or outsourced, arrangements will need to be agreed on the overseeing of the construction of each project. Any property or land vacated, due to the provision of the new facilities and surplus to requirements, will be handed back to the Landlord (STSB) for decisions on its best value future. The STSB can provide services for management and maintenance of the building to the User/Occupier, but this will be subject to agreement and the provision of resources, both staff and ongoing budget requirements.

- 4.10 As can be seen from these examples, the provision of services is varied, flexible and will be subject to the final Target Operating Model for the new trading entity (possibly Guernsey Real Estate) agreed following culmination of the two year's work streams to set up the best model for property service provision and operation.
- 4.11 In addition to clarity of actions the Joint Steering Group felt it was important that users of the States' estate should be more aware of the "value" of their accommodation. This recognition should encourage the more efficient use of property by the User/Occupiers. Initially it is likely that notional rent will be calculated to raise awareness and understand the value of the usage.
- 4.12 Where the new trading entity (potentially Guernsey Real Estate) take responsibility for the management and maintenance of a building there will need to be real service charges to cover the cost of the services provided. There is a backlog of maintenance in the States' estate of over £30m and addressing this in the current financial situation is not an easy task. The amount of work required has remained at the same level for some years, or increased, due to lack of resources. A detailed examination of the assets, and their liabilities, will need a value for money appraisal in order to provide a prioritised asset improvement plan. Methods to deal with this historic, on-going problem will be detailed in a future report to the States. Having an income would enable Guernsey Real Estate to access funding for inward investment into improving its assets, and asset base.
- 4.13 It is also recognised that assessing a rental value for particular accommodation (such as the Hospital, the Prison and the Fire Station) which is used wholly for the delivery of specialist public services might not be appropriate. Opportunities and issues that may arise between the Tenant and the Landlord will be subject to sensible discussion as to the way forward without prejudging

the outcome, and will be resolved by mutual agreement.

4.14 One of the major features of the proposed new structure will be the introduction of an Opportunities Management Group set up and run by the States' Trading Supervisory Board. This will examine the priority, funding scale, benefits and implications, including both policy and services benefits, arising from property related opportunities. This Group membership will carry out cross functional working and will be constituted so that it draws its membership from the relevant Committees required to progress and deliver an opportunity. A number of projects have already been identified in specific areas covering the following aspects:

- Varied short term opportunities (achievable within 3 years), such as selling Fort Richmond, maximising the value from Rue Marguerite land area and areas for temporary or permanent light industrial use.
- Site Releases, such as further office accommodation, the best use of Fontaine Vinery and the Pitronnerie Road Strategic Industrial Reserve.
- Opportunities that facilitate economic development throughout the Bailiwick, such as those that may be provided by the release of the Income Tax Office and Castel Hospital.
- Strategic Asset opportunities, such as the Harbour Action Area.
- Investment Opportunities within the current portfolio, including examining the benefits of bringing forward works to address the substantial backlog maintenance requirements within the current portfolio.
- Amenity Development Areas<sup>4</sup> within the current portfolio, an example of these could be La Vallette and Bathing Pools.
- Examination of the obligations of the current Leasehold properties rented in by the States of Guernsey.

## **5 Outcomes and Benefits of the New Operating Model**

5.1 Introduction of the new operating model and service delivery through the Estates Plan will support the achievement of States strategic objectives and policies by delivering the Estates Optimisation programme of work and support the Medium Term Financial Plan requirement from property capital receipts of £1million per annum, with a planned general revenue reduction from property rationalisation of between £1-2.2 million over a four year period. The major outcomes of this will be to:

- Reduce the overall cost of operating the public service estate through maximising the use of space and implementing a prioritised repair

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<sup>4</sup> Amenity Development Areas represent land management and economic development challenges and opportunities.

programme;

- Increase the flexibility and capacity of public service office accommodation through refurbishment where necessary;
- Support improvements in efficiency and customer service through the introduction of modern ways of working;
- Implement the policies for new space standards for public service office accommodation;
- Seek opportunities to rationalise the public property portfolio and dispose or explore innovative ways of releasing the liability of surplus property;
- To the greatest extent possible, unify the Facilities Management delivery to enable efficiencies and economies of scale and greater standardisation of services.
- Examine the Project Services role within the States and recommend any improvements necessary for better functioning and outputs.

## 5.2 Realisation of benefits in delivering these work streams will be from:

- Improving the facilities and quality of the services delivered, whether these be technical, management or administration services for the property estate or construction projects;
- Releasing capital from surplus properties and land, with a target of £10million sales/long leases or the like, in a 7 year period;
- Increasing revenue from commercially occupied/used properties;
- Reversing the decline of the States' assets by introducing Master Planning of areas such as Amenity Development Areas;
- Reducing the amount of responsive repairs by increasing the planned preventative maintenance work carried out on States' properties;
- Supporting Committees through the provision of focussed, prioritised property services to allow them to concentrate on service delivery, relieving pressure on limited resources;
- Providing the supporting data, through analysis of the state of the estate on a per building basis, to ensure limited resources can also be used to target improvements in accessibility, inclusivity and energy saving measures;
- Structuring a commercial entity, potentially Guernsey Real Estate, to support the use of the States' built assets, their management and administration, to provide continuity as one cross cutting organisation, rather than the current generally multi-faceted approach by individual Committees;
- Recognising the value of the land and property through the more commercial treatment of the estate and assist in maximising property asset value and opportunities.

## **6 Cost of the Transition**

- 6.1 There will be a cost to the examination, design and implementation of the changes to the strategic operating methods and their opportunity management. Funding for this programme of work is therefore required. It is estimated that a sum of up to £1 million will be required for this two year transition programme. The estimated costs should be considered in the context of the value an estate where the insurance rebuild valuation is in excess of £2.5bn, from which the current income derived is around £3.5m. The proposed programme supports the delivery of Estates Optimisation within the Public Sector Reform which, it has already been agreed by the States, will be funded from the Transformation and Transition Fund.
- 6.2 Estimated costs for the implementation phase of this programme are based both on the approximate number of working days that should be required from both in-house and for external technical specialists, where appropriate, to resource the programme of work which will scope, plan, test, refine and introduce the required changes.
- 6.3 Within the programme there are specific work streams necessary for the delivery of the Estates Plan. The Estates Plan objectives are designed to support Estates Optimisation by delivering the transformation of services in the following areas:-
- a. Better data, systems, processes and organisation
  - b. Better working locations
  - c. Increased professional practices
  - d. Improved Value
  - e. Better Public Amenities
  - f. Programme management and control.
- 6.4 By considering the resources required to deliver the six strands of the transformation programme of work, set out above, by 2020, tasks were assigned the number of full time equivalent staff hours, and the level of expertise required equated to a salary scale. The costs over the timespan were further examined to determine whether they contributed to:-
- Programme and Project Management
  - Supporting strong governance and reporting
  - Supporting effective engagement
  - Delivering the required product, and
  - Being applicable, measurable and proportionate to the benefits to be delivered as set out in Section 5 of this report.

- 6.5 Change will not be immediate. There will be a gradual transition over the minimum period of two years' required to develop, evaluate and evolve the work streams. The tasks include the design of the most suitable Target Operating Model for this service delivery, which will take into account best practice and best value requirements from the States' estate. Once the new Target Operating Model for property has been designed, the new structure can be staffed and implemented from existing posts within the current Property Section, albeit in some cases with adjusted and re-focussed roles within the transformed service structure.

## **7 Minor Mandate Changes**

- 7.1 To deliver the Estates Plan, and in pursuance of the policy for States property and land management proposed by the States' Review Committee, the Policy & Resources Committee and the States' Trading Supervisory Board consider that marginal changes to their related mandates may, at a future date, be appropriate.
- 7.2 These may be required to assist and clarify good professional practice in operational management, and enable resources to be based where they can be used to ensure best corporate use of their skills.
- 7.3 Before the programme of work examines the opportunities that may be presented by changing the way that some of the property services are delivered, it is premature to request any changes of mandate between the Policy & Resources Committee and the States' Trading Supervisory Board. The Joint Steering Group consider that it would be more appropriate to return to the States of Deliberation following the completion of the two year programme to update on progress achieved, and if necessary, request any refinements to mandates and resources and detailing the required changes.
- 7.4 It is noted, however, that under their current mandate, the Policy & Resources Committee may allocate operational functions to Committees, or transfer them between Committees as long as both parties agree to this transfer of responsibilities.

## **8 Timing and Project Progress**

- 8.1 The majority of the work streams within the programme will start mid-2018, and delivery of these will be complete by the end of this current States term. Following on from this programme the proposed trading entity (possibly Guernsey Real Estate) will deliver the transformed services as its business as usual, as well as their new operating function, from current amended establishment resources.

- 8.2 The work on the Estates Plan has been developed and progressed to date by a Joint Steering Group of representatives of the Policy & Resources Committee, the States' Trading Supervisory Board, together with Deputy Victoria Oliver (due to her professional expertise). This Group will remain at the forefront of the programme of work, and will oversee work on Opportunities Management.

## **9 Engagement and Consultation**

- 9.1 The States' Trading Supervisory Board has carried out extensive research on the structure needed to deliver this project. The study examined what measures other comparable jurisdictions have implemented, including the States of Jersey, local authorities in the United Kingdom and State Governments in the United States of America. In considering options the States' Trading Supervisory Board also examined its role as landlord of the property estate and the most effective relationship with service user Committees.
- 9.2 Consultation has also taken place with local professional property and facilities management providers, the Chief Secretaries and officers of States Committees and those delivering property services to the United Kingdom Cabinet Office.

## **10 Conclusions**

- 10.1 Previous States have resolved to incorporate a more unified and focussed approach to the management and administration of the States land and property assets. The proposals within this report take the utilisation of the States property portfolio to the next level by:
- recognising the roles and responsibilities of the parties involved in the use and management of the States estate;
  - designing, transitioning and transforming operational property services to develop the commercial function and identify and action those opportunities contained within the current portfolio;
  - enabling and facilitating joint working (with both States Committees and other parties) on the more commercial use of property;
  - obtaining the best use for the island from States' owned amenity areas.

## **11 Compliance with Rule 4**

- 11.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 11.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications. She

has advised that there is no reason in law why the Propositions should not to be put into effect.

- 11.3 In accordance with Rule 4(3), the Board has included Propositions which request the States to approve funding of up to £1million. Further details about the financial implications of the Propositions are provided in paragraph 6.
- 11.4 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Board.
- 11.5 In accordance with Rule 4(5), the Propositions relate to the duties of the Board. The States' Trading Supervisory Board has a duty to ensure the efficient management, operation and maintenance of property and real estate owned or leased by the States.
- 11.6 Also in accordance with Rule 4(5), the States' Trading Supervisory Board consulted with all Committees and external bodies such as comparable jurisdictions and local professional property and facilities management providers.

Yours faithfully

C N K Parkinson  
President, STSB

J C S F Smithies  
Vice-President, STSB

S J Falla MBE  
Non-States Member, STSB

J C Hollis  
Non-States Member, STSB

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

**STATES' TRADING SUPERVISORY BOARD**

OPTIMISING THE USE OF THE STATES LAND AND PROPERTY PORTFOLIO

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

26<sup>th</sup> April, 2018

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 States' Trading Supervisory Board requests that the Policy Letter "Optimising the use of the States Land and Property Portfolio" be considered at the States' meeting to be held on 6 June, 2018.

This request is made in view of the States debate regarding the next stage of the Policy & Resource Plan, which is scheduled for 5 June. The property Policy Letter is linked to the Policy & Resource Plan objectives and it is considered that the two being aligned in this way would be of benefit to Members of the States of Deliberation and debate in the Assembly.

Yours faithfully,

Charles Parkinson  
President, STSB

Jeremy Smithies  
Vice President, STSB

Stuart Falla MBE  
John Hollis  
Non-States Members, STSB

# **RESPONSIBLE OFFICER FOR THE BAILIWICK OF GUERNSEY**

**Under “The Regulation of Health Professions  
(Medical Practitioners) (Guernsey and Alderney)  
Ordinance, 2015”**

## **ANNUAL REPORT FOR THE YEAR 2017**

**Dr Peter Rabey, MBChB, FRCA.**

**Responsible Officer**

**States of Guernsey.**

**Submitted: 12 MARCH 2018.**

## Contents

1. Executive summary .....	3
2. Purpose of the Report .....	4
3. Background .....	4
4. Duties of the Responsible Officer .....	5
5. Governance Arrangements .....	5
6. Register of Doctors.....	7
7. Medical Appraisal .....	9
a. Appraisal and Revalidation Performance Data .....	9
b. Appraisers .....	10
c. Quality Assurance .....	10
d. Access, Security and Confidentiality .....	11
e. Clinical governance .....	12
8. Revalidation Recommendations.....	12
9. Recruitment and engagement background checks .....	12
10. Responding to Concerns and Remediation.....	13
11. Risks and Issues:.....	14
12. Progress against 2016 “Next Steps” .....	14
13. Next Steps for 2018: .....	15
14. Conclusion .....	15
15. Annual Report Appendix A: Audit of concerns about a doctor’s practice. ....	16
16. Annual Report Appendix B – Audit of revalidation recommendations. ....	18

## 1. Executive summary

The Responsible Officer is required to submit an annual report to the States of Guernsey, through the Committee for Health & Social Care, as to the discharge of his or her functions. This report provides a summary of activity relating to regulation and revalidation of doctors in 2017.

2017 saw consolidation and progress in the regulation of medical practitioners in the Bailiwick of Guernsey. Dr Peter Rabey remained in post as Responsible Officer as Suitable Person for local doctors for the General Medical Council throughout the year.

A second Responsible Officer was appointed in 2017. Dr Martyn Siodlak, Medical Director in Jersey agreed to become Responsible Officer (unpaid) to avoid a conflict of interest between the existing RO and a new doctor on the Register (his wife).

### Key Findings:

- At the end of 2017 there were a total of 218 doctors on the Guernsey Register and with a licence to practice. Of these 152 were “local practitioners” and 66 were “UK-connected Practitioners”. A breakdown of these numbers is given in the report.
- 95.3% of local practitioners had appraisals conducted on time in 2017. This compares favourably with UK rates of 91.9% [NHS England Annual Report for 2016/17 <sup>1</sup>]
- Delayed and missed appraisals: either firm plans are in place or appropriate escalation has taken place
- Three local doctors required revalidation recommendations to the GMC by the RO in 2017. All received positive recommendations, made on time, and all were accepted.
- Formal management of concerns was required for 4 doctors in 2017: 2 at high level (1 capability and 1 conduct); 1 at medium level (conduct); and 1 at low level (capability).
- Four doctors had cases ongoing from 2016 involving fitness to practice investigations by the General Medical Council. All were closed in 2017. No action was taken in 3 cases; 1 went to the Medical Practitioners Tribunal Service and resulted in Undertakings (the doctor had left the Bailiwick and is not on the local Register).
- The RO is aware of 3 doctors being investigated by the GMC in 2017 (It is possible under new GMC procedures that a patient and/or family might report a doctor to the GMC without the RO being involved if closed at an early stage). All were still under investigation at the end of the year.
- The Responsible Officer referred one local doctor to the GMC during 2017. The case remains under investigation and the doctor is not working as a medical practitioner in the Bailiwick

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<sup>1</sup> (<https://www.england.nhs.uk/wp-content/uploads/2017/10/report-to-ministers-responsible-officer-regulations-revalidation-1617.pdf>)

- Governance: The Responsible Officer maintains strong links with the General Medical Council, NHS England, and the Faculty of Medical Leadership and Management (FMLM).
- The Medical Practitioners Registrations Panel commenced its work in 2017.
- Complaints: There were no complaints about the RO in 2017.

## 2. Purpose of the Report

This report is to inform the Committee *for* Health & Social Care and through them the States of Deliberation, as to the discharge of the Responsible Officer's functions during the calendar year 2017. This is a requirement of the Responsible Officer under the Ordinance.

## 3. Background

Medical revalidation has, since 2012, provided doctors with a way to demonstrate that their skills are up to date and that they are fit to practice in their chosen field. It gives confidence to patients and the public that appropriate regular checks on doctors both locally and by the General Medical Council are in place. A good appraisal system is at the heart of revalidation.

In 2015 the States of Deliberation created "The Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015". This Ordinance established the role of Responsible Officer for the States of Guernsey. The legislation describes two classes of medical practitioner: "Local Practitioners" (those doctors on the local register who do not have a connection to UK designated body), and "UK Connected Practitioners" (those doctors on the local register who do).

Dr Peter Rabey remained in post throughout 2017 as Responsible Officer for the States of Guernsey for both classes of medical practitioner.

Dr Peter Rabey also remained the GMC Suitable Person for the Bailiwick throughout 2017. He is Suitable Person for doctors "with a licence to practise who do not have a prescribed connection elsewhere and who practice in Guernsey, Alderney, and Sark which fall within the Bailiwick of Guernsey". The Suitable Person role is similar to the UK Designated Body Responsible Officer role in terms of making recommendations to the GMC about revalidation of doctors; but a Suitable Person does not act for an NHS Designated Body. The Bailiwick of Guernsey (as for Jersey, Isle of Man, Gibraltar, etc) is not an NHS Designated Body, and the GMC therefore recognise a Suitable Person role rather than a Responsible Officer role.

In 2017 a second Responsible Officer was appointed for the Bailiwick. Dr Martyn Siodlak, Medical Director in Jersey, agreed to become RO (unpaid) for one doctor in the Bailiwick for whom the existing RO had a conflict of interest (his wife). Dr Siodlak

will oversee appraisal and revalidation recommendations for this one doctor. This amendment was supported by the Committee for Health and Social Care, and approved by the Policy & Resources Committee on 13 April 2017. The GMC were consulted, and supported these arrangements.

## 4. Duties of the Responsible Officer

The duties of the Responsible Officer as laid out in the Ordinance are as follows:

### ***Duties of responsible officer – appraisals and fitness to practise.***

*(1) In relation to the evaluation of the fitness to practise of every practitioner, the responsible officer must –*

*(a) assess –*

*(i) whether the practitioner undergoes regular appraisals, and*

*(ii) whether those appraisals satisfy the requirements of subparagraph (2), and*

*receive such appraisals submitted by the practitioner,*

*(b) assess whether the designated body of the practitioner has established and is carrying out appropriate procedures, using appropriate persons, to investigate concerns about that practitioner's fitness to practise raised by any person,*

*(c) where appropriate, take all reasonably practicable steps to investigate concerns about the practitioner's fitness to practise raised by any person,*

*(d) where appropriate, refer concerns about the practitioner to a relevant body or officer for a relevant purpose,*

*(e) take any steps necessary to protect patients, including recommend to the designated body of the practitioner that that practitioner should be suspended from practising as a medical practitioner or should have conditions or restrictions placed upon his or her practice,*

*(f) where the practitioner is subject to conditions imposed by, or undertakings agreed with, the General Medical Council, monitor compliance with those conditions or undertakings,*

*(g) make recommendations to the General Medical Council about the practitioner's fitness to practise,*

*(h) maintain records of the practitioner's fitness to practise evaluations, including appraisals and any other investigations or assessments, and*

*(i) communicate to the designated body of the practitioner any concerns held by the responsible officer regarding the discharge or adequate discharge of that designated body's functions under this Ordinance.*

## 5. Governance Arrangements

### Register of Local Doctors:

The day to day running of the local register of doctors continues to be supported by the Registrations Officer, Mr Edward Freestone, with administrative support from Ms Linda Nel. The register describes the two classes of medical practitioners ("local" and "UK-connected"), and indicates whether the doctors main link is with MSG, HSC, Primary Care, or "Other".

The list of names of doctors on the register is in the public domain, as is their GMC registration. The local register of doctors may be accessed by the public through the HSC website at <https://gov.gg/healthprofessionalregisters>.

### The Registrations Panel:

The Registrations Panel has responsibility for supporting the local register, to ensure that unsuitable applicants are not registered, and to prevent registration where there are good grounds for concern. The Panel also serves as a review body to review decisions made by the Responsible Officer relating to registration under the Ordinance.

In 2017 appointments were made to the Panel and confirmed by the Policy and Resources Committee. The Registrations Panel met in the first quarter of 2017. The panel has a legally-qualified Chair, lay-representation, and an independent medical practitioner who has not worked in the Bailiwick for 20 years.

### Appraisal of Doctors:

The Responsible Officer works closely with Appraisal Leads to ensure that appraisals of doctors on the Local Practitioners List are conducted to appropriate high standards.

The following acted as Appraisal Leads in 2017 for the different groups of Local Practitioners:

HSC Doctors:	Dr Nicola Brink
MSG Doctors:	Dr Graham Beck (to Sept '17), then Dr Carol Makin
General Practitioners:	Dr Tony Chankun (supported by Karen Diamond.)

Appraisal policies are in place and up-to-date for all these doctor groups.

The Responsible Officer receives copies of all appraisal documentation including: scope of practice, supporting evidence, inputs (including incidents and complaints), details of continuing professional development, reflection, personal development plan, and the appraisal output form completed by the appraiser. The appraiser in every case must determine whether or not any concerns should be escalated to the RO, and sign statements about the doctor's fitness to practice.

The RO can access real-time information about appraisals, allowing the monitoring of progress against completions. Progress is monitored regularly and any issues flagged with the appraisal leads in the first instance.

### Appraisal Quality Review:

New local appraisers undergo appraisal training delivered by the Wessex Area Team from NHS England, and update training is provided annually. The first 3 appraisals conducted by a new appraiser are subjected to quality review.

An Appraisers Network meeting takes place quarterly, jointly chaired by the Appraisal Lead for HSC and MSG.

External Quality Assurance of appraisals took place as part of a visit by the Appraisal Lead for Southampton University Hospitals on 31/3/17. Dr Henrik Steinbrecher also provided individual feedback to each local appraiser.

In addition the RO provides feedback to local appraisers, and all appraisees provide feedback about their appraisal, which is provided in anonymised form to appraisers.

External appraisers undergo quality review from their host organisation: Wessex Area Team, NHSE.

#### Higher Level Responsible Officer Quality Review:

The outstanding recommendations of the Faculty of Medical Leadership and Management (FMLM) “Higher Level Responsible Officer Quality Review” of systems in Guernsey [August 2016] were closed in 2017 with the establishment the Medical Practitioners Registrations Panel and of Care-Watch as a forum for lay-involvement.

#### Engagement with External Bodies:

The RO is an active participant in the Responsible Officer Network organised by NHS England, and attends the Suitable Person Reference Group meetings organised by the General Medical Council. The RO meets quarterly with the GMC Employment Liaison Advisor, and has further ad-hoc communication as required. A contract is in place with Wessex Area Team of NHS England to provide support, advice, and expertise for concerns regarding primary care doctors. The RO has an external Responsible Officer – Mr Peter Lees of the Faculty of Medical Leadership and Management, and takes part in appraisal and revalidation under their auspices.

## **6. Register of Doctors**

The Register of doctors is a live document and is amended regularly to reflect additions, departures, and other changes. The Guernsey register is available in summary form on-line at <https://gov.gg/healthprofessionalregisters>.

At the end of 2017 there were a total of 218 doctors on the Guernsey Register and with a licence to practice; an increase of 7 from 2016. Of these 152 were “local practitioners” and 66 were “UK-connected Practitioners”.

A breakdown for the position at the end of 2017 is provided in the table below (figures in brackets are 2016 for comparison):

<b>Local Register of Medical Practitioners, 2017.</b>					
	Hospital Doctors with HSC (including visiting consultants)	Medical Specialist Group Consultants	General Practitioners	Others	Total
Local Practitioners	35 (32)	45 (43)	66 (67)	6 (4)	152 (146)
UK Connected Practitioners	35 (32) (visiting)	6 (7) (4 locums)	12 (12)	13 (14)	66 (65)
Total	70 (64)	51 (50)	78 (79)	19 (18)	218 (211)

UK Connected Doctors: There were 35 UK-connected doctors working for HSC in 2017: this included visiting doctors and visiting appraisers for doctors. Six doctors working for MSG in 2017 retained a UK connection: this included 4 locum doctors and 2 new arrivals who still had a UK connection. A total of 12 GP's were connected to UK designated bodies; most of these acted as locums while in the Bailiwick.

Doctors Classed as "Others": Among those classed as "Others" were the Sark doctor (local practitioner), five recently retired doctors who wished to stay on the register, 3 visiting doctors involved in the bowel-screening programme, 3 prison doctors (2 locums), and some doctors who provide medical advice to local firms or do occasional private clinics.

The local RO is able to identify and communicate with any UK-connected doctors Responsible Officer through use of GMC Connect – the GMC's online portal for revalidation of doctors. In addition the public can search the GMC register to identify a doctor's Responsible Officer through the GMC website: <https://www.gmc-uk.org/index.asp> .

Conditions: The RO has authority to add conditions to a doctor's local registration. In 2017 this authority was not used.

## 7. Medical Appraisal

### a. Appraisal and Revalidation Performance Data

In 2017 there were 150 locally connected doctors who required an appraisal in-year. This is not the same as the total number of local practitioners (152) because of movement within year, for example some may have had appraisals done before arriving in Guernsey. A total of 143 appraisals were completed within the agreed time period. The table below gives details:

Appraisals: Due and Completed, 2017.					
	Hospital Doctors with HSC (including visiting consultants)	Medical Specialist Group Consultants	General Practitioners	Others	Total
Number of doctors with appraisal due within year 2017	34	45	65	6	150
Appraisals Completed within agreed time period.	34 * (100%)	41** (91%)	65 *** (100%)	3 **** (50%)	143 (95.3%)

Of appraisals not completed within prescribed time period:

- \* HSC: 1 doctor's appraisal was delayed for health reasons and completed in January 2018 with agreement from the RO.
- \*\* MSG: 2 appraisals were completed late (February 2018). Of the 4 outstanding appraisals, 3 are awaiting scheduled off-island appraisals, and the delay was due to the off-island appraiser's availability. One has been affected by health reasons.
- \*\*\* GP's: 100% compliance.
- \*\*\*\* Others: One doctor with late appraisal is not working and is under formal investigation. Two doctors did not submit 2017 appraisals: one is not working and one does occasional locum work. The circumstances of both are being followed up.
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The overall in-year appraisal rate for local practitioners was 95.3%. This compares favourably with UK rates of 91.9% [NHS England Annual Report for 2016/17 <sup>1</sup>]

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<sup>1</sup> (<https://www.england.nhs.uk/wp-content/uploads/2017/10/report-to-ministers-responsible-officer-regulations-revalidation-1617.pdf>)

If the RO believes that a doctor may not be engaging appropriately in the process of revalidation he may, after consultation with the GMC Employment Liaison Advisor, request that the GMC send a non-engagement concern to the doctor directly by completing a “Rev6” form. In 2017, no Rev6 forms were submitted by the RO.

One doctor with a missed appraisal in 2017 is under investigation by the GMC, and the GMC are aware of the doctor’s appraisal status. The doctor is not currently working in the Bailiwick.

## **b. Appraisers**

Medical appraisal is the cornerstone of revalidation of doctors. Doctors with a UK connection take part in appraisal and revalidation with their UK designated body. For locally-connected doctors there are 2 groups of appraisers. Most doctors fit cleanly into one of these groups, but for doctors in the “other” category, their appraiser is determined by best-fit (nearly always obvious).

Primary Care; Doctors in General Practice in Guernsey continue to demonstrate 100% engagement in appraisal, with all appraisals again undertaken on time. GP’s undertake appraisals either directly with the Wessex Appraisal Service, a service run by Health Education England; or with one of five on-island appraisers who receive support from the Wessex service. In 2017, a total of 44 primary care doctors underwent appraisals through the Wessex Appraisal Service with an average of 4 appraisals per appraiser. One locum GP also independently sourced an appraisal from within the Wessex service. The remaining General Practitioners had on-island appraisers. As well as receiving all relevant individual appraisal information, the RO receives an annual report from the Wessex Appraisal Service, reported from April to April. The latest report demonstrated that feedback rates from Guernsey doctors remain very high at 80%, and demonstrate continuing engagement and satisfaction with the process.

Secondary Care: The secondary care appraisal team in 2017 was expanded to a group of thirteen trained doctors comprising of both States Employed doctors and doctors from the Medical Specialist Group. Individual appraiser feedback continues to demonstrate high levels of satisfaction with the quality of appraisers. In a change to arrangements in 2017, links were established with Southampton University Hospitals (SUH) for secondary care appraisal support. This has involved training and quality assurance being provided by the SUH Lead Appraiser, Dr Henrik Steinbrecher. A local Appraisers Network meeting takes place quarterly, jointly chaired by the Appraisal Leads for HSC and MSG.

In future years approximately half of secondary care doctors will have appraisals conducted by off-island appraisers arranged through Southampton University Hospitals, who will continue to provide quality assurance of the on-island appraisal process. Specialties undergoing off-island appraisals this year include psychiatry, paediatrics, and surgery (including orthopaedics).

## **c. Quality Assurance**

In March 2017 Dr Steinbrecher, Appraisal Lead for Southampton University Hospitals, conducted a visit to Guernsey to look into appraisal systems, provide update training,

and then met individually with appraisers to provide feedback and quality support. His report states that: *“Overall the appraisal system on Guernsey is well managed, organized and matches other systems in NHS England Hospitals. ... I have no concerns about the process and practice of appraisal – revalidation in Guernsey at this time.”*

Routine ongoing quality assurance is achieved by active involvement of the appraisal leads and the RO. This includes:

Appraisal portfolios:

- Review of appraisal folders to provide assurance that the appraisal inputs, including pre-appraisal declarations and supporting information provided is appropriate and available.
- Review of appraisal folders to provide assurance that the appraisal outputs including personal development plan, summary and sign-offs are complete and to an appropriate standard.
- Review of appraisal outputs to provide assurance that they include any key items identified before the appraisal as needing discussion.

For the individual appraiser:

- An annual record of the appraiser's reflection on his or her appropriate continuing professional development is included in their appraisal
- An annual record of the appraiser's participation in appraisal calibration events such as reflection on appraisal network meetings.
- 360° feedback from doctors for each appraiser is collected at the conclusion of the appraisal process. The information is collected and reviewed by the appraisal leads, and collated and fed back to the appraiser in an anonymised manner. It is calibrated with the feedback for other appraisers and feedback to each appraiser includes anonymised score averages for all appraisers.

For the organisation:

- The RO receives real-time timelines of process of appraisal for each group of doctors.
  - Feedback from appraisees includes views on the systems used and support provided.

#### **d. Access, Security and Confidentiality**

The RO deals with a significant amount of sensitive personal data, and it is important that this is dealt with in line with best practice.

The Responsible Officer is registered with the Data Protection Commissioner for the Channel Islands, and has up-to-date Data Protection training.

Appropriate safeguards are in place. Paper records are kept in locked filing cabinets, in offices which are locked when not occupied. Doctors' appraisal portfolios are kept in

secure on-line systems designed for the purpose: MSG and HSC doctors use the PreP system and Primary Care doctors use the Clarity system. A few doctors use other systems including the “Fourteen Fish” online appraisal system. Each of these systems has security built in. The RO has access to doctors’ appraisal details via these systems. A few UK connected doctors are required to use the electronic MAG form (Medical Appraisal Guidance form, developed for NHS England), which must be stored electronically and does not have inbuilt security.

Doctors are firmly instructed that patient-sensitive data must not be uploaded into their appraisal portfolio, and if an appraiser discovers that this has inadvertently happened they request that the information be redacted.

The RO is not aware of any information governance breaches in this area in 2017.

#### **e. Clinical governance**

Prior to their appraisal, doctors receive information about all complaints and incidents in which they are named. This report is available to appraiser, appraisal lead and to the RO. In addition some doctors may be asked to reflect with their appraiser about specific incidents or events at their appraisal. The appraisal systems allow for such specific items to be identified clearly to both the appraiser and to the RO, to ensure that appropriate reflection and learning has taken place and been evidenced.

## **8. Revalidation Recommendations**

Revalidation typically takes place over a five year cycle, at the end of which the GMC seek a recommendation from the doctor’s RO / Suitable Person (if they have one). In 2017, three doctors required revalidation recommendations to the GMC. Positive recommendations were made by the RO for all doctors, following review of their appraisal portfolios and the evidence submitted against GMC requirements.

No deferral recommendations were required (made when the doctor has not produced sufficient evidence to support a positive recommendation, or when a process concerning fitness to practice is in place).

There were no notifications to the GMC of non-engagement by a doctor in processes for revalidation.

All recommendations were made on time, and were accepted by the GMC. (Appendix B presents numerical details using the NHS England audit template.)

## **9. Recruitment and engagement background checks**

Guernsey remains in a favourable position in terms of obtaining appropriate information for background checks before a doctor’s name is added to the local register. The use of very short-term locums is impractical for geographical and regulatory reasons, and there are robust processes for identifying and checking on any new doctors who work in the Bailiwick.

Before a doctor's name is added to the local register, checks are carried out including:

- Checks of GMC registration:
  - o Current GMC Registration
  - o Holds a valid Licence to Practice
  - o On the Specialist Register or GP Register (as appropriate)
- Curriculum Vitae (CV) of the doctor
- References (minimum of two)
- Form of information completed (contact details, training, qualifications, etc.)
- Specimen Signature
- Registration fee paid (£80).

When a doctor's name is added to the local register a circular is sent widely (including all island pharmacies) informing them of the name, specialty, and role of the new doctor, and providing a specimen signature.

Doctors will, of course, undergo the normal employment checks by their prospective employer in addition to the process of adding to the local register.

## 10. Responding to Concerns and Remediation

Concerns about doctors can be raised in many ways. Local policies for responding to concerns are in place and up to date for both Primary and Secondary Care. The policies are based on "Maintaining High Professional Standards", and provide pathways for action when a concern arises, including:

- involvement of independent advice (from NHS England),
- how the concern must be investigated and escalated,
- management of confidentiality,
- the processes to be gone through regarding any restriction of practice,
- exclusion from work,
- management of risk to patients,
- reviews of any exclusions,
- informing other organisations, and
- procedures for dealing with disciplinary, capability and health issues.

Concerns about doctors may result in informal or formal management. Informal management typically is used for minor matters, and when there is no risk to patients, the doctor demonstrates insight, and a consultative group consider that the matter can appropriately be closed with informal action.

Appendix A presents numerical information about formal management of new concerns raised about doctors in 2017. Formal management of concerns was required for 4 doctors in 2017: 2 at high level (1 capability, 1 conduct); 1 at medium level (conduct); and 1 at low level (capability). One of these concerned historical allegations regarding conduct in a doctor who has not lived or worked in the Bailiwick for many years, but where new local information required escalation to the GMC.

The General Medical Council investigated three new cases under Fitness to Practice procedures in 2017, with a further four cases ongoing from the previous year.

Of the 2016 cases, three were closed at case examiner stage without formal hearings by the Medical Tribunal Service (2 had been reported by a local patient and /or family, and one from the visiting doctor's UK Trust). The final 2016 case went to a MPTS Panel and resulted in the doctor giving Undertakings about their future practice. That doctor had been referred by the local RO; the doctor had already left the Bailiwick and the local Register of doctors.

Of the 3 new cases, one was formally referred to the GMC by the local RO and remains under investigation for matters relating to conduct and capability. The doctor has not worked in the Bailiwick since. One related to a historical case where new information from the Bailiwick was passed on to the GMC about a doctor who has not lived or worked in the Bailiwick for many years. The third was referred by a patient and/or family. All 3 remained under investigation at the end of 2017.

A formal remediation programme was concluded in 2017 for one doctor who had commenced the programme in 2016. The doctor is now working normally and there have been no new concerns. Remediation programmes for doctors are developed using the "Back on Track" framework developed by the National Clinical Assessment Service. No doctors were undergoing formal remediation programmes at the end of 2017.

## **11. Risks and Issues:**

Complaints: In 2017 no complaints were received about the discharge of the RO functions.

Conflict of Interest: As detailed above (section 3), a conflict of interest was identified when the RO's wife was appointed as a doctor on the local register. The Ordinance allows for this situation, and a second RO was appointed to oversee that doctor. The GMC were consulted and approved these arrangements.

## **12. Progress against 2016 "Next Steps"**

All stated aims for progress in 2017 have been achieved. In particular:

Registrations Panel: In 2017 significant progress was made in the establishment of the Medical Practitioners Panel. Panel members were appointed and confirmed by due process (approval by Policy and Resources). The panel members' induction took place in March 2017, and the panel then formally commenced its statutory duties. The panel conducts most of its work electronically, and the next meeting of the Panel will take place in March 2018. In 2018 there were no appeals to the Panel of decisions taken by the RO. The RO kept the Panel informed about the one doctor who was excluded from practice in 2017.

Appraisals: Off island appraisals were put in place for approximately half of secondary care doctors, through links with Southampton University Hospitals and Southern Health NHS Foundation Trust.

- Quality Assurance of secondary care appraisals took place, led by the Appraisal Lead for Southampton University Hospitals (SUH). Local appraisers received individual feedback from Dr Henrik Steinbrecher, who wrote a report on his findings.
- Training for Local Appraisers: Training to local appraisers was provided by Dr Henrik Steinbrecher, SUH Appraisal Lead.

### **13. Next Steps for 2018:**

Plans for 2018 include:

- Appointment of a new Appraisal Lead for secondary care. (Dr Brink has been appointed as Director for Public Health and will vacate the post).
- Continued external involvement in appraisals, including external appraisals for approximately half of secondary care doctors.
- Ongoing training and quality assurance, with involvement from the Wessex Appraisal Scheme and SUH.

### **14. Conclusion**

This annual report has presented details of the discharge of the Responsible Officer's functions in the year 2017. Further progress has been made in implementation of the Ordinance, and compliance with the requirements of regulation and revalidation of doctors in the Bailiwick.

The RO would like to thank all those involved in helping to deliver high quality regulation of doctors in the Bailiwick in 2017.

## 15. Annual Report Appendix A: Audit of concerns about a doctor's practice.

Concerns about a doctor's practice	High level <sup>1</sup>	Medium level	Low level	Total
Number of doctors with concerns about their practice in the last 12 months (new concerns).	2	1	1	4
Capability concerns (as the primary category) in the last 12 months	1	0	1	2
Conduct concerns (as the primary category) in the last 12 months	1	1	0	2
Health concerns (as the primary category) in the last 12 months	0	0	0	0
<b>Remediation/Reskilling/Retraining/Rehabilitation</b>				
Numbers of doctors with whom the designated body has a prescribed connection as at 31 December 2017 who have undergone formal remediation between 1 January 2016 and 31 December 2017. Formal remediation is a planned and managed programme of interventions or a single intervention e.g. coaching, retraining which is implemented as a consequence of a concern about a doctor's practice				1
Consultants				1
Staff grade, associate specialist, specialty doctor				0
General practitioner				0
Trainee: doctor on national postgraduate training scheme				0
Doctors with practising privileges who are independent healthcare providers,				0
Temporary or short-term contract holders				0
Other (including all responsible officers, and doctors registered with a locum agency, members of faculties/professional bodies, some management/leadership roles, research, civil service, other employed or contracted doctors, doctors in wholly independent practice, etc) All Designated Bodies				0
<b>TOTALS</b>				1
<b>Other Actions/Interventions</b>				
Local Actions:				
Number of doctors who were suspended/excluded from practice between 1 January and 31 December 2017:				1
Duration of suspension:				

<sup>1</sup> [http://www.england.nhs.uk/revalidation/wp-content/uploads/sites/10/2014/03/rst\\_gauging\\_concern\\_level\\_2013.pdf](http://www.england.nhs.uk/revalidation/wp-content/uploads/sites/10/2014/03/rst_gauging_concern_level_2013.pdf)

Less than 1 week	0
1 week to 1 month (*Doctor did not return from exclusion due to sickness)	1*
1 – 3 months	0
3 - 6 months	0
6 - 12 months	0
Number of doctors who have had local restrictions placed on their practice in the last 12 months?	1
GMC Actions: Number of doctors who:	
Were referred by the designated body to the GMC between 1 January 2017 and 31 December 2017	1
Underwent or are currently undergoing GMC Fitness to Practice procedures between 1 January and 31 December (includes investigations; see section 10 above)	1
Had conditions placed on their practice by the GMC or undertakings agreed with the GMC between 1 January and 31 December (*Historical case of doctor who had left the Bailiwick, but concluded in 2017).	1*
Had their registration/licence suspended by the GMC between 1 January and 31 December	0
Were erased from the GMC register between 1 April and 31 March (*Not including those who voluntarily relinquished their registration due to normal retirement).	0*
National Clinical Assessment Service actions:	0
Number of doctors about whom the National Clinical Advisory Service (NCAS) has been contacted between 1 April and 31 March for advice or for assessment	1
Number of NCAS assessments performed	0

## 16. Annual Report Appendix B – Audit of revalidation recommendations.

Revalidation recommendations between 1 January 2017 to 31 December 2017	
Recommendations completed on time (within the GMC recommendation window)	3
Late recommendations (completed, but after the GMC recommendation window closed)	0
Missed recommendations (not completed)	0
TOTAL	3
Primary reason for all late/missed recommendations For any late or missed recommendations only one primary reason must be identified	
No responsible officer in post	0
New starter/new prescribed connection established within 2 weeks of revalidation due date	0
New starter/new prescribed connection established more than 2 weeks from revalidation due date	0
Unaware the doctor had a prescribed connection	0
Unaware of the doctor's revalidation due date	0
Administrative error	0
Responsible officer error	0
Inadequate resources or support for the responsible officer role	0
Other	0
Describe other	-
TOTAL [sum of (late) + (missed)]	0