



BILLET D'ÉTAT

WEDNESDAY, 18th MARCH, 2020

VII
2020

VOLUME 1

ITEMS DEFERRED FROM MEETING ON 26TH FEBRUARY, 2020

1. Scrutiny Management Committee – Tribunal of Inquiry, P.2020/24
2. Requête - Ensuring that a Policy Letter on the Policy Governing 5G Technology is Debated by the States Assembly, P.2020/8
3. Requête - Suspension of Carrying Out of Works Further to Proposals for the Partial Removal of the Anti-Tank Wall in the Eastern Part of Pembroke Bay (L'Ancrese East) and the Managed Re-Alignment of the Coastline in that Area and Establishment of a Moratorium Period of 10 Years During which Time Suitable Maintenance is Undertaken to Provide Stability to the Wall. P.2019/143

LEGISLATIVE BUSINESS

Legislation Laid Before the States

The Health Service (Benefit) (Limited List) (Pharmaceutical Benefit)
(Amendment) Regulations, 2020
The Registration of Political Parties (Fees) Regulations, 2020
The Polling Stations (Hours of Opening) Regulations, 2020
The Elections (Presence of Candidates at Count) Rules, 2020
The Electoral Roll (Public Inspection) Rules, 2020
The Plant Health (Enabling Provisions) (Guernsey) Law, 2014
(Commencement) (Amendment) Ordinance, 2020
The Plant Health (Implementation) (Guernsey) Ordinance, 2020

BILLET D'ÉTAT

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I hereby give notice that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY**, the **18th March, 2020** at **9.30 a.m.**, to consider the items listed in this Billet d'État which have been submitted for debate.

R. J. COLLAS
Bailiff and Presiding Officer

The Royal Court House
Guernsey

5th March, 2020

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

SCRUTINY MANAGEMENT COMMITTEE

TRIBUNAL OF INQUIRY

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled 'Tribunal of Inquiry', dated 11 February 2020, they are of the opinion:

1. To resolve it is expedient that a Tribunal of Inquiry be established in accordance with the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended, to inquire into a matter of urgent public importance, namely the establishment of the facts and circumstances surrounding appointment to the post of Head of Curriculum and Standards in accordance with the following Terms of Reference:
 - a) to inquire into the circumstances leading up to and surrounding the appointment of the Head of Curriculum and Standards;
 - b) to examine whether the appointment made conformed to the current policies and procedures of the relevant Committees of the States of Guernsey;
 - c) to examine whether good governance standards were maintained during the appointment process;
 - d) to examine such other associated relevant matters as the Tribunal may think fit; and
 - e) to make such recommendations as the Tribunal considers appropriate.
2. To direct the Scrutiny Management Committee to request the Royal Court to appoint an individual or individuals to constitute the Tribunal of Inquiry.
3. To delegate authority to the Policy & Resources Committee to approve expenditure as required up to £150,000 in order that the Tribunal of Inquiry may be established and discharge its functions.
4. To resolve that the Tribunal of Inquiry should forward its resultant report to the Presiding Officer of the States of Deliberation for publication as an appendix to a Billet d'État.

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

SCRUTINY MANAGEMENT COMMITTEE

TRIBUNAL OF INQUIRY

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

11 February, 2020

Dear Sir,

1 Introduction

- 1.1 The Scrutiny Management Committee wishes to request for a second and final time that the circumstances surrounding the recruitment process for the appointment of the role of Head of Curriculum and Standards, employed by the States of Guernsey at the Committee *for* Education, Sport & Culture, do justify the establishment of a Tribunal of Inquiry in accordance with the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended. The Scrutiny Management Committee has been attempting to commission an effective independent review of this matter since September 2019 but, despite best efforts, has only made very limited progress to date with that independent review.
- 1.2 This recruitment process attracted significant media and public interest during 2019 resulting in substantial public comment of a highly critical nature. It is alleged that politicians sitting on the Committee *for* Education, Sport and Culture interfered with the appointment process by attempting to predetermine the outcome of the interview process and that there was poor or irregular governance surrounding the appointment. In the opinion of the Scrutiny Management Committee, such allegations have undermined public trust and confidence in their government's appointment processes and in government itself.
- 1.3 The Scrutiny Management Committee brought forward a Policy Letter and Propositions on the 27th August 2019 requesting that the States agree to the

establishment of a Tribunal of Inquiry in order to undertake an effective investigation of this matter. On 4th September the Assembly decided¹ by a narrow margin (*the original Propositions were amended 16 votes to 15 and the Propositions as amended were lost 13 votes to 14*) not to support the Propositions.²

- 1.4 Following this decision by the States Assembly, the Scrutiny Management Committee then chose to appoint a suitably qualified independent reviewer to undertake an investigation on its behalf. The Scrutiny Management Committee wrote to both the Committee *for* Education, Sport & Culture and the Policy & Resources Committee on the 12th September 2019 asking that the relevant information be supplied to its chosen independent reviewer. Eventually, after significant delay, a handover of some relevant documentary material was produced with concerns regarding data protection and employment law cited to explain the delay. Material from the Policy & Resources Committee was received on the 22nd November 2019 and material from the Committee *for* Education, Sport and Culture was received on the 13th December 2019. This material was reviewed by the independent reviewer commissioned by the Scrutiny Management Committee. It is important to emphasise that much of the material provided to the Scrutiny Management Committee had been submitted in heavily redacted form. This Committee understands that the documents had been substantially redacted due principally to data protection concerns. In particular, it is clear that because a number of key witnesses have withdrawn their consent in respect of their personal data being shared with the Scrutiny Management Committee and/or its independent reviewer, it was felt that such material could not be disclosed to the review process without contravention of the Data Protection Law.³
- 1.5 Changes in data protection legislation⁴ introduced on 7th January 2020 by the Committee *for* Home Affairs initially appeared to provide a helpful legal gateway to allow the relevant Committees to supply the data in un-redacted form to the investigation. The Scrutiny Management Committee immediately wrote to the relevant Committees on the 8th January 2020 and requested that all relevant material be submitted to its independent reviewer without redaction. However, no additional material has been received with additional data protection concerns being cited by both the relevant Committees. Furthermore, the recent

¹ [Hansard 4th September 2019 pg.1795](#)

² [Billet XVII of 2019 - Votes 2019/75](#)

³ The Data Protection (Bailiwick of Guernsey) Law, 2017

⁴ The Data Protection (General Provisions) (Bailiwick of Guernsey) (Amendment) Regulations, 2020

changes in data protection legislation have potentially introduced additional challenges to the Scrutiny Management Committee regarding publishing and publicly making reference to evidence from the independent review or holding a public hearing relating to this matter.

1.6 To date, the Scrutiny Management Committee has incurred significant cost amounting to circa £60,000 to progress its independent review and it is now clear that its completion will incur an overall cost of not less than £150,000. This anticipated cost is believed to be similar to the estimated cost to undertake a Tribunal of Inquiry and could be reduced further if the work done thus far by the independent reviewer is incorporated into the proposed Tribunal process. Furthermore, the Scrutiny Management Committee remains concerned that any final report submitted by its independent reviewer will face significant obstacles to being published without significant redactions, due to data protection and employment law concerns. This has raised a significant concern with Members of the Scrutiny Management Committee regarding value for money if the final independent report cannot be published without redaction and also in light of certain key documents not being available to the independent reviewer. The Scrutiny Management Committee is of the view that it should not continue with its independent review at further cost to the taxpayer if the final report will not be allowed to set out a full analysis of what happened and deliver genuine transparency to the public. Any published report that does not clearly identify the issues in a full and frank manner would not in the opinion of the Scrutiny Management Committee represent an efficient use of resources.

1.7 Therefore, the Scrutiny Management Committee has concluded that, in these unusual circumstances, it believes the best and only effective way to deliver a complete, independent and transparent review is pursuant to the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended; the Guernsey equivalent of a public inquiry process.

2 Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended

2.1 The Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended, states that the provisions of that Law shall apply *“where it has been resolved...by the States that it is expedient that a tribunal be established for inquiring into a definite matter described by the Resolution as of urgent public importance”*. The Scrutiny Management Committee is unanimously of the opinion that the facts and circumstances surrounding the appointment process do satisfy the statutory criteria for such an inquiry under the 1949 legislation. Precisely what happened

before, during and immediately after the specific appointment process in question is “a definite matter” and the “urgent public importance” test has been well documented by the weight of public and media interest. This matter needs to be determined once and for all so that there is real clarity about what happened and why; and so that the States of Guernsey can learn from the experience and implement any relevant recommendations.

The Law confers upon the Tribunal all the powers, rights and privileges as are vested in the Royal Court with regard to:

- a) enforcing the attendance of witnesses and their examination on oath;
- b) compelling the production of documents; and
- c) issuing of a commission or request to examine witnesses out of this Island.

To put the matter simply, only a Tribunal set up under the 1949 Law would have the authority to cut through the barriers to scrutiny that have been documented above.

The Royal Court would be responsible for the appointment of persons to serve on the Tribunal.

- 2.2 The Scrutiny Management Committee is mandated to advise the States when it believes a Tribunal of Inquiry should be established⁵. It is the unanimous, firm belief of the Scrutiny Management Committee that this course of action is justified in the interests of holding an effective review that will have unimpeachable independence and transparency. Additionally, this Committee believes such action fulfils another mandated duty, *“to recognise that the carrying out of scrutiny in public where possible is likely to contribute positively to public perceptions of scrutiny”*.
- 2.3 Since 12th September 2019 the Scrutiny Management Committee has attempted to progress this matter by means of an independent review. It has acted in good faith in trying to progress an effective review. However, the Scrutiny Management

⁵ Extract from the Scrutiny Management Committee mandate “To advise the States if and when in its opinion circumstances justify the establishment of a Tribunal of Inquiry in accordance with the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended.”

Committee now firmly believes that this option is unlikely to result in the publication of a transparent meaningful and conclusive report.

- 2.4 It has become apparent that to be effective the review requires access to all the relevant information as well as an ability to compel any and all relevant witnesses of fact to attend a hearing to give evidence.
- 2.5 The Scrutiny Management Committee believes that the public interest would be best served if this review process is conducted in public and that any other potential mechanism available to the Scrutiny Management Committee is not sufficiently robust and ultimately would prove ineffective. It should be well understood that if this Policy Letter is not supported by the Assembly, the Scrutiny Management Committee will cease to investigate this matter for the reasons given above.

3 Recommendations

- 3.1 To resolve it is expedient that a Tribunal of Inquiry be established in accordance with the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended, to inquire into a matter of urgent public importance, namely the establishment of the facts and circumstances surrounding appointment to the post of Head of Curriculum and Standards in accordance with the following Terms of Reference:
 - a) to inquire into the circumstances leading up to and surrounding the appointment of the Head of Curriculum and Standards;
 - b) to examine whether the appointment made conformed to the current policies and procedures of the relevant Committees of the States of Guernsey;
 - c) to examine whether good governance standards were maintained during the appointment process;
 - d) to examine such other associated relevant matters as the Tribunal may think fit; and
 - e) to make such recommendations as the Tribunal considers appropriate.
- 3.2 To direct the Scrutiny Management Committee to request the Royal Court to appoint an individual or individuals to constitute the Tribunal of Inquiry.
- 3.3 To delegate authority to the Policy & Resources Committee to approve expenditure as required up to £150,000 in order that the Tribunal of Inquiry may be established and discharge its functions.

- 3.4 To resolve that the Tribunal of Inquiry should forward its resultant report to the Presiding Officer of the States of Deliberation for publication as an appendix to a Billet d'État.

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.
- 4.3 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the Propositions above have the unanimous support of all Committee Members.
- 4.4 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee mandate; *"To advise the States if and when in its opinion circumstances justify the establishment of Tribunal of Inquiry in accordance with the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended"*.

Yours faithfully,

C J Green

President

L B Queripel

Vice-President

J S Merrett

Member

G Morris

Non-States Member

Advocate P Harwood

Non-States Member

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

REQUÊTE

**ENSURING THAT A POLICY LETTER ON THE POLICY GOVERNING
5G TECHNOLOGY IS DEBATED BY THE STATES ASSEMBLY**

The States are asked to decide:-

Whether, after consideration of the Requête dated 20th January, 2020, they are of the opinion:-

1. To direct the Committee *for* Economic Development to present a policy letter to the States of Deliberation no later than the end of the current political term, detailing its recommended policy on 5G technology, including specific reference to the licence conditions and criteria.

OR, only if Proposition 1 shall have fallen,

2. To direct the Committee *for* Economic Development to present a policy letter to the States of Deliberation no later than the end of 2020, detailing its recommended policy on 5G technology, including specific reference to the licence conditions and criteria.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

REQUÊTE

ENSURING THAT A POLICY LETTER ON THE POLICY GOVERNING 5G TECHNOLOGY IS
DEBATED BY THE STATES ASSEMBLY

THE HUMBLE PETITION of the undersigned Members of the States of Deliberation
SHEWETH THAT:

1. In June 2018, the Committee *for* Economic Development (“the Committee”) published its first ever telecommunications strategy, *The Future of Telecoms*. The strategy states:

“The three key objectives are:

 1. Provision of Fibre to business districts within 2-3 years
 2. Provision of high quality residential broadband to all residential properties within 2-3 years
 3. Provision of next generation mobile technology in line, or earlier than the UK”
2. With specific regard to the third objective, next generation mobile, the strategy explains:

“Planning and standardisation activities for 5th generation (5G) mobile networks is already underway and all of the big Telecoms Infrastructure providers have active 5G research and development projects, and early technology trials are underway at numerous locations around the world.”
3. Your Petitioners note that the telecommunications strategy has been neither debated nor endorsed by the States of Deliberation, although there has long been an expectation that there will be a chance to debate the issue. At the time that *The Future of Telecoms* was published on the official website for the States of Guernsey in June 2018, the public was informed that:

“A further Policy Letter on the implementation of that strategy will be submitted to the States in 2019.”
4. In November 2018, the Channel Islands Competition & Regulatory Authorities (“CICRA”) hosted a 5G summit involving government officials, senior telecoms industry and digital sector leaders, and experts from the UK “to discuss and

debate opportunities for the Channel Islands as the advent of 5G technology draws nearer”.

5. In December 2018 the Committee published some FAQs on 5G in response to increasing public interest in the issue. Concerns expressed by the community focused on a variety of different aspects of 5G. These include (but are not limited to): questions around the relative costs and benefits of 5G; issues around cybersecurity, data protection and privacy; and potential health and environmental impacts, especially those relating to non-ionising radiation, as well as queries around the scope, transparency and accountability of ICNIRP, the organisation whose guidelines inform our health and safety standards.
6. In January 2019, the Committee’s lead for Digital, Deputy Dudley Owen, wrote a letter that was published in Guernsey Press. It was written in response to a number of letters from members of the public on the issue. Deputy Dudley Owen’s letter reiterated the fact that 5G would be debated by the States in 2019:

“During 2019, the Committee *for* Economic Development will publish a policy letter, to be debated by the States, which will set out the next stage of the telecommunications strategy. Central to that is the roll-out of 5G.”
7. In April 2019, the Committee requested that CICRA launch a draft ‘statement of intent’ consultation process with telecoms companies and other interested parties to understand their views on the spectrum requirements and the proposed licencing process required to help meet those objectives, especially in relation to the rollout of 5G technology. This consultation took place during May and June 2019.
8. In June 2019, the Committee updated the P&R Plan with regards to digital connectivity, a States-approved policy priority, as follows:

“Digital connectivity and infrastructure

In summer 2018 the Committee *for* Economic Development published a telecommunications strategy following consultation and engagement with the public and private sector in the island. The States of Guernsey’s Economic Development Strategy confirmed that the implementation of the telecommunications strategy was a critical priority, and resources have been prioritised to develop a government and regulatory framework to deliver the objectives of the strategy and to foster investment in the infrastructure required. A policy letter will be debated by the States’ Assembly in 2019.”

9. In September 2019, the States was informed in statement by the President of the Committee:

“The Committee has now had the opportunity to consider the feedback from that consultation and will be providing an update to States members on next steps within the next few weeks.”

10. In October 2019, a document called ‘Future of Telecoms Strategy – update for States members’ was emailed to deputies by an officer on behalf of the Committee. This update announced that a policy letter was no longer required. The Committee argued that this was because it had become apparent through the consultation that the move towards 5G would be incremental, using existing 4G networks to deliver ‘4G+’ and then variables of 5G, rather than a new, single standalone 5G network. The Committee argued that because of this evolutionary approach it would “not be practical to seek a single licence for the issuance of suitable spectrum in initial 5G deployments”. However, the Committee confirmed that the roll out of a full island-wide 5G network remains a core objective, anticipating that the full deployment of the standalone version of 5G will take place post 2022.

11. The update confirmed that the Committee intends “to direct CICRA to issue licences to allow telecoms operators access to appropriate spectrum to facilitate the initial evolutionary deployment of 5G”, and that licences will be subject to clear conditions and criteria on security, health and safety, planning requirements, network speed and a commitment on deployment timescale and Bailiwick coverage.

12. Your Petitioners note that, although there had been a lot of public interest in the issue, including a high profile community-led campaign focused on the anticipated States debate, the Committee did not publicly communicate its decision that it would no longer be bringing a policy letter to the States. Neither did it take the opportunity to confirm to the public (as per the update for States members) that 5G trials would be starting imminently.

13. In November 2019, 5G trials commenced. The Committee’s lead for Digital, Deputy Dudley Owen, announced:

“The trials will be an opportunity to gain first-hand local experience of the new technology before a wider roll-out is commenced.”

14. Your Petitioners are of the firm opinion that 5G technology is an important policy area that should be debated by the States Assembly before any wider rollout is commenced.
15. The Telecommunications (Bailiwick of Guernsey) Law 2001 provides that the Guernsey Competition and Regulation Authority (GCRA) (“the Authority”) may grant licences for operators in the Bailiwick. The duties of the Authority are contained in the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001. The States of Deliberation gave the Authority powers under the Law to set and determine the standards against which licences are granted.
16. In 2006, the States approved an Amendment to the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 that allows the States to provide directions to the Authority in a number of areas:

“(1A) The States may, on the recommendation of the Commerce and Employment Department made after consultation with the Director General, and without prejudice to the provisions of subsection (1), by Ordinance give the Director General directions of a strategic or general nature including, without limitation, directions concerning the priorities to be taken into account by him in the exercise of his functions and powers in respect of any utility service.”
17. In September 2011, the Commerce and Employment Department brought a policy letter titled ‘Review of Utility Regulation’, which looked at all areas in the Authority’s mandate and made various observations and recommendations. One relevant observation was as follows:

“Whilst the Director General has performed his statutory duties in accordance with the legislative requirements, it could be said that the States have not provided sufficient clarity on their general and strategic objectives. [...] [T]here is scope for the States to provide greater clarity in certain areas where it considers this necessary.”
18. Pursuant to this policy letter, the States agreed to adopt the Six Principles for Economic Regulation, the first of which is Accountability. The definition for Accountability begins as follows:

“independent regulation needs to take place within a framework of duties and policies set by the democratically accountable States of Deliberation.”

The fourth principle is Coherence, the definition of which begins as follows:

“regulatory frameworks should form a logical part of the States of Guernsey’s broader policy context, consistent with established priorities”

19. The report forming the basis for (and appended to) that policy letter, A Review of Guernsey’s Utility Regulatory Regime, carried out by the Regulatory Policy Institute in 2010 states:

“a number of important challenges lie ahead for the States and for the regulatory framework in telecoms. Most important among these will be the development of an appropriate policy and regulatory approach with respect to the rollout of new technologies and next-generation network infrastructure.”

20. Your Petitioners contend that in the decade since that observation was made, the need for an appropriate policy and regulatory approach with respect to the rollout of new technologies and next-generation infrastructure is more urgent than ever. Your Petitioners note that the Committee already has the vast majority of the information it needs to pull together a policy letter on 5G, as it has already written a telecommunications strategy, seen the results of CICRA’s consultation with industry and is in the process of developing licence conditions and criteria.

THESE PREMISES CONSIDERED, YOUR PETITIONERS humbly pray that the States may be pleased to resolve:

1. To direct the Committee *for* Economic Development to present a policy letter to the States of Deliberation no later than the end of the current political term, detailing its recommended policy on 5G technology, including specific reference to the licence conditions and criteria.

OR, only if Proposition 1 shall have fallen,

2. To direct the Committee *for* Economic Development to present a policy letter to the States of Deliberation no later than the end of 2020, detailing its recommended policy on 5G technology, including specific reference to the licence conditions and criteria.

AND YOUR PETITIONERS WILL EVER PRAY

GUERNSEY

This 20th day January, 2020

H L de Sausmarez

L B Queripel

V S Oliver

J S Merrett

M J Fallaize

E A McSwiggan

S L Langlois

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

REQUÊTE

**SUSPENSION OF CARRYING OUT OF WORKS FURTHER TO PROPOSALS FOR THE PARTIAL
REMOVAL OF THE ANTI-TANK WALL IN THE EASTERN PART OF PEMBROKE BAY (L'ANCRESSE
EAST) AND THE MANAGED RE-ALIGNMENT OF THE COASTLINE IN THAT AREA AND
ESTABLISHMENT OF A MORATORIUM PERIOD OF 10 YEARS DURING WHICH TIME SUITABLE
MAINTENANCE IS UNDERTAKEN TO PROVIDE STABILITY TO THE WALL**

The States are asked to decide:-

Whether, after consideration of the Requête dated 27th November, 2019, they are of the opinion:-

1. To agree that the carrying out of any works to implement the managed re-alignment of the coastline at L'Ancrese East as set out in Section 7 of the Policy Letter of the Committee *for the* Environment & Infrastructure dated 18th August 2017 and described in Section 6, Volume 1 of the report "Guernsey Coastal Defences" prepared by Royal Haskoning Dhv further to the Resolution of the States made at their meeting on 29th September 2017 be suspended.
2. To agree that the period of suspension shall be 10 years from the date of this Resolution or such shorter period as the States may at any future time by resolution determine.
3. To direct the Committee *for the* Environment & Infrastructure to arrange for implementation of a maintenance schedule as proposed in Recital 6.
4. In the event of a failure of the wall, resulting in the ingress of the sea onto the common, to direct the Committee *for the* Environment & Infrastructure to revert to the States with proposals for minimising any damage to the common, which may include a proposal for managed re-alignment in accordance with the Resolution of the States of 29th September 2017 referred to in Recital 1.

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

REQUÊTE

SUSPENSION OF CARRYING OUT OF WORKS FURTHER TO PROPOSALS FOR THE PARTIAL REMOVAL OF THE ANTI-TANK WALL IN THE EASTERN PART OF PEMBROKE BAY (L'ANCRESSE EAST) AND THE MANAGED RE-ALIGNMENT OF THE COASTLINE IN THAT AREA AND ESTABLISHMENT OF A MORATORIUM PERIOD OF 10 YEARS DURING WHICH TIME SUITABLE MAINTENANCE IS UNDERTAKEN TO PROVIDE STABILITY TO THE WALL.

THE HUMBLE PETITION of the undersigned Members of the States of Deliberation SHEWETH THAT:

1. At their meeting on 29th September, 2017 the States of Deliberation resolved as follows –
 - "1. To endorse the proposal to implement the managed re-alignment ("Option 7b") of the coastline at L'Ancresse East as set out in Section 7 of this Policy Letter and described in Section 6, Volume 1 of the report "Guernsey Coastal Defences" prepared by Royal Haskoning Dhv."¹
2. The managed re-alignment ("Option 7b") referred to in the above recited Resolution involves the removal of 130 metres of anti-tank wall in the Eastern part of Pembroke Bay, construction of rock armour groynes and creation of a managed realignment of the beach head in the area at an estimated cost of £1,000,000.
3. On 6th November 2018 the Committee for the Environment & Infrastructure submitted a planning application in connection with the works described in order that the scope of any required Environmental Impact Assessment (EIA) could be determined. Advice on the required EIA is awaited and the works now appear unlikely to commence before the summer of 2020.
4. Your Petitioners recognise that the integrity of the section of wall that will be effected by the proposed works will gradually decline if no works are carried out. They further recognise that some maintenance should be carried out in order to ensure that it is kept safe. However they are of the view that the carrying out of the totality of the works comprised in "Option 7b" will, amongst other things, detract significantly from the attractiveness of the area. In particular your Petitioners believe that the construction of the rock armour groynes on what is a pristine beach area will not prove

¹ See item 11 on Billet d'État No. XVIII of 2017.

to be visually attractive, and there are substantial risks that the envisaged re-alignment of a bay within a bay may not occur.

5. In the current circumstances your Petitioners believe that there is merit in agreeing to suspend implementation of Option 7b for a period of at least 10 years, unless the States at any future time by resolution determine otherwise.
6. If suspension of implementation of Option 7b were agreed, your Petitioners believe that maintenance should be undertaken to provide stability to the wall to give the optimum chance of the wall remaining intact for the 10 year period referred to in Recital 5. This is envisaged to involve work, as undertaken at panels 4 and 5 in 2018, to fill the voids in the wall and provide reinforcement to the toe of the wall. There will be the requirement to spend in the short term in the region of £100,000 at panels 8 and 9 to undertake similar work as carried out at panels 4 and 5. In addition it would be prudent to add additional rock armour to the toe of panels 4 and 5 as the previous work was undertaken with a short design life. The only other panel of concern at the moment is panel 11 which may require a similar spend during the moratorium period. It would be prudent to have a maintenance budget of £200,000 set aside and taken from the Minor Capital Allocation for Coastal Repairs budget to cover the estimated cost of any maintenance programme. It should be remembered that the addition of further heavier rock armour to panels 4 and 5 and the new heavier rock armour to panels 8 and 9 will of course be available and is needed, for the managed re-alignment (Option 7b) if it does go ahead in the future.
7. The option to suspend implementation of Option 7b, do no maintenance and intervene only in the event of a health and safety issue arising or a significant failure in the wall causing damage to the common was considered by your Petitioners. Adopting such an option would involve the enhanced risks of a breach in the wall occurring and damage caused by the ingress of the sea onto and erosion of areas of the common. In addition, any failure in the wall in those circumstances would then make access and repair more difficult. Although not the Petitioners favoured solution as detailed in Recital 6, it would in the opinion of the Petitioners nonetheless be in preference to the managed re-alignment (Option 7b) described in Recital 1.
8. Your petitioners acknowledge that if there is a failure of the wall, resulting in damaging ingress of the sea onto the common, this issue should revert to the States to decide whether to revert to managed re-alignment (Option 7b) or another course of action.
9. Your petitioners confirm that the Propositions set out below have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.

THESE PREMISES CONSIDERED, YOUR PETITIONERS humbly pray that the States may be pleased to resolve:

1. To agree that the carrying out of any works to implement the managed re-alignment of the coastline at L'Ancrese East as set out in Section 7 of the Policy Letter of the Committee *for the* Environment & Infrastructure dated 18th August 2017 and described in Section 6, Volume 1 of the report "Guernsey Coastal Defences" prepared by Royal Haskoning Dhv further to the Resolution of the States made at their meeting on 29th September 2017 be suspended.
2. To agree that the period of suspension shall be 10 years from the date of this Resolution or such shorter period as the States may at any future time by resolution determine.
3. To direct the Committee *for the* Environment & Infrastructure to arrange for implementation of a maintenance schedule as proposed in Recital 6.
4. In the event of a failure of the wall, resulting in the ingress of the sea onto the common, to direct the Committee *for the* Environment & Infrastructure to revert to the States with proposals for minimising any damage to the common, which may include a proposal for managed re-alignment in accordance with the Resolution of the States of 29th September 2017 referred to in Recital 1.

AND YOUR PETITIONERS WILL EVER PRAY
GUERNSEY

This 27th day of November 2019

Deputy A.H. Brouard
Deputy T.J. Stephens
Deputy N.R. Inder
Deputy L.B. Queripel
Deputy P.T.R. Ferbrache
Deputy A.C. Dudley Owen
Deputy R.G. Prow

The original signed copy of this Requête is held at the Greffe
and is available to view on request.

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

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

No. 3 of 2020

THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL BENEFIT) (AMENDMENT) REGULATIONS, 2020

In pursuance of sections 10 and 35 of the Health Service (Benefit) (Guernsey) Law, 1990, made by the Committee *for* Employment & Social Security on 21st January, 2020 are laid before the States.

EXPLANATORY NOTE

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

These Regulations come into force on the 22nd January, 2020.

No. 7 of 2020

THE REGISTRATION OF POLITICAL PARTIES (FEES) REGULATIONS, 2020

In pursuance of Article 77C of, the Reform Law (Guernsey) Law, 1948 , and all other powers enabling it in that behalf, “The Registration of Political Parties (Fees) Regulations, 2020” made by the States’ Assembly & Constitution Committee on 30th January, 2020, are laid before the States.

EXPLANATORY NOTE

These Regulations set at £80 the fee that must accompany an application to register a political party under the Fourth Schedule to the Reform Law (Guernsey) Law, 1948. These Regulations were made on 30th January 2020 and came into force on the day they were made.

No. 8 of 2020

THE POLLING STATIONS (HOURS OF OPENING) REGULATIONS, 2020

In pursuance of Article 77C of the Reform Law (Guernsey) Law, 1948, and all other powers enabling it in that behalf, “The Polling Stations (Hours of Opening) Regulations, 2020” made by the States’ Assembly & Constitution Committee on 30th January, 2020, are laid before the States.

EXPLANATORY NOTE

These Regulations provide for polling stations in the 2020 General Election to be open between 8am and 8pm. The polling stations are set out in the Schedule to the Advance Polling and Super Polling Stations Ordinance, 2020. These regulations were made on 30th January 2020 and came into force on the day they were made.

No. 9 of 2020

THE ELECTIONS (PRESENCE OF CANDIDATES AT COUNT) RULES, 2020

In pursuance of Articles 38A(5) and 78 of the Reform Law (Guernsey) Law, 1948, and all other powers enabling it in that behalf, “The Elections (Presence of Candidates at Count) Rules, 2020” made by the States’ Assembly & Constitution Committee on 30th January, 2020, are laid before the States.

EXPLANATORY NOTE

These Rules specify the conditions on which election candidates or their representatives may be present at the counting of votes. The rules also prescribe forms for the notification of a candidate's intention to exercise either his or her entitlement to be present when the votes are counted or to nominate a representative to be present in his or her stead. They were made on 30th January 2020 and came into force on the day they were made.

No. 13 of 2020

THE ELECTORAL ROLL (PUBLIC INSPECTION) RULES, 2020

In pursuance of Sections 34(5) and (6), and 78 of the Reform Law (Guernsey) Law, 1948, the Electoral Roll (Public Inspection) Rules, 2020 made by the Committee *for* Home Affairs on 3rd February 2020, is laid before the States.

EXPLANATORY NOTE

These Rules specify the places at which and the period during which the draft Electoral Roll being prepared for the 2020 General Election is available for public inspection, and when future draft Electoral Rolls will be made available for public inspection.

ORDINANCES LAID BEFORE THE STATES

THE PLANT HEALTH (ENABLING PROVISIONS) (GUERNSEY) LAW, 2014 (COMMENCEMENT) (AMENDMENT) ORDINANCE, 2020

In pursuance of the provisions of the proviso to Article 66A(1) of The Reform (Guernsey) Law, 1948, as amended, "The Plant Health (Enabling Provisions) (Guernsey) Law, 2014 (Commencement) (Amendment) Ordinance, 2020", made by the Policy & Resources Committee on the 4th February, 2020, is laid before the States.

EXPLANATORY MEMORANDUM

This Ordinance amends the Plant Health (Enabling Provisions) (Guernsey) Law, 2014 (Commencement) Ordinance, 2019 made by the Policy & Resources Committee on the 23rd April 2019 and laid before the States on the 12th June, 2019. The amendment changes the commencement date for the Plant Health (Enabling Provisions) (Guernsey) Law, 2014, under which the Plant Health (Implementation) (Guernsey) Ordinance, 2020 is proposed to be made, from exit day to 4th February, 2020 when the Implementation Ordinance was made. Exit day will not take place in the Bailiwick until the end of the Transition Period under the EU Withdrawal Agreement agreed between the UK and the EU.

The Ordinance was approved by the Legislation Review Panel on the 3rd February, 2020 and made by the Policy & Resources Committee in exercise of its powers under Article 66A(1) of the Reform (Guernsey) Law, 1948. Under the proviso to the said Article 66A(1), the States of Deliberation have the power to annul the Ordinance.

THE PLANT HEALTH (IMPLEMENTATION) (GUERNSEY) ORDINANCE, 2020

In pursuance of the provisions of the proviso to Article 66A(1) of The Reform (Guernsey) Law, 1948, as amended, "The Plant Health (Implementation) (Guernsey) Ordinance, 2020", made by the Policy & Resources Committee on the 4th February, 2020, is laid before the States.

EXPLANATORY MEMORANDUM

Introduction

This Ordinance implements the EU's Plant Health Regulation ("PHR") which came into force on the 14th December, 2019. Guernsey is required to implement the PHR in view of its obligations in relation to goods under Protocol 3 to the UK's Treaty of Accession to the European Communities and Regulation 7906/73 relating to agricultural matters.

Due to the extension of the article 50 period agreed between the EU27 and the UK beyond 31st October, 2019, the PHR has direct effect in Guernsey and so must be enforced/implemented. During the current Transition Period, as part of the UK's Withdrawal Agreement with the EU, the UK is to be treated as an EU member State and is required to

implement EU legislation during this period. Therefore, the Implementation Ordinance treats the UK as a member State.

The PHR, together with the EU Official Controls Regulation ("OCR"), EU Animal Health Regulation, and related EU legislation relating to food and feed, forms the EU "Smarter Rules for Safer Food" (SRSF) legal framework. The framework is designed to provide "farm to fork" coverage in terms of the application of EU standards and to safeguard biosecurity from sanitary and phytosanitary threats posed by third countries and from within the European Union.

The European Communities (Official Controls) (Implementation and General Provisions) (Guernsey) Ordinance, 2019, made by the Policy & Resources Committee on the 10th December, 2019 and laid before the States on the 5th February, 2020 provides a general foundation by which official controls implementing the SRSF can be performed whilst other legislation will provide for enforcement of the detailed, area specific controls under specific EU legislation such as the PHR.

Compliance with the PHR and alignment with the UK legislation implementing the PHR is required to ensure continued market access in the EU and the UK for Guernsey plants and plant products.

Why a new Ordinance is needed

A new Ordinance is needed to implement the PHR as the Plant Health (Guernsey) Ordinance, 2019 (2019 Ordinance), , was put in place to ensure EU and UK market access for Guernsey companies in the event of a hard Brexit so has not come into force. The 2019 Ordinance implemented the previous EU Plant Health Directive, which the PHR repealed and replaced, and was based on a UK/British Islands plant passport area rather than the European Union territory. As the PHR has direct effect in Guernsey, unlike the previous EU Directive, the new Implementation Ordinance only needs to provide for enforcement and administrative provisions in relation to the substantive requirements which are set out in the PHR. The 2019 Ordinance, which comes into force on exit day at the end of the transition period under the Withdrawal Agreement, is not being repealed now in case there is a hard Brexit. However, the need for repeal will be reviewed during 2020 as the most likely outcome is that the Implementation Ordinance will remain in force after the Transition Period subject to any necessary amendments/modifications that may be made at that time. This is because the PHR and the OCR will be Preserved EU law under Bailiwick Brexit legislation on exit day.

Context

The Official Controls Ordinance designated the Committee for the Environment & Infrastructure (E&I) as the Designated Authority in relation to protective measures against plant pests and gave it powers to appoint Designated Officers to discharge its functions under the OCR. The Implementation Ordinance confers enforcement and other administrative functions on the Committee, as the Designated Authority responsible for plant health, to enforce the detailed plant health controls in the PHR. The PHR requires that enforcement and other administrative arrangements to implement the PHR are carried out in accordance with the framework for official controls in the OCR to ensure consistency of

official controls across the SCRF framework. The Implementation Ordinance sets out the specific civil notice and criminal offence provisions to enforce requirements of the PHR, and various procedural requirements relating to authorisations and registrations under the PHR to the extent that the detail of those provisions are left to the discretion of EU Member States.

The Ordinance

The Implementation Ordinance is also consistent with the April, 2006 policy resolution of the States which approved the drafting of legislation in accordance with policy principles which provided for comprehensive new plant health legislation in line with international standards.

The main purpose of the Implementation Ordinance is to provide for enforcement of the plant health measures in the PHR. The Implementation Ordinance is also aligned closely with equivalent English Plant Health Legislation enforcing the requirements of the PHR and providing for local measures where derogations or stricter local controls are allowed under the PHR. The policy is to align closely with the UK to facilitate continued access for Guernsey plant and plant product companies to the important UK plant/plant product market.

The Implementation Ordinance gives enforcement functions to E&I and to plant health officers appointed by its President. A person appointed as an official plant health officer under the Implementation Ordinance is also automatically a Designated Person, with powers to carry out certain enforcement action, under the Official Controls Ordinance.

Part I of the Implementation Ordinance requires plant health officers to serve specified notices where certain plants, plant products or plant pests have been brought into Guernsey from outside the Union territory in breach of EU plant health legislation or without being presented for required official controls on entry. Part III sets out notice powers and powers of entry for plant health officers to prevent the establishment or spread of plant pests. Parts VII and VIII set out further general powers for plant health officers to enter premises, request and disclose information and take steps where requirements of notices are not met and general provisions in relation to notices given by plant health officers and appointment of such officers.

Part V provides for procedure in relation to registration and authorisations under the PHR which must be made to E&I as the competent authority. The PHR includes a duty for plant breeders/producers etc. to register as professional operators and provides for authorisation of such registered operators to issue plant passports in relation to movements of certain plants in the Union territory. General transitional provisions applying to all areas covered by the OCR are provided for under section 31 and Schedule 2 of the Official Controls Ordinance which provides for previous non-statutory authorisations to issue plant passports to remain in force and gives certain plant businesses, required to register as professional operators under the PHR, a transitional period of 6 months from 14th December, 2019 to do so.

Part VI requires prior notification to either plant health officers or E&I when specified plants with higher plant health risks are to be brought into Guernsey. Part II provides for an exception from the requirement for movements of plants to be accompanied by a plant

passport and Part IV and Schedule 1 mirror additional local plant health measures provided for in England in relation to certain plants. Part IX provides for standard appeal provisions against certain decisions of E&I or plant health officers, Part X and Schedules 2 and 3 provide for the offence and penalty provisions in relation to breaches of the PHR, the OCR in relation to plants and plant products and other EU plant health legislation which has direct effect in Guernsey; Part XI provides for a power for E&I to provide for fees by Order and for standard exclusion of liability provisions. Part XII provides for a power to amend or prescribe certain provisions by Order of E&I and for standard provisions. Some additional repeals of out of date plant health legislation are made under section 52 which were not repealed in the Plant Health Enabling Law.

The Implementation Ordinance and the PHR will also replace the current plant health legislation listed in the Schedule to the Plant Health (Enabling Provisions) (Guernsey) Law, 2014 (Commencement) Ordinance, 2019. As with the 2019 Ordinance, the Implementation Ordinance and PHR will combine and update the current controls on trade in plants, trees and certain wood and measures to control and prevent outbreaks of plant pests which are currently contained in separate Ordinances. The provisions reflect the agreed policy principles in the 2006 resolution and policy letter except that the PHR and the Ordinance do not provide for controls on the means and methods of transportation of plants and the control of noxious and invasive plants in respect of which current controls have for now been retained. Alignment with the EU and UK requirements will also assist in meeting the requirements of the International Plant Protection Convention, 1951 the UK's ratification of which has been extended to Guernsey.

The Ordinance was approved by the Legislation Review Panel on the 3rd February, 2020 and made by the Policy & Resources Committee in exercise of its powers under Article 66A(1) of the Reform (Guernsey) Law, 1948. Under the proviso to the said Article 66A(1), the States of Deliberation have the power to annul the Ordinance.

The full text of the legislation can be found at:

<http://www.guernseylegalresources.gg/article/90621/Statutory-Instruments>