



# BILLET D'ÉTAT

WEDNESDAY, 28<sup>th</sup> SEPTEMBER, 2022

XVII  
2022

## *ELECTIONS AND APPOINTMENTS*

### *Appointments laid before the States*

Appointment of the Chairman of the Guernsey Banking Deposit  
Compensation Board  
Appointments of Ordinary Members of the Guernsey Banking Deposit  
Compensation Board

## *LEGISLATIVE BUSINESS*

### *Legislation laid before the States*

The Aviation Registry (Eligibility) Regulations, 2022  
The Plant Health (Amendment of Transitional Provision) (Guernsey)  
Regulations, 2022  
The Beneficial Ownership (Definition) (Amendment) Regulations, 2022  
The Parochial Elections (St Peter Port) (No.4) Regulations, 2022  
The Sanctions (Implementation of UK Regimes) (Bailiwick of Guernsey)  
(Brexit) (Amendment) (No. 3) Regulations, 2022

### *Legislation for Approval*

1. Policy & Resources Committee - The Income Tax (Guernsey) (Amendment)  
Ordinance, 2022, P.2022/65
2. Policy & Resources Committee - The Income Tax (Guernsey) (Amendment)  
(No. 2) Ordinance, 2022, P.2022/66

**CONTINUED OVERLEAF**

3. Committee *for the* Environment & Infrastructure - The Public Highways (Temporary Closure) (Amendment) Ordinance, 2022, P.2022/67
4. States' Assembly & Constitution Committee - The Reform (Guernsey) (Amendment) Law, 2022, P.2022/68
5. Committee *for* Employment & Social Security - The Prevention of Discrimination (Guernsey) Ordinance, 2022, P.2022/70

#### *OTHER BUSINESS*

6. Policy & Resources Committee - The Bailiwick's Further Participation in UK Free Trade Agreements, P.2022/71
7. Committee *for* Health & Social Care - Review of the Children Law and Outcomes, P.2022/74
8. Committee *for the* Environment & Infrastructure - Environmental Pollution (Guernsey) Law, 2004 Part VI - Water Pollution Supplementary Policy Letter, P.2022/69
9. Committee *for* Economic Development - Low Value Debt Relief, P.2022/72
10. Committee *for* Home Affairs - Amendments to the Criminal Justice Framework, P.2022/73
11. Policy & Resources Committee - Schedule for future States' business, P.2022/75

#### *APPENDIX REPORT*

Committee *for* Home Affairs - Office of the Data Protection Authority - Annual Report 2021

# 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 28<sup>th</sup> SEPTEMBER, 2022 at 9.30 a.m.**, to consider the items listed in this Billet d'État which have been submitted for debate.

R. J. McMahon  
Bailiff and Presiding Officer

The Royal Court House  
Guernsey

12<sup>th</sup> September, 2022

## ***APPOINTMENT LAID BEFORE THE STATES OF DELIBERATION***

### **APPOINTMENT OF CHAIRMAN OF THE GUERNSEY BANKING DEPOSIT COMPENSATION BOARD**

In accordance with section 3(4) of the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008 as amended, the following appointment, by the Committee *for* Economic Development to the Guernsey Banking Deposit Compensation board is laid before the States of Deliberation:-

- Mr. Richard Denton as Chairman with effect from 2<sup>nd</sup> July 2022.

Mr. Denton has been appointed as Chairman until 1<sup>st</sup> July 2023.

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

The Committee *for* Economic Development has concluded that Mr. Denton is suitable to be Chairman of the Guernsey Banking Deposit Compensation board.

The curricula vitae of Mr. Rick Denton is summarised below.

#### Mr. Rick Denton

<b>Career:</b>	Denton Lovel Associates (consulting/business coaching/NED).	2013-to date
	Chief Executive Officer, Triangle Group.	2013-2016
	Managing Director/Head of International Wealth Advisory, Barclays Wealth & Investment Division.	2010-2013
	Group Commercial Director, Fortis Channel Islands/Fortis Offshore.	2004-2010
	Executive Vice President, Head of European Private Client Services, Bank of Bermuda.	1999-2004
	Director, Coutts Offshore Europe, International Private Banking.	1997-1999
	Director of UK market, Coutts International Private Banking.	1995-1999
	Head of Strategic Development and Planning, Coutts Group.	1994-1995
	Senior Manager, NatWest Group.	1985-1992
	NatWest Group graduate trainee.	1983-1985
<b>Professional qualifications:</b>	Institute of Directors, certificate and diploma in company direction.	2014
	Henley Management School, accredited executive development coaching qualification.	2014
	Society of Trust & Estate Practitioners (STEP), Diploma (with distinction).	2004
	Securities Institute, Chartered Member of Securities	2000



	Institute.	
	Securities Institute, Investment Advice Certificate (with distinction).	1998-1999
	Chartered Institute of Bankers, Associate Member of the Chartered Institute of Bankers (ACIB), now Institute of Financial Services.	1998
<b>Education:</b>	Master's in Business Administration, Warwick University.	1992-1994
	Post Graduate Certificate in Education, Nottingham University.	1982-1983
	BA (Hons) History, Nottingham University.	1979-1982
<b>Current/recent Non-Executive Directorships:</b>	NED, Guernsey Post Ltd.	2021- to date
	NED, Guernsey Electricity Ltd.	2018- to date
	Chair of the Guernsey Banking Deposit Compensation Scheme.	2017- to date
	Global MENA Financial Assets Ltd.	2017- to date
	London Central Portfolio Ltd and associated companies.	2016- to date
	Offshore partner, Athene Capital GP Ltd.	2014- to date
	Director and founder, Denton Lovel Associates.	2013- to date
<b>Other:</b>	Patron, Cardiac Action Group LBG (charity).	2021- to date
	States of Guernsey Administrative Review Board/Complaints Panel.	2021- to date
	Council Member, Lawn Tennis Association Ltd (UK charity).	2019- to date
	Council Member, Institute of Directors.	2016- to date
	Treasurer, Guernsey Island Games Association LBG (Charity).	2015- to date
	Director, Channel Islands Lawn Tennis Associations LBG (Charity.)	2007- to date

## ***APPOINTMENT LAID BEFORE THE STATES OF DELIBERATION***

### **APPOINTMENT OF AN ORDINARY MEMBER OF THE GUERNSEY BANKING DEPOSIT COMPENSATION BOARD**

In accordance with section 3(4) of the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008 as amended, the following appointment, by the Committee *for* Economic Development to the Guernsey Banking Deposit Compensation board is laid before the States of Deliberation:-

- Ms. Karen Gibbons as ordinary member with effect from 1<sup>st</sup> September 2022.

Ms. Gibbons has been appointed as ordinary member until 31<sup>st</sup> August 2026.

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

The Committee *for* Economic Development has concluded that Ms. Gibbons is suitable to be an ordinary member of the Guernsey Banking Deposit Compensation board.

The curricula vitae of Ms. Karen Gibbons is summarised below.

#### Ms. Karen Gibbons

	<b>Position/company:</b>	<b>Dates:</b>
<b>Career:</b>	Head of International Liaison and Research, Financial Services Compensation Scheme (FSCS).	2018- to present
	Head of Policy and External Relations, FSCS.	2010-2018
	Assistant Manager – Regulatory Reform and Policy, FSCS.	2009-2010
	Chief Executive Office, FSCS.	2007-2009
	Financial Services Authority, FSCS.	2005-2007
	Assistant Manager – Deposit Team, FSCS.	2002-2005
	Customer Service Team, FSCS.	1999-2002
	Various roles, National Westminster Bank.	1983-1999
<b>Education:</b>	The Open University, Degree in Politics, Philosophy and Economics.	2018
	Kingston College Further Education, A Levels in History, Government and Politics, Sociology.	1980-1982
<b>Current/recent Non-Executive Directorships</b>	European Forum of Deposit Insurers (EFDI)	2020-2022

## **APPOINTMENT LAID BEFORE THE STATES OF DELIBERATION**

### **APPOINTMENT OF AN ORDINARY OF THE GUERNSEY BANKING DEPOSIT COMPENSATION BOARD**

In accordance with section 3(4) of the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008 as amended, the following appointment, by the Committee *for* Economic Development to the Guernsey Banking Deposit Compensation board is laid before the States of Deliberation:-

- Mr. Robert Girard as an ordinary member with effect from 1<sup>st</sup> September 2022.

Mr. Girard has been appointed as an ordinary member until 31<sup>st</sup> August 2027.

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

The Committee *for* Economic Development has concluded that Mr. Girard is suitable to be an ordinary member of the Guernsey Banking Deposit Compensation board.

The curricula vitae of Mr. Robert Girard is summarised below.

#### Mr. Robert Girard

	<b>Position/company:</b>	<b>Dates:</b>
<b>Career:</b>	Country Head and Director of Institutional Banking, RBS International.	2019-2021
	Executive Committee Member, RBS International.	2020-2020
	Senior Country Head and Country Head Guernsey, RBS International.	2016-2019
	Executive Committee Member, RBS International.	2009-2019
	Island Director & Regional Director Corporate & Institutional Banking, RBS International.	2009-2016
	Multiple banking roles, RBS International.	1976-2009.
<b>Professional qualifications:</b>	University of Cambridge Institute for Sustainable Leadership Programme.	2020-2021
	RBS Group Executive Development Programme.	2009-2021
	Elected as a Fellow of the Chartered Institute of Bankers.	2007
	Coutts/NatWest Offshore Leadership Development Programme.	2000-2004
	Business Programme, Durham University Business School.	1997
	Associate of the Chartered Institute of Bankers.	1991
	Higher National Certificate in Business Studies, Guernsey College of Further Education (Distinction).	1982
	Ordinary National Certificate in Business Studies,	1978

Appointment of an Ordinary Member of the Guernsey Banking Deposit Compensation Board (Robert Girard)

Guernsey College of Further Education (Distinction)

<b>Education:</b>	Guernsey College of Further Education, ONC & HNC in Business Studies.	1977-1982
	Grammar School Guernsey	1969-1976
<b>Current/recent Non-Executive Directorships</b>	Board member, Office of the Financial Service Ombudsman.	2021
	Board Director, RBS Group Global Captive Insurance Co, Lothbury Insurance Limited.	2009-date
	Board Director, Royscot Guernsey Limited.	2009-2017
<b>Other:</b>	RBS Group Executive Programme-Insead-Managing Value creation.	2011
	Wharton university of Pennsylvania-Strategic Risk Management.	2011

## **APPOINTMENT LAID BEFORE THE STATES OF DELIBERATION**

### **APPOINTMENT OF AN ORDINARY MEMBER OF THE GUERNSEY BANKING DEPOSIT COMPENSATION BOARD**

In accordance with section 3(4) of the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008 as amended, the following appointment, by the Committee *for* Economic Development to the Guernsey Banking Deposit Compensation board is laid before the States of Deliberation:-

- Mr. Stuart Lawson as ordinary member with effect from 1<sup>st</sup> September 2022.

Mr. Lawson has been appointed as ordinary member until 31<sup>st</sup> August 2025.

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

The Committee *for* Economic Development has concluded that Mr. Lawson is suitable to be an ordinary member of the Guernsey Banking Deposit Compensation board.

The curricula vitae of Mr. Stuart Lawson is summarised below.

#### Mr. Stuart Lawson

	<b>Position/company:</b>	<b>Dates:</b>
<b>Career:</b>	Specialist Product Manager, Northern Trust ("NT") Group.	2016-2021
	Head of Regulatory & Market Change, NT Group.	2013-2016
	Head of Real Estate Funds, NT Guernsey.	2007-2013
	Chief Administration Officer, NT Guernsey.	2006-2007
	Head of Finance and Risk, NT Guernsey. <sup>1</sup>	1995-2006
	Client Accounting Manager, NT Guernsey. <sup>2</sup>	1988-1995
	Audit Senior, KPMG Channel Islands.	1984-1988
<b>Appointments:</b>	Chairman, Northern Trust (Guernsey) Limited.	2013-2022
	Senior Vice President, NT Group.	2008-2021
	Various Board appointments across 12 client groups and 7 NT licensee companies.	2007-2022
<b>Professional:</b>	Chartered Accountant (FCCA).	1993
<b>Qualifications:</b>	BA Economics, Geography, Sociology London Metropolitan University.	1983-1984
	DipHE Social & Environmental Problems University of Winchester.	1981-1983
<b>Education:</b>	Minster School, Southwell, Notts.	1974-1981

---

<sup>1</sup> Formally Barings (Guernsey) Limited acquired by ING Group in 1995 and Northern Trust Group in 2005.

<sup>2</sup> Formally Barings (Guernsey) Limited acquired by ING Group in 1995 and Northern Trust Group in 2005.

## **STATUTORY INSTRUMENTS LAID BEFORE THE STATES**

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

No. 29 of 2022

### **THE AVIATION REGISTRY (ELIGIBILITY) REGULATIONS, 2022**

In pursuance of section 12(1) of the Aviation Registry (Guernsey) Law, 2013, “The Aviation Registry (Eligibility) Regulations, 2022”, as amended, made by the Committee *for* Economic Development on 21st April, 2022, are laid before the States.

#### **EXPLANATORY NOTE**

These Regulations replace the Aviation Registry (Eligibility) Regulations, 2015. These Regulations specify the persons who are 'qualified persons' for the purpose of section 12 of the Aviation Registry (Guernsey) Law, 2013.

These Regulations came into force on 21<sup>st</sup> May 2022.

No. 51 of 2022

### **THE PLANT HEALTH (AMENDMENT OF TRANSITIONAL PROVISION) (GUERNSEY) REGULATIONS, 2022**

In exercise of the powers conferred on it by Article 108 of Reserved Regulation 2016/2031 of the European Parliament and of the Council on protective measures against plants and pests, and all other powers enabling it in that behalf “The Plant Health (Amendment of Transitional Provision) (Guernsey) Regulations, 2022” made by the Committee for the Environment and Infrastructure on 20<sup>th</sup> June 2022, are laid before the States.

#### **EXPLANATORY NOTE**

These Regulations amend the transitional provision in regulation 6 of the Plant Health (Brexit) (Amendment) (Guernsey) Regulations, 2020, which makes transitional provision in relation to phytosanitary certificates to accompany certain plants and plant products imported into Guernsey from EU Member States. The provision extends the transitional provision relating to plants etc. from the EU to 31<sup>st</sup> December 2022. This is consistent with an extension made to the equivalent transitional provision in Great Britain.

These Regulations shall come into force on 30<sup>th</sup> June, 2022.

No. 53 of 2022

**THE BENEFICIAL OWNERSHIP (DEFINITION) (AMENDMENT) REGULATIONS, 2022**

In pursuance of section 31 and 39 of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017, "The Beneficial Ownership (Definition) (Amendment) Regulations. 2022", made by the Policy & Resources Committee on 12<sup>th</sup> July, 2022, are laid before the States.

**EXPLANATORY NOTE**

These regulations amend the definition of "recognised stock exchange" in the Beneficial Ownership (Definition) Regulations, 2017, to reflect the fact that there has been a change of name for the Alternative Investment Market and to identify the London Stock Exchange Main Market by name.

These Regulations came into force on 12<sup>th</sup> July, 2022.

No. 54 of 2022

**THE PAROCHIAL ELECTIONS (ST PETER PORT) (NO.4) REGULATIONS, 2022**

In pursuance of the powers conferred on it by Articles 54(4) and 77C of the Reform (Guernsey) Law, 1948 and all other powers enabling it in that behalf, "The Parochial Elections (St Peter Port) (No.4) Regulations, 2022" made by the States' Assembly & Constitution Committee on 20<sup>th</sup> July, 2022, are laid before the States.

**EXPLANATORY NOTE**

These Regulations prescribe the date for an election to the office of Douzenier in the Parish of St Peter Port on the 27<sup>th</sup> July, 2022, following the vacation of office of two previous incumbents and the holding of an elector's meeting on the 13<sup>th</sup> July, 2022.

These Regulations came into force on the day they were made, 20<sup>th</sup> July, 2022.

No. 55 of 2022

**THE SANCTIONS (IMPLEMENTATION OF UK REGIMES) (BAILIWICK OF GUERNSEY) (BREXIT)  
(AMENDMENT) (NO. 3) REGULATIONS, 2022**

In pursuance of section 27(5) of the Sanctions (Bailiwick of Guernsey) Law, 2018, “The Sanctions (Implementation of UK Regimes) (Bailiwick of Guernsey) (Brexit) (Amendment) (No. 3) Regulations, 2022”, made by the Policy & Resources Committee on 26<sup>th</sup> July 2022, are laid before the States.

**EXPLANATORY NOTE**

The Sanctions (Implementation of UK Regimes) (Bailiwick of Guernsey) (Brexit) Regulations, 2020 (the “Principal Regulations”) gave effect with modifications within the Bailiwick, to the UK sanctions regime in respect of the Republic of Belarus and Russia respectively under the UK’s Republic of Belarus (Sanctions) (EU Exit) Regulations 2019 (U.K.S.I. 2019 No. 600) and Russia (Sanctions) (EU Exit) Regulations 2019 (U.K.S.I. 2019 No. 855). These Regulations amend the Principal Regulations in order to give effect within the Bailiwick recent changes made to the UK’s legislative framework for its Republic of Belarus and Russia sanctions regimes in respect of the powers of the UK’s Office of Communications and matters concerning aircraft.

The Regulations came into force on 26<sup>th</sup> July, 2022.

The full text of the legislation can be found at: <http://www.guernseylegalresources.gg>



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

**THE INCOME TAX (GUERNSEY) (AMENDMENT) ORDINANCE, 2022**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Guernsey) (Amendment) Ordinance, 2022", and to direct that the same shall have effect as an Ordinance of the States.

**EXPLANATORY MEMORANDUM**

This Ordinance amends the Income Tax (Guernsey) Law, 1975 –

- (a) by providing that an interim assessment for a year of charge may be made at any time, whether before or (as is currently the case) after the commencement of that year, and
- (b) by changing the instalment dates on which income tax is payable in respect of any year of charge from 6 monthly (30<sup>th</sup> June and 31<sup>st</sup> December) to quarterly (15<sup>th</sup> April, 15<sup>th</sup> July and 15<sup>th</sup> October in that year of charge and 15<sup>th</sup> January in the next year of charge), with other consequential amendments.



# **The Income Tax (Guernsey)**

## **(Amendment) Ordinance, 2022**

**THE STATES**, in pursuance of their Resolution of the 2<sup>nd</sup> November, 2021<sup>a</sup>, and in exercise of the powers conferred on them by sections 203A and 208C of the Income Tax (Guernsey) Law, 1975<sup>b</sup>, and all other powers enabling them in that behalf, hereby order:-

### **Amendment of 1975 Law.**

1. The Income Tax (Guernsey) Law, 1975 is further amended as follows.
2. In section 73(2)(a) after the words "on any person at any time" insert "whether before or".
3. In section 81(1) after the words "tax for any year of charge" insert "up to and including the year of charge 2022".
4. After section 81(1) insert the following subsection -  
  
"(1A) Subject to the provisions of sections 66C, 81A and 81B, tax for any year of charge following the year of charge 2022 shall be payable in four equal instalments as follows –

(a) the first instalment on or before the 15<sup>th</sup> April in

---

<sup>a</sup> Article I(3) of Billet d'État No. XXI of 2021.

<sup>b</sup> Ordres en Conseil Vol. XXV, p. 124; the Law has been amended.

that year,

- (b) the second instalment on or before the 15<sup>th</sup> July in that year,
- (c) the third instalment on or before the 15<sup>th</sup> October in that year,
- (d) the fourth instalment on or before the 15<sup>th</sup> January in the next year of charge,

Provided that, in respect of each of paragraphs (a), (b), (c) or (d), where the assessment in consequence of which the tax is chargeable is not made before the 17<sup>th</sup> March, 16<sup>th</sup> June, 16<sup>th</sup> September or 17<sup>th</sup> December (as the case may be) in that year, the relevant instalment shall be payable within 30 days from the date of the issue of the notice of assessment."

5. In section 199(6) after "the 30<sup>th</sup> June and the 31<sup>st</sup> December in that year" insert "(in respect of any year of charge up to and including the year of charge 2022) or on the 15<sup>th</sup> April, 15<sup>th</sup> July and 15<sup>th</sup> October in that year and the 15<sup>th</sup> January in the next year of charge (in respect of any year of charge following the year of charge 2022)".

6. In section 199AA(2)(a) after "the 30<sup>th</sup> June and the 31<sup>st</sup> December in that year" insert "(in respect of any year of charge up to and including the year of charge 2022) or on the 15<sup>th</sup> April, 15<sup>th</sup> July and 15<sup>th</sup> October in that year and the 15<sup>th</sup> January in the next year of charge (in respect of any year of charge following the year of charge 2022)".

**Citation.**

7. This Ordinance may be cited as the Income Tax (Guernsey) (Amendment) Ordinance, 2022.

**Commencement.**

8. This Ordinance shall come into force on the 1<sup>st</sup> October, 2022.

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

**THE INCOME TAX (GUERNSEY) (AMENDMENT) (NO. 2) ORDINANCE, 2022**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Guernsey) (Amendment) (No. 2) Ordinance, 2022", and to direct that the same shall have effect as an Ordinance of the States.

**EXPLANATORY MEMORANDUM**

This Ordinance amends the Income Tax (Guernsey) Law, 1975 and completes the legislation needed to implement the 2018 resolutions concerning the establishment of the Revenue Service. The effect of those resolutions was to transfer to the Revenue Service the income tax functions of the previous office of Director of Income Tax and the social insurance contribution functions previously vested in the Committee for Employment and Social Security and Administrator.

Sections 2, 3, 4, 6, 9 and 12 contain consequential amendments relating to the changes made by section 7.

Section 5 inserts a new section 204A which empowers the Director of the Revenue Service to grant administrative relief from the liability to pay tax in exceptional cases where the administrative effort of pursuing a debt would clearly outweigh the benefit of recovering it.

Section 7 inserts new clauses which replace the existing confidentiality provisions whereby only persons who have taken a formal oath administered under the Law can be prosecuted for disclosing information about a person's income, profits or tax—

- (a) section 205A, which prohibits the disclosure of information forming part of the official records of the Committee or relating to the business, property or affairs of any person by anyone who has obtained such information or otherwise gained access to it,
- (b) section 205B, which lists the windows by which the disclosure of such information may lawfully be made (eg, to Her Majesty's Procureur as to any suspected offence or with the express consent of the person to whom it relates), and

- (c) section 205C, which prohibits, without lawful authority or reasonable excuse, gaining access to information comprised in the official records of the Committee.

Section 8 repeals section 206 which contains the now-replaced oath provisions.

Section 10 repeals other sections which relate to the disclosure of information and are now subsumed by the new section 205B.

Section 11 replaces section 208A with modern boiler-plate clauses relating to the liability of directors, etc, for criminal offences committed by incorporated and unincorporated bodies.

Section 13 repeals the ordinances setting out the form of oath.

Section 14 amends the Social Insurance (Guernsey) Law, 1978 by inserting new clauses—

- (a) section 91A, which empowers the Director of the Revenue Service to issue statements of practice for the purpose of providing practical guidance in respect of the Law and its administration in relation to contributions (the section is based on the corresponding section of the Income Tax Law), and
- (b) section 91B, which empowers the Director to grant administrative relief from the liability to pay contributions in exceptional case where the administrative effort of pursuing a debt would clearly outweigh the benefit of recovering it (the section is based on the new income tax section 204A above).

Sections 15 and 16 deal with citation and commencement.

# **The Income Tax (Guernsey)**

## **(Amendment) (No. 2) Ordinance, 2022**

**THE STATES**, in pursuance of their Resolutions of the 18<sup>th</sup> April, 2018<sup>a</sup> and the 4<sup>th</sup> June, 2020<sup>b</sup>, and in exercise of the powers conferred on them by sections 203A, 206B and 208C of the Income Tax (Guernsey) Law, 1975<sup>c</sup>, section 115A of the Social Insurance (Guernsey) Law, 1978<sup>d</sup> and all other powers enabling them in that behalf, hereby order:-

### **Amendment of 1975 Law.**

1. The Income Tax (Guernsey) Law, 1975 ("**the Law**") is further amended as follows.
2. Section 75CB(6) is repealed.
3. In section 172(3) for the words " the obligation as to secrecy imposed by section two hundred and six of this Law" substitute "the prohibition on the disclosure of information imposed by section 205A".
4. In section 177 for the words "the obligation as to secrecy imposed by section two hundred and six of this Law" substitute "the prohibition on the disclosure

---

<sup>a</sup> Article 3 of Billet d'État No. XI of 2018.

<sup>b</sup> Article X of Billet d'État No. XI of 2020.

<sup>c</sup> Ordres en Conseil Vol. XXV, p. 124; this enactment has been amended.

<sup>d</sup> Ordres en Conseil Vol. XXVI, p. 292; this enactment has been amended.



of information imposed by section 205A".

5. After section 204 insert the following section –

**"Statements of practice in relation to administrative relief."**

204A. (1) Without prejudice to the generality of section 204, statements of practice thereunder may make provision in respect of the granting by the Director of relief from liability to pay tax ("administrative relief") in any particular and exceptional case where, in the Director's absolute discretion, the administrative effort (whether by reason of the potential expenditure of time, resources or money, or otherwise) of pursuing the debt would clearly outweigh the benefit (financial, fiscal or other) of recovering it.

(2) For the avoidance of doubt, there is no enforceable right or expectation to be granted administrative relief."

6. Section 205(3) is repealed.

7. After section 205 insert the following sections –

**"Prohibition on disclosure of information."**

205A. (1) Subject to the provisions of section 205B -

(a) no person who under the provisions of or for the purposes of this Law, or any Ordinance, regulation or resolution made under it, receives information –

(i) comprised in or forming part of the

official records of the Committee, or

- (ii) relating to the business, property or affairs of any person or body,

(b) no person who –

- (i) obtains any such information directly or indirectly from a person who has so received it, or

- (ii) otherwise gains access to any such information,

shall disclose the information without the consent of the person, if any, to whom it relates and (if different) the person from whom it was so received or obtained or from whom, or through or by means of whom, access to it was so gained.

(2) A person who discloses information in contravention of this section is guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding two years, or to a fine not exceeding twice level 5 on the uniform scale, or to both.

(3) For the avoidance of doubt, and without limitation, the prohibition on the disclosure of information imposed by this section –

- (a) is binding on persons to whom it applies in perpetuity,

(b) applies to persons –

(i) who receive, obtain or gain access to the information unintentionally or in an unauthorised or accidental manner, or

(ii) who are authorised to perform any function or task in the course of which they may receive, obtain or gain access to such information, and

(c) applies to –

(i) past and present members of, and clerks or deputy clerks to, the Guernsey Revenue Service Tribunal and the former Guernsey Tax Tribunal, including past and present members in respect of the exercise by them of the functions of an appointed member under section 75CB, and

(ii) past and present members of the Committee.

(4) The "**official records of the Committee**" means –

(a) any information under the control of the

Committee or the Director relating to the income or profits of, or to any tax paid or payable by, any identifiable individual, other person or body, or

- (b) any other information obtained, received or created under the provisions of or for the purposes of this Law or any Ordinance, regulation or resolution made under it,

whether held in electronic or non-electronic form.

**Cases where disclosure is permitted.**

**205B.** (1) Section 205A does not preclude the disclosure by the Director or any person authorised by the Director of information -

- (a) which at the time of disclosure is or has already been made available to the public from other sources,
- (b) in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it,
- (c) for the purpose of enabling or assisting the Director to perform the Director's functions,
- (d) to any person for the time being authorised to

carry out any functions in connection with the operation of this Law or any Ordinance, regulation or resolution made under it,

(e) to any person, body or authority for the purposes of –

(i) an approved international agreement (within the meaning of section 75C),

(ii) an international tax measure (within the meaning of section 75CC(1B)), or

(iii) regulations made under section 171A (regulations in respect of substance requirements),

(f) under the authority of or in accordance with the requirements of any other provision of this Law or the provisions of any other enactment,

(g) in connection with or for the purposes of any proceedings, penalty, action, sanction or remedy (civil, criminal or administrative) arising out of or under the provisions of this Law or any Ordinance, regulation or resolution made under it,

(h) with the express consent of the person to whom

it relates,

- (i) without prejudice to paragraph (g), for the purposes of legal proceedings to obtain or enforce an order for the making of payments for the maintenance or education of a spouse, former spouse, child or dependant,
- (j) to Her Majesty's Procureur as to any suspected offence under the provisions of this Law or otherwise (and whether in the Bailiwick or elsewhere),
- (k) to any of the following persons, bodies or authorities for the purpose of enabling or assisting them to perform their respective functions -
  - (i) the Administrator appointed under section 94 of the Social Insurance (Guernsey) Law, 1978, provided that the information disclosed may only be –
    - (A) the name and address of any person,
    - (B) information relating to the income of any person, and

- (C) information relevant to any liability to tax, or contributions under the Social Insurance (Guernsey) Law, 1978, to which any person is or may be subject, or the amount of any such liability,
- (ii) the electronic census supervisor, or any census officer, appointed under the Electronic Census (Guernsey) Ordinance, 2013, provided that the information disclosed may only be information relating to the income of any person,
- (iii) the Registrar of Beneficial Ownership of Legal Persons appointed under the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,
- (iv) the Registrar of Beneficial Ownership of Legal Persons in Alderney appointed under the Beneficial Ownership of Legal Persons (Alderney) Law, 2017,
- (v) the Registrar of Companies appointed under section 495(1) of the Companies (Guernsey) Law, 2008,

- (vi) the person appointed to the office of Greffier under section 20 of the Government of Alderney Law, 2004, in respect only of the functions of Registrar arising out of or under the provisions of the Companies (Alderney) Law, 1994,
- (vii) Her Majesty's Greffier, in respect only of the functions of Her Majesty's Greffier arising out of or under the provisions of the Document Duty (Guernsey) Law, 2017 and the Document Duty (Anti-Avoidance) (Guernsey) Law, 2017,
- (viii) an officer appointed under section 13(1) of the Minimum Wage (Guernsey) Law, 2009, in cases where a breach of any provision of the Minimum Wage (Guernsey) Law, 2009 is suspected, provided that the information disclosed may only be –
  - (A) the name and address of any employer suspected of breaching any provision of that Law,
  - (B) the name, address, tax number and social insurance number of



any employee in respect of whom  
such a breach is suspected, and

(C) the evidence upon which it is  
suspected that there has been  
such a breach,

(ix) the supervisor, deputy supervisor and  
economic statistics officers appointed  
under the provisions of the Economic  
Statistics (Guernsey and Alderney) Law,  
2019,

(x) the Administrator of Population  
Management, the office of which was  
established by section 1 of the Population  
Management (Guernsey) Law, 2016,

and information disclosed by the Director or any  
person authorised by the Director by virtue of  
this paragraph to any of the persons, bodies or  
authorities specified in the above subparagraphs  
may, without prejudice to the provisions of any  
other enactment restricting or authorising the  
disclosure and use of information, be used by  
them for the purpose of enabling or assisting  
them to perform their respective functions.

(2) Section 205A does not preclude the disclosure of

information –

- (a) in connection with or for the purposes of any proceedings (civil, criminal or administrative), whether arising out of or under the provisions of this Law or otherwise, or
- (b) in compliance with an order of the court.

**Prohibition on unauthorised access to information.**

**205C. (1)** A person who, without lawful authority or reasonable excuse, gains access to information comprised in the official records of the Committee is guilty of an offence and liable -

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding twice level 5 on the uniform scale, or to both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

(2) For the purposes of this section persons have lawful authority to gain access to information comprised in the official records of the Committee if –

- (a) those persons themselves are entitled to control access of the kind in question to the information,

or

- (b) those persons have consent to such access by them from any person who is so entitled."

8. Section 206 is repealed.

9. In section 206ZA(4) for "in accordance with his oath taken under section 206" substitute "in accordance with the provisions of section 205B".

10. Sections 206A, 206AA and 206B are repealed.

11. For section 208A substitute the following sections -

**"Criminal liability of directors, etc.**

208A. (1) Where an offence under the provisions of this Law or any Ordinance or regulations made under it is committed by an incorporated company or other legal person and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any of the following persons -

- (a) in the case of an incorporated company, any director, secretary or other similar officer thereof,
- (b) in the case of a limited partnership with legal personality, any general partner,
- (c) in the case of a limited liability partnership, any

member,

- (d) in the case of a foundation, any foundation official, or
- (e) any person purporting to act in any capacity described in paragraph (a), (b), (c) or (d),

that person as well as the company or other legal person (as the case may be) is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of an incorporated company or other legal person are managed by its members, subsection (1) applies to a member in connection with that member's functions of management as if that member were a director.

**Criminal proceedings against unincorporated bodies.**

**208AA.** (1) Where an offence under the provisions of this Law or any Ordinance or regulations made under it is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any of the following persons -

- (a) in the case of -
  - (i) a partnership, any partner thereof, but subject to the provisions of subparagraph (ii),

- (ii) a limited partnership without legal personality, any general partner thereof,
- (b) in the case of any other unincorporated body, any director of that body or other officer thereof who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

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

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

(3) A fine imposed on an unincorporated body on its conviction of an offence under the provisions of this Law or any Ordinance or regulations made under it shall be paid from the funds of that body."

**12.** In section 209(1) –

- (a) in the definition of "oath" the words after "affirmation" are repealed,
- (b) after the definition of "oath", insert the following definition –

**""official records of the Committee" : see section 205A(4),".**

**Repeal of Ordinances as to forms of oath.**

13. The Income Tax (Forms of Oath) Ordinance, 1992<sup>e</sup> and the Income Tax (Forms of Oath) (Amendment) Ordinance, 2009<sup>f</sup> are repealed.

**Amendment of Social Insurance Law.**

14. After section 91 in Part VI of the Social Insurance (Guernsey) Law, 1978 insert the following sections and cross heading –

*"Director of the Revenue Service:  
Statements of practice*

**Statements of Practice.**

91A. (1) The Director of the Revenue Service (the "**Director**") may issue statements of practice for the purpose of providing practical guidance in respect of any provision made by or under this Law in relation to

---

<sup>e</sup> Recueil d'Ordonnances Tome XXVI, p. 1.

<sup>f</sup> No. XVIII of 2009 (Recueil d'Ordonnances Tome XXXIII, p. 530).

contributions and in connection with the administration of this Law in relation to contributions.

(2) Statements of practice shall come into force on such date as the Director may appoint.

(3) The Director may revoke or vary any statement of practice, and a statement of practice may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient.

(4) The Director shall publish statements of practice and any revision thereof in such manner as the Director considers appropriate.

(5) Statements of practice must be taken into account by the Director in exercising the functions of the Director under this Law.

(6) In any proceedings –

(a) before the Social Insurance Tribunal or Guernsey Revenue Service Tribunal under the provisions of this Law, or

(b) before the Ordinary Court on a reference or appeal from either of those Tribunals,

a relevant provision of a statement of practice may be relied on as tending to support or, as the case may be, defeat the Director's decision.

(7) Section 116 applies to statements of practice as it applies to regulations.

(8) References in this section to this Law include references to any Ordinance or regulations made under it.

**Statements of practice in relation to administrative relief.**

**91B.** (1) Without prejudice to the generality of section 91A, statements of practice thereunder may make provision in respect of the granting by the Director of the Revenue Service (the "**Director**") of relief from liability to pay contributions ("**administrative relief**") in any particular and exceptional case where, in the Director's absolute discretion, the administrative effort (whether by reason of the potential expenditure of time, resources or money, or otherwise) of pursuing the debt would clearly outweigh the benefit (financial, fiscal or other) of recovering it.

(2) For the avoidance of doubt, there is no enforceable right or expectation to be granted administrative relief."

**Citation.**

**15.** This Ordinance may be cited as the Income Tax (Guernsey) (Amendment) (No. 2) Ordinance, 2022.

**Commencement.**

**16.** This Ordinance shall come into force on the 1<sup>st</sup> October, 2022.



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

**THE PUBLIC HIGHWAYS (TEMPORARY CLOSURE) (AMENDMENT) ORDINANCE, 2022**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Public Highways (Temporary Closure) (Amendment) Ordinance, 2022", and to direct that the same shall have effect as an Ordinance of the States.

**EXPLANATORY MEMORANDUM**

This Ordinance amends the Public Highways (Temporary Closure) Ordinance, 1999 ("the 1999 Ordinance"), which provides for applications to the Royal Court for "al fresco" licences enabling the licence holder to have exclusive possession of a specified area of the public highway without offending the law against obstructing the public highway. The amendments insert into the 1999 Ordinance a new Part which enables the Committee for the Environment & Infrastructure by Order to designate "al fresco zones" in certain areas of the island after public consultation. Within these zones, the Committee will be empowered to grant "al fresco" permits, the effect of which will be similar to the licences. Standard conditions will apply within such zones unless waived by the Committee in a particular case and additional conditions can be applied by the Committee as necessary. If premises are not in an "al fresco" zone, the Royal Court licence application process will still apply. The Ordinance also changes the licence validity period from the calendar year to October-September (which is the relevant period for the new permits) and makes consequential amendments to other parts of the Ordinance.



# **The Public Highways (Temporary Closure) (Amendment) Ordinance, 2022**

**THE STATES**, in pursuance of their Resolution of the 28<sup>th</sup> April, 2022<sup>a</sup>, in exercise of the powers conferred on them by section 1(2) of the Fees, Charges and Penalties (Guernsey) Law, 2007<sup>b</sup>, and in exercise of all other powers enabling them in that behalf, hereby order:-

## **Amendment of 1999 Ordinance.**

1. The Public Highways (Temporary Closure) Ordinance, 1999<sup>c</sup> ("**the 1999 Ordinance**") is amended as follows.

2. Before section 1 of the 1999 Ordinance, for "*Effect of "al fresco" licences*", substitute -

### **"PART I**

#### **EFFECT OF "AL FRESCO" LICENCES AND PERMITS".**

3. In section 1(1) of the 1999 Ordinance -

(a) for "rule of customary law" substitute "rule of law, whether customary or statutory",

---

<sup>a</sup> Article IV of Billet d'État No. VIII of 2022.

<sup>b</sup> Order in Council No. VII of 2008. This enactment has been amended.

<sup>c</sup> Recueil d'Ordonnances Tome XXVIII, p. 185. This enactment has been amended.

(b) after "licence", in each place where it occurs, insert "or permit", and

(c) after "licensee" insert "or permit holder".

4. After section 1 of the 1999 Ordinance, for "*Applications for grant of "al fresco" licences*", substitute -

## "PART II

### "AL FRESCO" LICENCES: APPLICATION TO ROYAL COURT".

5. In the following provisions of the 1999 Ordinance -

(a) section 2(1),

(b) section 4,

(c) section 6(1), and

(d) section 8(2),

for "this Ordinance", in each place where it occurs, substitute "this Part".

6. Section 3(1)(e) is repealed.

7. Section 5(1)(e) is repealed.

8. In section 6(1) of the 1999 Ordinance, for "have exclusive occupation of the area specified in the licence" substitute "occupy the specified area in accordance with section 1".

9. In section 7 of the 1999 Ordinance -

(a) in subsection (1)(a), for "31<sup>st</sup> December" substitute "30<sup>th</sup> September (**"the expiration date"**)",

(b) in subsection (2), for paragraph (a) substitute -

"(a) from the 1<sup>st</sup> October until the expiration date in the following year, or",

(c) in subsection (3), for "31<sup>st</sup> December preceding" substitute "expiration date", and for "1<sup>st</sup> January" substitute "1<sup>st</sup> October",

(d) after subsection (3) insert -

"(3A) Despite the provisions of subsection (3), Her Majesty's Greffier may, if Her Majesty's Greffier thinks fit having regard to all the circumstances, receive and deal with an application for renewal of an "al fresco" licence after the expiration date, and any such renewal shall be deemed to have had effect from the day after the expiration date.", and

(e) in subsection (5), for "October" substitute "July preceding the expiration date".

10. After section 12 of the 1999 Ordinance, insert the following -

"PART III  
APPLICATIONS FOR "AL FRESCO PERMITS" IN DESIGNATED ZONES

**Designation of "al fresco" zones.**

12A. (1) The Committee may, from time to time, by order -

- (a) designate any area as an "al fresco" zone ("**designated zone**") for the purpose of this Part,
- (b) prescribe, in respect of such designated zone, conditions of general application which shall, subject to variation under section 12B(6), be attached to permits issued under this Part in that designated zone,

as it thinks fit.

(2) In any case where the Committee proposes to make an order under this section, the Committee shall -

- (a) place a notice in La Gazette Officielle setting out -
  - (i) that the proposals have been published,
  - (ii) the times and public places at which the proposals are available for public inspection, and

- (iii) the period, which shall be not less than seven days beginning with the date of the publication, within which any representations in respect of the proposals may be sent to the Committee,
- (b) make the proposals, including maps of the proposed designated zone ("**proposed zone**"), available for inspection -
  - (i) on the States of Guernsey website,
  - (ii) at the premises of the Constables of the parishes in which the proposed zone is situated, and
  - (iii) in such other public place or places as the Committee considers appropriate, and
- (c) send a copy of the proposals, including a map of the proposed zone, to -
  - (i) the Constables of the parishes in which the proposed zone is situated,
  - (ii) the States Committee for Economic Development,

(iii) the States Committee for Home Affairs, and

(iv) such other committee or body as the Committee considers appropriate having regard to the location of the proposed zone,

together with a statement of the period for representations mentioned in paragraph (a)(iii).

(3) The Committee shall, before making an order under this section, consider any representations sent to the Committee pursuant to subsection (2).

**Application for "al fresco" permit.**

**12B.** (1) A person wishing to obtain an "al fresco" permit ("**permit**") in respect of any area of the public highway situated in a designated zone shall apply to the Committee in such form and manner as the Committee may determine.

(2) An application for a permit shall include, without limitation, the following particulars -

(a) the full name and address of the applicant,

(b) the location of the area of the public highway for which the application is made,

(c) full details of -



- (i) the purpose,
- (ii) the hours of the day, and
- (iii) the days of the year,

for which the permit is being sought.

(3) Upon receipt of an application under subsection (1), and at any time thereafter, the Committee may require the applicant to supply such additional information as it may reasonably consider necessary to determine the application.

(4) The Committee may, having taken into account the application and any additional information supplied to it -

- (a) subject to subsections (5) and (6), grant to the applicant a permit authorising the applicant to occupy the specified area in accordance with section 1 during the hours and days mentioned and for the purposes specified therein, or
- (b) refuse to grant to the applicant a permit.

(5) A permit granted under subsection (4) shall be made subject to -

- (a) such conditions as may be prescribed under section 12A(1)(b), unless varied by the Committee under subsection (6), and

(b) such other conditions as the Committee may consider necessary or expedient.

(6) The Committee may, if it thinks fit in any particular case, vary the conditions prescribed under section 12A(1)(b).

(7) The Committee may, if it thinks fit during the validity of a permit, and subject to section 12F(2), attach such other conditions to that permit, or vary those previously attached, as the Committee considers necessary or expedient.

(8) Without prejudice to any conditions attached to the permit, a permit issued under this Part is liable to immediate suspension upon the direction of an officer of police or a member of the fire brigade if such officer or member is of the opinion that an emergency has arisen requiring such immediate suspension.

**Period of validity of "al fresco" permits and renewals.**

12C. (1) Unless suspended or forfeited under this Ordinance, a permit granted under section 12B shall be valid -

(a) from such day as the Committee directs until the 30<sup>th</sup> September ("**the expiration date**") next following, or

(b) where the application is not unlimited as respects the days of the year, on or between such days as the Committee may determine.

(2) If renewed, unless suspended or forfeited under this

Ordinance, a permit shall be valid -

- (a) from the 1<sup>st</sup> October until the expiration date in the following year, or
- (b) on or between the days previously determined by the Committee.

(3) Subject to subsection (4) and section 12G, a permit shall be renewed for any year upon payment on or before the expiration date to the Committee of the renewal fee prescribed in section 13 in one payment, and in default shall cease to be valid after the expiration date.

(4) Despite the provisions of subsection (3), the Committee may, if it thinks fit in all the circumstances, receive and deal with an application for renewal of a permit after the expiration date and any such renewal shall be deemed to have had effect from the day after the expiration date.

(5) Where a permit is suspended in pursuance of any of the provisions of this Ordinance and that period of suspension does not end until after the unexpired portion of the period for which the permit is then current, the permit holder may, upon payment of the appropriate fee, renew that permit at the end of the period then current but the permit so renewed shall be of no effect until the period of suspension is ended.

**Register of "al fresco" permits.**

**12D.** (1) The Committee shall, having granted a permit, and subject to payment of the fees prescribed under this Ordinance, issue to the applicant a permit in such form as the Committee may from time to time

determine.

(2) The Committee shall keep a register, in such form as the Committee shall determine, of permits issued by the Committee under this Part.

(3) The Committee shall from time to time amend the register kept in accordance with subsection (2) in the following circumstances -

- (a) upon suspension, forfeiture or non-renewal of a permit, or
- (b) upon variation of the conditions of a permit, or
- (c) where a permit holder informs the Committee that the permit holder has ceased or will cease to exercise that permit, or
- (d) upon a change of name by a permit holder, or
- (e) upon a permit ceasing for any other reason to be valid.

**Change of name of "al fresco" permit holder or adjacent premises.**

12E. In the event of a change of name of a permit holder or of the name of the premises (if any) controlled by the permit holder adjacent to the specified area, the permit holder shall as soon as reasonably practicable notify the Committee and the Chief Officer of Police in writing thereof, and at the same time send the permit to the Committee for amendment.

**Notices.**

12F. (1) If the Committee decides to refuse to grant an application for a permit, the Committee shall give the applicant written notice stating -

- (a) the terms of, and the reasons for, the decision, and
- (b) particulars of the right of appeal under section 12H.

(2) If the Committee intends, in relation to a valid permit, to -

- (a) attach any condition or vary any condition previously attached, or
- (b) suspend or forfeit that permit,

("the decision") the Committee shall give the applicant ("A") written notice stating -

- (i) that the Committee intends to make the decision,
- (ii) the terms of, and the reasons for, the proposed decision,
- (iii) that A may, within a period of 14 days beginning on the date of the notice,

make written representations to the Committee in respect of the proposed decision, and

- (iv) particulars of the right of appeal which would be exercisable under section 12H if the Committee were to make the decision,

and the Committee shall consider any representations made in response to a notice given under this subsection before giving further consideration to the proposed decision.

(3) Where the Committee decides, having taken into account (where applicable) any representations, to make a decision in respect of which a right of appeal is conferred by section 12H, it shall give written notice to the person to whom the decision relates stating -

- (a) the terms of, and the reasons for, the decision, and
- (b) particulars of the right of appeal under section 12H.

**Suspension, forfeiture or non-renewal of "al fresco" permit.**

**12G.** Subject to section 12F(2), the Committee may suspend, or forfeit, a permit if it is satisfied that -

- (a) the permit holder has breached a condition attached to the permit,

- (b) the permit holder has been convicted of an offence under section 14,

or the Committee is otherwise satisfied in all the circumstances of the case that the permit should be suspended, or forfeited, as the case may be.

**Appeals.**

**12H.** (1) A person aggrieved by a decision of the Committee under this Part may appeal to the Royal Court ("**the Court**") against the decision.

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

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality,
- (e) there was a material error as to the facts or as to the procedure.

(3) Subject to subsection (4), an appeal under this section shall be instituted -

- (a) within a period of 28 days immediately following the date of the notice of the decision,

- (b) by summons served on the Committee stating the grounds and material facts on which the appellant relies.

(4) The Committee may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution, and on hearing the application the Royal Court may -

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

The provisions of this section are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007.

(5) On an appeal under this section the Court may -

- (a) set the decision aside and, if the Court considers it appropriate to do so, remit the matter to the Committee with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.

(6) On an appeal under this section the Court may, on the application of the appellant or the Committee or of its own volition, and on



such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

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

11. After section 12H of the 1999 Ordinance (inserted pursuant to section 8), insert -

"PART IV  
GENERAL AND MISCELLANEOUS".

12. In section 13(1) of the 1999 Ordinance -

(a) at the end of paragraph (a)(ii), delete "and", and for "."  
at the end of paragraph (b) substitute ",", and

(b) after paragraph (b) insert –

"(c) in respect of an application for the grant of an  
"al fresco" permit or an application to vary the  
conditions attached to such a permit, £176 to  
the Committee, and

(d) in respect of an application to renew an "al  
fresco" permit, £176 to the Committee."

13. In section 14 of the 1999 Ordinance –

(a) in subsection (1), after "'al fresco" licence" insert "or  
permit", and

- (b) in subsection (3), after "'al fresco" licence", in each place where it occurs, insert ", or permit, as the case may be,".

**14.** In section 18(1) of the 1999 Ordinance -

- (a) after the definition of "'**al fresco**" licensee", insert -

"'**al fresco**" permit" means a permit granted under Part III,

"**al fresco**" permit holder" means the holder of an "al fresco" permit,"

- (b) in the definitions of "**applicant**" and "**application**", after "licence" insert "or permit, as the case may be",

- (c) after the definition of "**application**", insert -

"'**the Committee**" means the States Committee for the Environment & Infrastructure,

"**designated zone**": see section 12A(1)(a),"

- (d) after the definition of "**the Ordinary Court**", insert -

"'**permit**" means an "al fresco" permit,

"**permit holder**" means an "al fresco" permit holder," and

- (e) in the definition of "**specified area**", after "licence" insert "or permit".

**Amendment of 2007 Law.**

15. In the Table in Part B of the Schedule to the Fees, Charges and Penalties (Guernsey) Law, 2007, in the second column of the entry relating to the Public Highways (Temporary Closure) Ordinance, 1999, after the existing wording, add the following paragraph -

"Fees payable to Committee for the Environment & Infrastructure on application for grant, variation of conditions and renewal of al fresco permit".

**Transitional provisions.**

16. (1) For the avoidance of doubt, where an "al fresco" licence which was granted or renewed under the 1999 Ordinance prior to commencement of this Ordinance ("**the date of commencement**") remains valid at the date of commencement, such licence shall continue to be valid, unless suspended or forfeited under Part II of the 1999 Ordinance, until 31<sup>st</sup> December next following the date of commencement.

(2) The holder of such a licence as is mentioned in subsection (1) which is held in respect of an area of the public highway situated in a designated zone may, prior to its expiration in accordance with subsection (1), apply to the Committee in such form and manner as the Committee may determine for an "al fresco" permit in place of the said licence, and upon such application and payment of the appropriate fee the Committee may -

- (a) grant to the applicant an "al fresco" permit in similar terms to the said licence, subject to such conditions as may be prescribed under section 12A(1)(b), unless varied by the Committee under section 12B(6), and

subject to such other conditions as the Committee may consider necessary or expedient, or

(b) refuse to grant the applicant an "al fresco" permit.

(3) Any -

(a) "al fresco" permit which is granted pursuant to subsection (2)(a), or

(b) "al fresco" licence which is renewed pursuant to section 7(3) of the 1999 Ordinance on or before 31<sup>st</sup> December next following the date of commencement (or pursuant to section 7(3A),

shall be valid only until 30<sup>th</sup> September next following the date of such grant or renewal, as the case may be, and the fees prescribed in section 13 of the 1999 Ordinance for such grant or renewal shall be reduced accordingly.

#### **Interpretation.**

17. In this Ordinance -

"**the 1999 Ordinance**" means the Public Highways (Temporary Closure) Ordinance, 1999,

"**designated zone**" means an area designated as an "al fresco" zone for the purpose of Part III of the 1999 Ordinance.

#### **Extent.**

18. This Ordinance has effect in the Island of Guernsey.

**Citation.**

19. This Ordinance may be cited as the Public Highways (Temporary Closure) (Amendment) Ordinance, 2022.

**Commencement.**

20. This Ordinance shall come into force on the 1<sup>st</sup> October, 2022.

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

**PROJET DE LOI**

Entitled

**THE REFORM (GUERNSEY) (AMENDMENT) LAW, 2022**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Reform (Guernsey) (Amendment) Law, 2022", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

**EXPLANATORY MEMORANDUM**

This Projet amends the Reform (Guernsey) Law, 1948 ("the Reform Law"), principally by inserting a new Schedule to establish, and confer functions on, the office of Commissioner for Standards. It is intended that the same person shall be appointed as Commissioner in both Jersey and Guernsey, and consequently the provisions are consistent with (but not identical to) the provisions in the equivalent Jersey legislation.

Section 1 makes what are effectively consequential amendments to the Articles of the Reform Law dealing with the code of conduct, and protections for persons appearing before the Scrutiny Management Committee and a code of conduct panel. Subsection 6 substitutes a new Article 77A that provides a targeted power to amend the inserted Schedule by Ordinance. Sections 2 and 3 are the interpretation and citation provisions, and section 4 provides for the Law to come into force on the day appointed by regulations made by the States' Assembly and Constitution Committee ("SACC"), and includes a transitional provision to cater for any investigations ongoing when the Projet comes into force with power to make any further transitional provision that SACC consider necessary or expedient by regulation.

The Schedule inserts a new First Schedule to the Reform Law. Paragraph 1 establishes the office of the Commissioner, and paragraph 2 deals with the Commissioner's appointment and his or her term of office. Paragraph 3 is concerned with the circumstances in which the office becomes vacant, and confers power on SACC to appoint someone to the office while it is vacant or the holder is unable to perform its functions, with a requirement to report such an appointment as soon as reasonably practicable. Paragraph 4 is concerned with resources for the Commissioner. Paragraph 5 sets out the Commissioner's functions, and types of complaint which are not to be investigated. It provides that the Commissioner shall report to SACC on any investigation s/he undertakes, including conclusions and recommendations for action,

but that those conclusions and recommendations are not binding on SACC. Paragraph 6 provides expressly for the Commissioner's independence, and paragraph 7 provides power for the Commissioner to make and publish a statement of the manner in which he or she proposes to discharge his or her functions which SACC must lay before the States. Paragraph 8 imposes a duty on the Commissioner to make an annual report which SACC must lay before the States.

Paragraph 9 confers power on the Commissioner to require a person to appear before him or her to give evidence or produce a document, and to answer questions. It provides for a produced document (or copy thereof) to be retained by the Commissioner for up to a year. It provides for the avoidance of doubt that a person subject to requirements under this paragraph may refuse to answer questions or produce a document on the ground of a privilege conferred by Article 20E, that is, the same immunities and privileges as if the person were a witness before the Royal Court, including privilege against self-incrimination and legal professional privilege.

Paragraphs 10 – 14 create offences of disobedience to a requirement of the Commissioner, interfering with witnesses, providing false or misleading information, obstruction and destruction of documents. Paragraph 15 confers immunity from criminal or civil proceedings in respect of words spoken or written in a complaint to the Commissioner, and when answering questions from and appearing before the Commissioner, and provides that an answer given or an oral or written statement made in the course of a person's appearance before the Commissioner shall not be admissible in evidence against the person in any other civil proceedings or criminal proceedings. It provides that this does not preclude proceedings under the false information offence, and the protection conferred in respect of complaints made does not extend to a complaint that the Commissioner is not to investigate under paragraph 5(2) (eg a frivolous or vexatious complaint). It also provides that providing a document in respect of another person in response to a request made under the Schedule shall not be regarded as a breach of any duty owed to that other person. Paragraph 16 is a standard exclusion of liability provision for things done under the Schedule other than in bad faith, and paragraph 17 is the interpretation provision.

# PROJET DE LOI

ENTITLED

## **The Reform (Guernsey) (Amendment) Law, 2022**

THE STATES, in pursuance of their Resolutions of the 19<sup>th</sup> August, 2020<sup>a</sup> and 13<sup>th</sup> July, 2022<sup>b</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 Islands of Guernsey, Herm and Jethou.

### **Amendment of the Reform Law.**

1. (1) The Reform (Guernsey) Law, 1948<sup>c</sup> ("**the Reform Law**") is amended as follows.

(2) In Article 20E -

(a) at the end of subparagraph (a) delete "or",

(b) in subparagraph (b) delete "a failure to comply with a code of conduct or", and at the end insert "or", and

---

<sup>a</sup> Article X of Billet d'État No. XVI of 2020.

<sup>b</sup> Article X of Billet d'État No. XII of 2022.

<sup>c</sup> Ordres en Conseil Vol. XIII, p. 288. This enactment has been amended.



(c) after subparagraph (b) insert -

"(c) the Commissioner,".

(3) In Article 20F(2) -

(a) in subparagraph (b), for "such allegations and complaints", substitute "allegations and complaints falling within subparagraph (a)(ii)",

(b) in subparagraph (c), for "a panel to co-operate fully with it" substitute "a panel or the Commissioner to co-operate fully with the panel or the Commissioner (as the case may be)",

(c) in subparagraph (d), after "panel" insert "and Commissioner", and for "it" substitute "the panel or the Commissioner (as the case may be)", and

(d) in subparagraph (e), at the end of item (i) delete "or" and after item (i) insert -

"(ia) requiring the People's Deputy to apologise, or".

(4) In Article 20G, after the definition of "code of conduct" insert -

""**the Commissioner**" means the Commissioner for Standards appointed under the First Schedule,".

(5) After Article 20I, insert –

**"Commissioner for Standards."**

21. The First Schedule, which makes provision in respect of the Commissioner for Standards, has effect."

(6) For Article 77A, substitute -

**"Power to amend First, Third and Fourth Schedules by Ordinance."**

77A. The States may by Ordinance amend -

(a) Part 2, and paragraph 15, of the First Schedule,  
and

(b) the Third and Fourth Schedules."

(7) After section 78, insert the Schedule as the First Schedule.

**Interpretation.**

2. In this Law -

"**code of conduct**" has the meaning given in Article 20G of the Reform Law,

"**commencement**" means the commencement of this Law,

"**the Commissioner**" means the Commissioner for Standards appointed under the First Schedule to the Reform Law inserted by this Law,

"**the Committee**" means the States' Assembly & Constitution Committee, and

"**the Reform Law**": see section 1(1).

**Citation.**

3. This Law may be cited as the Reform (Guernsey) (Amendment) Law, 2022.

**Commencement and transitional provision.**

4. (1) This Law shall come into force on the day appointed by regulations made by the Committee; and different days may be appointed for different purposes.

(2) An investigation into an allegation or complaint falling within Article 20F(2)(a)(i) of the Reform Law that, immediately before commencement, has been started (but not concluded) by a panel established under a code of conduct pursuant to Article 20F(2)(b), may, on commencement, be continued and concluded by the Commissioner (at his or her discretion) in accordance with the provisions of the First Schedule to the Reform Law inserted by section 1(7) in the same way as if the investigation had been started by the Commissioner, and in those circumstances that schedule shall be construed accordingly.

(3) Regulations made under subsection (1) may make such further transitional provision in respect of any investigation falling within subsection (2) as the Committee considers necessary or expedient for the purpose of ensuring that it can be continued and concluded by the Commissioner fairly and efficaciously.

(4) Article 77C of the Reform Law applies to regulations made under subsection (1) as it applies to regulations under that Law.

## SCHEDULE

Section 1(7)

### "FIRST SCHEDULE

#### COMMISSIONER FOR STANDARDS

Article 21

#### PART 1 - ESTABLISHMENT AND ADMINISTRATION

##### **Office of Commissioner.**

1. (1) There is established an office of Commissioner of Standards.

(2) A person who holds the office of Commissioner of Standards is referred to in this Law as the "**Commissioner**".

##### **Appointment of Commissioner.**

2. (1) The Commissioner shall be appointed by the States on the nomination of the Committee.

(2) The Commissioner shall be appointed on such terms and conditions as may from time to time be agreed between the Committee and the Commissioner, provided that none of those terms and conditions is inconsistent with any provision of this Schedule.

(3) Without prejudice to subparagraph (2), and subject to the provisions of this paragraph and paragraph 3 (vacancy in office), the Commissioner shall hold office for such term not exceeding five years as may be agreed between the Committee and the Commissioner at the time of appointment.

- (4) On being appointed the Commissioner shall cease to -
  - (a) hold any employment as an employee of the States, and
  - (b) be the holder of any public office in the Bailiwick.

(5) If the Commissioner ceases to hold office by reason of the expiration of the agreed term, he or she shall be eligible for reappointment.

**Vacancy in office.**

- 3. (1) The office of Commissioner becomes vacant if -
  - (a) the term of appointment of the person holding the office expires,
  - (b) the States resolves to revoke the appointment, or
  - (c) the person holding the office -
    - (i) dies,
    - (ii) gives the Committee written notice of resignation from the appointment,
    - (iii) stands for election to the office of People's Deputy,
    - (iv) becomes an employee of the States, or the holder of a public office in the Bailiwick,

- (v) is compulsorily detained or made subject to guardianship under the Mental Health (Bailiwick of Guernsey) Law, 2010,
- (vi) becomes bankrupt,
- (vii) whether in the Bailiwick or elsewhere, is convicted of an offence involving corruption, or
- (viii) whether in the Bailiwick or elsewhere, is ordered to be imprisoned following conviction for any offence.

(2) Subject to subparagraph (3), the Committee may appoint a person to carry out the duties of the office of the Commissioner while -

- (a) the office is vacant, or
- (b) the holder of the office is unable to perform the functions of the office.

(3) The Committee must report an appointment under subparagraph (2) to the States as soon as reasonably practicable.

**Resources.**

4. The States must ensure that the Commissioner is provided with such administrative and other support as the Commissioner may reasonably require for the purpose of discharging the functions of the Commissioner under this Law.

## PART 2 - POWERS AND DUTIES

### **Commissioner's functions relating to investigations, complaints and other matters.**

5. (1) The functions of the Commissioner are -
  - (a) to investigate a complaint to the Commissioner that a breach of the code of conduct has occurred,
  - (b) to initiate an investigation if the Commissioner believes that a breach of the code of conduct may have occurred,
  - (c) to report to the Committee on the outcome of any investigation referred to in item (a) or (b),
  - (d) on the Commissioner's own initiative or, if requested by the Committee, to give advice on any matter relating to standards of conduct of elected members of the States, including proposals to change the code of conduct, and
  - (e) all such other functions as may be assigned to the office of the Commissioner by Resolution of the States, or under any other enactment.
- (2) The Commissioner shall not investigate a complaint which -
  - (a) is made anonymously,

(b) in the Commissioner's opinion, is frivolous, vexatious or unsubstantiated, or

(c) is from a person who is not a member of the States regarding words spoken by, or actions of, an elected member during a meeting of the States.

(3) On receipt of a complaint described in subsection (1)(a), the Commissioner must decide whether there are grounds to investigate and shall either -

(a) notify the complainant that no such grounds exist (including, but not limited to, because the complaint falls into subparagraph (2)), or

(b) undertake an investigation,

save that (for the avoidance of doubt) the Commissioner is not required to notify the complainant under item (a) where the complaint has been made anonymously.

(4) The Commissioner shall determine the procedure and timing of any investigation.

(5) In making a report to the Committee under subsection (1)(c), the Commissioner shall state his or her conclusions and recommend what action, if any, should be taken.

(6) The Commissioner's conclusions and recommendations are not binding on the Committee.



**Independence.**

6. (1) The Commissioner must not be directed by any person on how any function of the office of Commissioner is to be carried out, including, in particular, whether or not to undertake an investigation referred to in paragraph 5(1)(a) or (b).

(2) The Commissioner may seek legal advice from Her Majesty's Procureur on any subject relevant to the functions of the office of the Commissioner.

**Statement of manner in which functions are to be discharged.**

7. (1) The Commissioner may make and publish a statement of the manner in which he or she proposes to discharge his or her functions under this Schedule and any other enactment.

(2) The Commissioner shall keep under review and revise, as needed, any statement made and published under subparagraph (1).

(3) The Commissioner must, at the same time that a statement or revision is made, provide a copy of the statement or revision, as the case may be, to the Committee.

(4) The Committee must, as soon as reasonably practicable, lay any statement made under this paragraph, and any revision of it, before the States.

**Duty to prepare annual report.**

8. (1) The Commissioner shall, each year -

(a) make a report in respect of the activities of the office of Commissioner for the previous year, and

- (b) at the same time as the report is made, provide a copy of it to the Committee.

(2) On receiving the report mentioned in subparagraph (1) the Committee shall, as soon as reasonably practicable, lay it before the States.

### PART 3 – ENFORCEMENT AND OFFENCES

#### **Power to require people to appear, answer questions and provide documents.**

9. (1) Subject to subparagraph (2), the Commissioner may, in the exercise of his or her functions, do all or any of the following -

- (a) require a person to appear before the Commissioner to give evidence or to produce a specified document, or to do both,
- (b) require a person to answer questions,
- (c) require a person who has access to a document to provide the information contained in it to the Commissioner in a legible and comprehensible form.

(2) For the avoidance of doubt, a person may at any time refuse to answer a question from, or produce a document to, the Commissioner on the ground of a privilege conferred by Article 20E.

(3) The power under subparagraph (1)(a) to require a document to be produced includes a power -

- (a) if the document is produced, to retain the document or to take copies of it or extracts from the information it contains, and
- (b) if the document is not produced, to require the person to whom the requirement was directed to state, to the best of his or her knowledge and belief, where it is.

(4) If documents are retained, a list of the documents must be supplied to the person from whom they were obtained.

(5) A document retained under subparagraph (3)(a) -

- (a) may be retained for one year, but
- (b) if within that year proceedings to which the document is relevant are commenced against any person, may be retained until the conclusion of those proceedings.

(6) If -

- (a) the Commissioner has retained a document under subparagraph (3)(a), and
- (b) a person reasonably requires the document for his or her business,

the Commissioner must provide the person with a copy of it as soon as reasonably practicable.

(7) In this Part, "**document**" has the meaning given in Part II of the

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

### *Offences*

#### **Disobedience to requirement of Commissioner.**

10. (1) A person who, without reasonable excuse -
- (a) disobeys a requirement to produce documents to the Commissioner, to answer questions or to appear before the Commissioner to give evidence, or
  - (b) having so appeared, refuses to comply with a requirement to answer a question put by the Commissioner,

is guilty of an offence.

(2) A person guilty of an offence under subparagraph (1) shall be liable to a fine not exceeding level 5 on the uniform scale.

#### **Interference with witnesses.**

11. (1) A person is guilty of an offence if he or she, by fraud, intimidation, force or threat, by the offer or promise of any inducement or benefit, or by other improper means -
- (a) induces or attempts to induce another person who has been required to answer questions from, appear before or produce documents to the Commissioner, to refrain from doing as requested or formally required, or

- (b) influences or attempts to influence another person in respect of any information given or documents produced in response to such a request.

(2) A person guilty of an offence under subparagraph (1) shall be liable to imprisonment for a term not exceeding two years, or to a fine, or to both.

**False or misleading information.**

12. (1) If a person to whom subparagraph (2) applies -

- (a) makes a statement which he or she knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (c) produces or furnishes, or causes or permits to be produced or furnished, any information or document which he or she knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

he or she is guilty of an offence.

(2) This subparagraph applies to a person ("P") who -

- (a) makes any statement or provides any information or document to the Commissioner, or to any officer, servant or agent of the Commissioner, when the Commissioner or that person is acting in the exercise of his or her functions, or
- (b) otherwise than as mentioned in paragraph (a) makes any statement or provides any information or document to the Commissioner in circumstances in which P knows or could reasonably be expected to know that the statement, information or document would or might be used by the Commissioner for the purpose of exercising his or her functions.

(3) A person guilty of an offence under subparagraph (1) shall be liable to imprisonment for a term not exceeding two years, or to a fine, or to both.

**Obstruction.**

13. (1) A person shall be guilty of an offence if he or she hinders or obstructs a person in the exercise by that person of a function under this Schedule.

(2) A person guilty of an offence under subparagraph (1) shall be liable to a fine of level 5 on the standard scale, to a period of imprisonment not exceeding three months, or to both.

**Destruction of documents.**

14. (1) A person shall be guilty of an offence if, when required to produce a document under this Schedule or knowing that a document may be

required to be produced under this Schedule, the person, with intent to deceive, destroys the document or in any other way renders it unintelligible or useless, or difficult or impossible to retrieve.

(2) A person guilty of an offence under subparagraph (1) shall be liable to imprisonment for a term not exceeding two years, or to a fine, or to both.

#### PART 4 - FINAL

#### **Immunity of persons appearing, answering questions and providing documents.**

15. (1) Subject to subparagraphs (2) and (3) -

(a) no civil proceedings or criminal proceedings may be instituted against any person in respect of any words spoken or written by that person -

(i) in a complaint to the Commissioner that a breach of the code of conduct has occurred, or

(ii) in the course of answering questions from, or appearing and giving evidence before, the Commissioner, and

(b) an answer given by a person to a question put to that person, or an oral or written statement made by a person in the course of the person's appearance before the Commissioner, shall not be admissible in evidence against the person in any other civil proceedings or criminal proceedings.

(2) Subparagraph (1) does not preclude the institution of criminal proceedings under paragraph 12 (false or misleading information).

(3) Subparagraph (1)(a) does not apply to a complaint that the Commissioner does not investigate in accordance with paragraph 5(2).

(4) Where a person ("A") provides, in compliance with a request made under this Schedule, a document in respect of another person ("B"), the provision of that document shall not be regarded as a breach of any duty owed by A to B.

**Exclusion of liability.**

16. (1) No person undertaking a function under this Schedule (including, but not limited to, the Commissioner) is to be liable in damages or personally liable in any civil proceedings in respect of anything done, or omitted to be done, after the coming into force of this Schedule in respect of that function, unless the thing was done or omitted to be done in bad faith.

(2) Subparagraph (1) does 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.

**Interpretation.**

17. In this Schedule, unless the context requires otherwise -

**"bankrupt"**, in relation to any person ("P"), means -

- (a) that P has been declared by the Court to be insolvent or that a Commissioner or Committee of Creditors



has been appointed by the Court to supervise or secure P's estate,

- (b) that P's affairs have been declared in a state of "désastre" at a meeting held before a Commissioner,
- (c) that a preliminary vesting order has been made against P in respect of any of his or her real property in the Bailiwick, or
- (d) that a composition or arrangement with creditors has been entered into in respect of P whereby P's creditors will receive less than 100p in the pound or that possession or control has been taken of any of P's property or affairs by or on behalf of creditors,

**"the code of conduct"** means a code of conduct within the meaning of Article 20G that is in force at the relevant time, and for these purposes **"the relevant time"** means -

- (a) for the purposes of paragraph 5(1)(a), the time of the alleged breach relating to the complaint,
- (b) for the purposes of paragraph 5(1)(b), the time of the suspected breach, and
- (c) for the purposes of paragraph 5(1)(d), the time the proposals for change are made,

the **"Commissioner"**: see paragraph 1(2), and

the "**Committee**" means the States' Assembly & Constitution Committee."

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

**THE PREVENTION OF DISCRIMINATION (GUERNSEY) ORDINANCE, 2022**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Prevention of Discrimination (Guernsey) Ordinance, 2022", and to direct that the same shall have effect as an Ordinance of the States.

**EXPLANATORY MEMORANDUM**

This Ordinance introduces a prohibition on discrimination on the grounds of a person's disability, race, carer status, sexual orientation or religious belief. The prohibition will apply to employers, those who provide goods and services, schools and education providers, clubs and associations and accommodation providers. The Ordinance also introduces a positive duty on those groups to make reasonable adjustments for a disabled person who is employed or, as the case may be, uses the services they provide.

Part I sets out and defines the protected grounds of disability, race, carer status, sexual orientation and religious belief. In relation to the definition of disability, there is a requirement for an impairment to be "long term" i.e. have lasted, or be expected to last, for not less than 6 months, or until the end of a person's life in order for a person to have a disability. If there is any doubt as to the expected duration of the impairment, section 1(5) provides for medical evidence to be sought.

Part II provides the meaning of discrimination under the Ordinance by providing for four ways in which discrimination can occur; direct discrimination, discrimination by association, indirect discrimination and discrimination arising from disability.

Part III establishes the meaning of victimisation and harassment under the Ordinance.

Part IV sets out two courses of conduct which are prohibited generally by the Ordinance; publishing an advertisement which indicates an intention by a person to do any act which is prohibited under the Ordinance, and causing, instructing or inducing another person to do a prohibited act.

Part V sets out the provisions relating to work, including the prohibitions on discrimination, harassment and victimisation in this context. It also sets out when an employer may ask for information about a protected ground, together with the provisions on equal pay and equal treatment including provision for a material factor defence to apply to an equal pay or equal treatment clause. This Part also makes provision for discrimination to be prohibited in various circumstances related to

employment such as employment agencies and vocational training providers, as well as in relation to partnerships and certain office holders.

Part VI sets out the provisions relating to goods and services providers, schools and education providers, clubs and associations and accommodation providers. Principally, these sections set out the circumstances in which discrimination, harassment and victimisation are prohibited in relation to services provided by these groups.

Part VII sets out the duty to make reasonable adjustments for a disabled person, together with an additional duty for service providers and school and education providers, and separate provisions relating to the duties owed by commercial and residential landlords.

Part VIII concerns the procedure for complaints before the Tribunal, including the conciliation processes, time limits, burden of proof and appeals. It also sets out the basis on which awards can be made by the Tribunal under the Ordinance, including the limits on compensation and provisions regarding joined complaints.

Part IX provides for a statutory official (the Director of the Employment and Equal Opportunities Service, whose office will be established by a separate piece of legislation to come into force at the same time as this Ordinance) to have powers to serve non-discrimination notices, impose financial penalties, establish and maintain a register of non-discrimination notices and to obtain information.

Part X concerns general miscellaneous and procedural matters, including the liability of employers and agents, the making of subordinate legislation and codes of practice and guidance, proof of documents, interpretation, transitional provisions and commencement.

The Schedule sets out the exceptions to the prohibitions and duties under the Ordinance.

# **The Prevention of Discrimination (Guernsey)**

## **Ordinance, 2022**

### ARRANGEMENT OF SECTIONS

#### PART I

##### PROTECTED GROUNDS

1. Disability.
2. Race.
3. Carer status.
4. Sexual orientation.
5. Religious belief.

#### PART II

##### MEANING OF DISCRIMINATION

6. Direct discrimination.
7. Discrimination by association.
8. Indirect discrimination.
9. Discrimination arising from disability.

#### PART III

##### MEANING OF OTHER TERMS RELATED TO PROHIBITED CONDUCT

10. Victimisation.
11. Harassment.

#### PART IV

##### CONDUCT PROHIBITED GENERALLY

12. Advertisements.
13. Causing, instructing or inducing another person to undertake a prohibited act.

#### PART V

##### CONDUCT PROHIBITED AT WORK

14. Employees and applicants for employment.
15. Employers: requests for information.
16. Employers: equal pay.
17. Employers: equal treatment.
18. Defence of material factor.
19. Discussions about pay.

- 20. Contract workers.
- 21. Employment agencies.
- 22. Vocational training providers.
- 23. Partnerships.
- 24. Personal office holders.
- 25. Public office holders.
- 26. Professional or trade organisations.
- 27. Professional bodies.

## PART VI CONDUCT PROHIBITED IN OTHER CIRCUMSTANCES

- 28. Goods and services.
- 29. Education.
- 30. Clubs and associations.
- 31. Accommodation.

## PART VII DUTIES - DISABILITY

- 32. Duty to make reasonable adjustments for a disabled person.
- 33. Reasonable adjustments: proactive duty of service providers, schools and education providers in respect of disabled persons generally.
- 34. Duty to carry out minor improvements: commercial or residential landlords.
- 35. Duty to allow reasonable adjustments to physical features: residential landlords.
- 36. Duty to allow reasonable adjustments to physical features: commercial landlords.
- 37. Disability: public sector duty to prepare accessibility action plans.
- 38. Disability: accessibility of the public highway.

## PART VIII COMPLAINTS PROCEDURE AND THE TRIBUNAL

- 39. Restriction of proceedings for contravention of this Ordinance.
- 40. Notification of potential complaint - goods and services etc.
- 41. Pre-complaint conciliation.
- 42. Making of complaints to the Tribunal.
- 43. Time limit for presenting complaints.
- 44. Form of complaints.
- 45. Refusal to hear complaints.
- 46. Time when act complained of is done.
- 47. Conciliation services.
- 48. Burden of proof before the Tribunal.
- 49. Awards.

- 50. Amount of compensation - work.
- 51. Amount of compensation - cases where pay or financial loss may be awarded.
- 52. Amount of compensation - goods and services etc.
- 53. Amount of compensation - equal pay.
- 54. Reduction of award in certain cases.
- 55. Joined complaints under this Ordinance.
- 56. Joined employment complaints.
- 57. Appeals from Tribunal to Royal Court.
- 58. Reference of points of law to Royal Court.
- 59. Appeals from Royal Court to Court of Appeal.

## PART IX NON-DISCRIMINATION NOTICES

- 60. Issue of non-discrimination notices.
- 61. Discretionary financial penalties.
- 62. Representations prior to financial penalty.
- 63. Appeals against decisions to impose financial penalties.
- 64. Register of non-discrimination notices.
- 65. Power to obtain information.
- 66. Appeals against notices.

## PART X MISCELLANEOUS AND FINAL

- 67. Codes of practice and guidance.
- 68. Liability of employers and agents, etc.
- 69. Restrictions on contracting out.
- 70. Awards to be recoverable as preferred debts.
- 71. Proof of documents.
- 72. Interpretation.
- 73. Ships and aircraft.
- 74. Exceptions to the prohibitions in Parts IV to VII.
- 75. General provisions as to subordinate legislation.
- 76. Transitional provisions: contracts etc.
- 77. Extent.
- 78. Citation.
- 79. Commencement.

## SCHEDULE

### PART I

#### GENERAL EXCEPTIONS TO THE PROHIBITIONS IMPOSED BY PARTS IV TO VII

1. Positive action.
2. Act done under legislative or judicial authority.
3. Compliance with law of another country.
4. National security.
5. Immigration.
6. Population Management.
7. Crown employment, etc.
8. Protection from harm.
9. Race: act done pursuant to States' policy.
10. Charities and non profit organisations.
11. Acts of worship.
12. Religious organisations.
13. Tribunal members.
14. Animals.

### PART II

#### SPECIFIC EXCEPTIONS - WORK

15. Genuine and determining occupational requirement.
16. Employment for the purposes of an organised religion.
17. Senior leadership positions: schools with a religious ethos.
18. Safeguarding (employment).
19. Employees and family situations.
20. Qualifications.
21. Employment of people with a particular disability.
22. No requirement to employ person who cannot fulfil essential functions of post.

### PART III

#### SPECIFIC EXCEPTIONS - EDUCATION

23. Disability: admission to schools.
24. Religious belief: admission to schools.
25. Curricula.
26. Pupils with assessed needs.

### PART IV

#### SPECIFIC EXCEPTIONS - HEALTH

27. Infectious diseases.



- 28. Blood donation services.
- 29. Care within the family.
- 30. Clinical judgement.
- 31. Persons who lack capacity.
- 32. Preventative health services.

PART V  
SPECIFIC EXCEPTIONS - GOODS AND SERVICES

- 33. Financial services involving an assessment of risk.
- 34. Financial services arranged by an employer and personal pension schemes.
- 35. Financial services: religious mutual organisations.
- 36. Television, radio and online broadcasting and distribution.
- 37. Information society services.
- 38. Dramatic performances.
- 39. Goods and services: religious belief.

PART VI  
SPECIFIC EXCEPTIONS - CLUBS AND SPORTS

- 40. Clubs - restricted membership.
- 41. Sport - disability and nationality.

PART VII  
SPECIFIC EXCEPTIONS - ACCOMMODATION

- 42. Private disposals of residential premises.
- 43. Accommodation provided in a person's home.
- 44. Social housing.
- 45. Specialist accommodation.
- 46. Power of Committee to amend Schedule.

# **The Prevention of Discrimination (Guernsey)**

## **Ordinance, 2022**

**THE STATES**, in pursuance of their Resolutions of the 17<sup>th</sup> July 2020<sup>a</sup> and 4<sup>th</sup> November 2021<sup>b</sup>, and in exercise of the powers conferred on them by sections 1 and 4 of the Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004<sup>c</sup> and all other powers enabling them in that behalf, hereby order:-

### **PART I**

#### **PROTECTED GROUNDS**

##### **Disability.**

1. (1) Disability is a protected ground.
- (2) A person has a disability if the person has one or more long term impairments.
- (3) A long term impairment is an impairment which -
  - (a) has lasted, or is expected to last, for not less than six months, or

---

<sup>a</sup> Article XV of Billet d'État No. XV of 2020.

<sup>b</sup> Article XIV of Billet d'État No. XX of 2021.

<sup>c</sup> Order in Council No. XIII of 2005.

(b) is expected to last until the end of the person's life.

(4) For the purposes of the time periods specified in subsection (3), an impairment can have lasted, or can be expected to last, notwithstanding -

(a) the impairment being, or having been, in a period of remission where the impairment has the potential to recur, or

(b) medical treatment controlling the symptoms of the impairment to any extent.

(5) If there is any doubt as to whether an impairment is a long term impairment, medical evidence may be sought by the person with the impairment from a registered health professional, special educational needs coordinator or occupational health practitioner, as the case may be, as to the expected duration of the impairment.

(6) In relation to the protected ground of disability, a reference to a disabled person is a reference to a person who has a disability.

(7) For the purposes of this Ordinance, "**impairment**" means -

(a) the total or partial absence of one or more of a person's bodily or mental functions, including the absence of a part of a person's body,

(b) the presence in the body of organisms or entities causing, or likely to cause, chronic disease or illness,

(c) the malfunction, malformation or disfigurement of a part of a person's body,

- (d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
- (e) a condition, illness or disease which affects a person's thought processes, perception of reality, social interactions, emotions or judgement or which results in disturbed behaviour.

**Race.**

- 2. (1) Race is a protected ground.
- (2) Race includes -
  - (a) colour,
  - (b) nationality,
  - (c) ethnic origins,
  - (d) national origins,
  - (e) descent, which includes caste.
- (3) In relation to the protected ground of race -
  - (a) a reference to a person who has a particular protected ground is a reference to a person of a particular racial group, and
  - (b) a reference to persons who share a protected ground is a reference to persons of the same racial group.

(4) A racial group is a group of persons defined by reference to race.

(5) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group.

(6) For the purposes of this Ordinance, "**national origins**" includes being of Bailiwick origin.

**Carer status.**

3. (1) Carer status is a protected ground.

(2) Subject to subsection (4), a person ("A") has carer status if A provides care or support on a continuing, regular or frequent basis for a person with a disability ("B"), and -

(a) B's disability is of a nature which requires continuing, regular or frequent care or support of the kind that A is providing, and

(b) A lives with B or is a close relative of B.

(3) A is a close relative of B if either A or B is the -

(a) spouse, partner, child, sibling, parent, grandchild, grandparent, or

(b) parent or child of a spouse or partner,

of the other.

(4) If there is any doubt as to whether B's disability is of a nature which requires continuing, regular or frequent care or support of the kind that A is

providing, evidence may be sought by B from a registered health professional, special educational needs coordinator, occupational health practitioner, or social worker, as the case may be, as to the nature of B's disability and the care needs arising from it.

(5) Subject to subsection (6), A does not have carer status if the care or support provided to B is provided by A in a professional capacity, as part of A's contract of employment or in the course of self-employment by A.

(6) For the avoidance of doubt, A may be reimbursed for all expenses properly incurred in connection with the care or support without losing carer status.

#### **Sexual orientation.**

4. (1) Sexual orientation is a protected ground.

(2) Sexual orientation means a person's sexual orientation towards -

- (a) persons of the same sex,
- (b) persons of a different sex, or
- (c) persons of both the same sex and persons of a different sex.

(3) In relation to the protected ground of sexual orientation -

- (a) a reference to a person who has a particular protected ground is a reference to a person who is of a particular sexual orientation,

- (b) a reference to persons who share a protected ground is a reference to persons who are of the same sexual orientation.

**Religious belief.**

- 5. (1) Religious belief is a protected ground.
  - (2) Religious belief includes religious background or outlook, and a reference to religious belief includes a reference to a lack of religious belief.
  - (3) In relation to the protected ground of religious belief -
    - (a) a reference to a person who has a particular protected ground is a reference to a person of a particular religious belief,
    - (b) a reference to persons who share a protected ground is a reference to persons who are of the same religious belief.

PART II

MEANING OF DISCRIMINATION

**Direct discrimination.**

- 6. (1) A person ("A") discriminates against another ("B"), if because of a protected ground, A treats B less favourably than A treats or would treat others.
  - (2) The protected ground referred to in subsection (1) which is the reason for the less favourable treatment may, at the time of the less favourable treatment -

- (a) exist,
- (b) have previously existed but no longer exist,
- (c) exist in the future, or
- (d) be imputed to B by A.

(3) If the protected ground is disability, and a disabled person ("C") has a particular disability, A does not discriminate against B (where B is not a disabled person, or where B is a disabled person who does not have the particular disability that C has) only because A treats or would treat C more favourably than A treats B for the purpose of removing or mitigating a disadvantage to which C would otherwise be put as a result of C having that particular disability.

(4) If the protected ground is carer status, and B does not have carer status, A does not discriminate against B only because A treats or would treat a person with carer status more favourably than A treats B for the purpose of removing or mitigating a disadvantage to which the person with carer status would otherwise be put as a result of having carer status.

(5) For the purposes of establishing a contravention of subsection (1), it does not matter whether A has the same protected ground as B.

**Discrimination by association.**

7. A person ("A") discriminates against another ("B") who is associated with another person ("C") if -

- (a) A treats B, by virtue of that association, less favourably than a person who is not so associated is, has been or would be treated, and



- (b) similar treatment of C would, by virtue of section 6(1) and (2), constitute discrimination.

**Indirect discrimination.**

8. (1) A person ("A") discriminates against another ("B") if A applies a provision, criterion or practice which has a discriminatory effect on B in relation to a protected ground.

(2) For the purposes of subsection (1), a provision, criterion or practice has a discriminatory effect on B in relation to a protected ground if -

- (a) A applies, or would apply, it to persons with whom B does not share the ground,
- (b) it puts, or would put, persons with whom B shares the ground at a particular disadvantage when compared with persons with whom B does not share it,
- (c) it puts, or would put, B at that disadvantage, and
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

**Discrimination arising from disability.**

9. (1) A person ("A") discriminates against a disabled person ("B") if -

- (a) A treats B unfavourably because of something arising in consequence of B's disability, and
- (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

### PART III

#### MEANING OF OTHER TERMS RELATED TO PROHIBITED CONDUCT

##### **Victimisation.**

10. (1) A person ("A") victimises another person ("B"), if A subjects B to a detriment because B has -

- (a) made a complaint under this Ordinance,
- (b) brought proceedings against A or any other person under this Ordinance,
- (c) given evidence or information in connection with proceedings brought by any person against A or any other person under this Ordinance,
- (d) otherwise done anything under or by reference to this Ordinance in relation to A or any other person (including, for the avoidance of doubt, opposed acts which contravene this Ordinance), or
- (e) alleged that A or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this Ordinance,

or because A knows that B intends to do any of these things, or suspects that B has done, or intends to do, any of them.

(2) It is not victimisation if A subjects B to a detriment because B gives false evidence or information, or makes a false complaint or allegation, if the evidence or information is given, or the complaint or allegation is made, in bad faith.

**Harassment.**

11. (1) A person ("A") harasses another ("B") if -
- (a) A engages in unwanted conduct related to a protected ground, and
  - (b) the conduct has the purpose or effect of -
    - (i) violating B's dignity, or
    - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- (2) A also harasses B if -
- (a) A engages in unwanted conduct of a sexual nature, and
  - (b) the conduct has the purpose or effect referred to in subsection (1)(b).
- (3) A also harasses B if -
- (a) A or another person engages in unwanted conduct of a sexual nature or that is related to a protected ground,
  - (b) the conduct has the purpose or effect referred to in subsection (1)(b), and

- (c) because of B's rejection of, or submission to, the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account -

- (a) the perception of B of the conduct in question,
- (b) the circumstances of the case,
- (c) whether it is reasonable for the conduct to have that effect.

(5) This section is without prejudice to the Protection from Harassment (Bailiwick of Guernsey) Law, 2005<sup>d</sup>.

#### PART IV

#### CONDUCT PROHIBITED GENERALLY

##### **Advertisements.**

12. (1) A person must not publish or cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do any act which is or might be prohibited by any provision of this Ordinance.

(2) Subsection (1) does not apply to an advertisement if the intended act would not in fact be so prohibited.

---

<sup>d</sup> Order in Council No. VIII of 2006.

(3) The publisher ("A") of an advertisement prohibited by subsection (1) is not subject to any liability under that subsection if A proves -

(a) that the advertisement was published in reliance on a statement made to A by the person who caused it to be published to the effect that, by reason of the operation of subsection (2), the publication would not be prohibited, and

(b) that it was reasonable for A to rely on that statement.

(4) A person who knowingly or recklessly makes a statement such as is referred to in subsection (3)(a) which in a material respect is false or misleading is liable to proceedings brought by the Director of the Employment and Equal Opportunities Service in accordance with Part IX.

(5) Proceedings in respect of a contravention of subsection (1) shall only be brought by the Director of the Employment and Equal Opportunities Service in accordance with Part IX.

**Causing, instructing or inducing another person to undertake a prohibited act.**

13. (1) A person ("A") must not, in relation to another person ("B") -

(a) in the case where A has authority over B or where B is accustomed to act in accordance with A's wishes, instruct, procure, or attempt to procure B to do any act which is prohibited by this Ordinance, or

(b) in any other case, cause, induce, or attempt to induce B to do any act which is prohibited by this Ordinance, including by providing or offering B with any benefit,

or by subjecting or threatening to subject B to any detriment.

(2) An offer or threat is not prevented from falling within subsection (1)(b) because it is not made directly to B, if it is made in such a way that B is likely to hear of it.

(3) Proceedings in respect of a contravention of subsection (1) shall only be brought by the Director of the Employment and Equal Opportunities Service in accordance with Part IX.

## PART V

### CONDUCT PROHIBITED AT WORK

#### **Employees and applicants for employment.**

14. (1) An employer ("A") must not discriminate against a person ("B") -

- (a) in the arrangements A makes for the purposes of deciding to whom to offer employment or work experience,
- (b) as to the terms on which A offers B employment or work experience,
- (c) by not offering B employment or work experience.

(2) An employer ("A") must not discriminate against an employee of A's ("B") -

- (a) as to B's terms of employment,

- (b) by denying B access, or limiting B's access, to opportunities for promotion, re-grading, transfer or training or to any other benefit associated with employment,
- (c) by dismissing B,
- (d) in the arrangements A makes for the purposes of deciding who to make redundant, or
- (e) by subjecting B to any other detriment.

(3) An employer must not victimise a person or employee, as the case may be, in any of the ways or circumstances set out in subsection (1)(a) to (c) or 2(a) to (e).

(4) An employer ("A") must not harass a person -

- (a) who is an employee of A, or
- (b) who has applied to A for employment or work experience.

(5) For the purposes of subsections (1) and (2) it is immaterial whether the work is casual.

(6) In this Ordinance -

- (a) "**contract of employment**" means a contract of service or apprenticeship, or a contract personally to execute any work or labour, whether express or implied and whether written or oral,

- (b) "**employee**" means an individual who has entered into or who works under (or, where the employment has ceased, worked under) a contract of employment, and includes an individual who has entered into or works under (or worked under, as the case may be) an apprenticeship or internship; and for the avoidance of doubt, does not include an individual who is a volunteer,
- (c) "**employer**", in relation to an employee, means the person by whom the employee is (or where the employment has ceased, was) employed,
- (d) "**employment**" means employment under a contract of employment, and related expressions shall be construed accordingly.

**Employers: requests for information.**

15. (1) An employer ("**A**") shall not request or require information about a protected ground from another person ("**B**") during a recruitment process under this Part, which indicates, or might reasonably be understood as indicating, an intention by A to do any act which is or might be prohibited by this Ordinance.

- (2) Subsection (1) does not apply to a request for information if -
  - (a) the intended act would not in fact be prohibited by this Ordinance,
  - (b) the information is used wholly as part of A's diversity monitoring, is kept confidential, and forms no part of the recruitment process, or



(c) if the request is necessary for the purpose of -

(i) establishing whether a duty to make reasonable adjustments is or will be imposed on A in relation to B in connection with the recruitment process, or

(ii) establishing whether B will be able to carry out a function that is intrinsic to the work or work experience concerned.

(3) In subsection (2)(c)(ii), where A reasonably believes that a duty to make reasonable adjustments would be imposed on A in relation to B by section 32, the reference to a function that is intrinsic to the work or work experience concerned is to be read as a reference to a function that would be intrinsic to the work or work experience once A complied with that duty.

(4) Proceedings in respect of a contravention of subsection (1) shall only be brought by the Director of the Employment and Equal Opportunities Service in accordance with Part IX.

(5) In this section -

(a) "**recruitment process**" means a process which an employer ("A") undertakes because A wishes to employ a person or have the person work for A by way of work experience, and includes, without limitation, the process of advertising for a post, sifting applications, selection of candidates for interview, interviewing, job offers and negotiation of an employment contract, and

- (b) "**diversity monitoring**" means the recording by an employer of information relating to one or more of a person's protected grounds in the course of a recruitment process, for purposes related to the promotion by the employer of diversity in the employer's workforce.

**Employers: equal pay.**

- 16. (1) This section applies where -

- (a) a person ("**A**") with a particular protected ground is employed to do work that is equal to work that a comparator ("**B**") who does not have the particular protected ground does,
- (b) B is employed by A's employer or by an associate of A's employer,
- (c) both A and B are employed in Guernsey, and
- (d) B and A were employed to do the work that is equal within three years of each other.

- (2) For the avoidance of doubt, B must be a real person.

(3) Where this section applies, if the terms of A's employment do not (by whatever means) include an equal pay clause, they shall be treated as including one.

(4) An equal pay clause is a provision which relates to pay or any other financial benefit relating to A's employment (including, for the avoidance of

doubt, membership of or rights under an occupational pension scheme) that has the following effect -

- (a) if a term of A's contract of employment is less favourable to A than a corresponding term of B's is to B, A's term is modified so as not to be less favourable,
- (b) if A does not have a term in A's contract of employment which corresponds to a term of B's that benefits B, A's terms are modified so as to include such a term.

(5) For the purposes of this section, A's work is equal to that of B's if -

- (a) A's work and B's work are the same or broadly similar, and
- (b) such differences as there are between their work are not of practical importance, having regard to the frequency with which differences between their work occur in practice and the nature and extent of the differences.

(6) Neither subsection (1) or subsection (2) of section 14 has effect in relation to a term of A's work that -

- (a) is modified, or included by virtue of, an equal pay clause, or
- (b) would be so modified or included but for section 18.

**Employers: equal treatment.**

17. (1) This section applies where -

- (a) a person ("A") with a particular protected ground is employed to do work that is not materially different from work that a comparator who does not have the particular protected ground ("B") does,
- (b) B is employed by A's employer or by an associate of A's employer,
- (c) both A and B are employed in Guernsey, and
- (d) B and A were employed to do the work that is not materially different within three years of each other.

(2) For the purpose of making the comparison in subsection (1), B need not be a real person.

(3) Where this section applies, if the terms of A's employment do not (by whatever means) include an equal treatment clause, they shall be treated as including one.

(4) An equal treatment clause is a provision which relates to the terms and conditions of employment other than pay (including, for the avoidance of doubt, working hours, holiday entitlement and entitlement to breaks) that has the following effect -

- (a) if a term of A's contract of employment is less favourable to A than a corresponding term of B's is to B, A's term is modified so as not to be less favourable,

- (b) if A does not have a term in A's contract of employment which corresponds to a term of B's that benefits B, A's terms are modified so as to include such a term.

(5) Neither subsection (1) or (2) of section 14 has effect in relation to a term of A's work that would be modified or included by virtue of an equal treatment clause but for section 18.

**Defence of material factor.**

18. (1) An equal pay clause or an equal treatment clause in A's employment contract has no effect if the employer shows that the difference between A's terms and B's terms is because of a material factor reliance on which -

- (a) does not involve treating A less favourably than B because of A's particular protected ground than the employer treats B, and
- (b) if the factor is within subsection (2), is a proportionate means of achieving a legitimate aim.

(2) A factor is within this subsection if A shows that, as a result of the factor, A and persons with whom A shares the protected ground doing work equal to A's, or, as the case may be, work which is not materially different to A's, are put at a particular disadvantage when compared with persons with whom A does not share the protected ground and who do work equal to A's, or work which is not materially different to A's, as the case may be.

(3) For the purposes of this section, a factor is not material unless it is a material difference between A's case and B's.

**Discussions about pay.**

19. (1) A term of a person's contract of employment that purports to prevent or restrict the person ("P") from disclosing or seeking to disclose information about the terms of P's work is unenforceable against P insofar as P makes or seeks to make a relevant pay disclosure.

(2) A term of a person's contract of employment that purports to prevent or restrict the person ("P") from seeking disclosure of information from a colleague about the terms of the colleague's work is unenforceable against P insofar as P seeks a relevant pay disclosure from the colleague, and for these purposes "colleague" includes a former employee of the same employer or an associated employer, in relation to the work in question.

(3) For the purposes of this Ordinance, a disclosure is a "**relevant pay disclosure**" if made for the purpose of enabling the person who makes it, or the person to whom it is made, to find out whether or to what extent there is, in relation to the work in question, a connection between pay and having (or not having) a particular protected ground.

(4) The following are to be treated as protected acts for the purposes of the relevant victimisation provisions in this Part -

- (a) seeking a disclosure that would be a relevant pay disclosure,
- (b) making or seeking to make a relevant pay disclosure,  
or
- (c) receiving information disclosed in a relevant pay disclosure.

**Contract workers.**

20. (1) A principal ("A") must not, in relation to contract work for A, discriminate against a contract worker ("B") -

- (a) as to the terms on which A allows B to do the work,
- (b) by not allowing B to do the work, or continue to do it,
- (c) by denying B access, or limiting B's access, to any benefits, facilities or services in relation to the work (including, without limitation, benefits consisting of the payment of money), or
- (d) by subjecting B to any other detriment.

(2) A principal ("A") must not, in relation to contract work for A, victimise a contract worker in any of the ways or circumstances set out in paragraphs (a) to (d) of subsection (1).

(3) A principal ("A") must not, in relation to contract work for A, harass a contract worker.

(4) In this section -

- (a) "**principal**" means a person who makes work available for an individual who is -
  - (i) employed by another person, and
  - (ii) supplied by that other person in furtherance of a contract to which the principal is a party

(whether or not that other person is a party to it),

- (b) "**contract work**" is work such as is mentioned in paragraph (a), and
- (c) a "**contract worker**" is an individual supplied to a principal in furtherance of a contract such as is mentioned in paragraph (a)(ii).

**Employment agencies.**

21. (1) An employment agency ("**A**") must not discriminate against a person ("**B**") -

- (a) in the arrangements A makes for selecting persons to whom to provide any of the services of an employment agency,
- (b) as to the terms on which A offers to provide any service to B, or the terms on which A provides any service to B,
- (c) by not offering to provide a service to B,
- (d) by terminating the provision of a service to B, or
- (e) by subjecting B to any other detriment.

(2) An employment agency must not, in relation to the provision of any of its services, victimise a person in any of the ways or circumstances set out in subsection (1)(a) to (e).



(3) An employment agency must not, in relation to the provision of any of its services, harass a person.

(4) References in subsection (1) to the services of an employment agency include guidance on careers and any other services relating to employment, including training.

(5) An employment agency is not subject to any liability under subsection (1) if it proves in relation to the relevant action -

(a) that it acted in reliance on a statement made to it by the employer to whom it is endeavouring to supply with persons to do work to the effect that the action is not prohibited by any provision of this Ordinance, and

(b) that it was reasonable for it to rely on the statement.

(6) A person who knowingly or recklessly makes a statement such as is referred to in subsection (5)(a) which in a material respect is false or misleading is liable to proceedings brought by the Director of the Employment and Equal Opportunities Service in accordance with Part IX.

**Vocational training providers.**

22. (1) A provider or arranger of vocational training ("A") must not discriminate against a person ("B") -

(a) in the arrangements A makes for selecting persons to whom to provide training,

(b) as to the terms on which A offers to provide the training or other facilities concerned with such training

to B, or the terms on which A provides the training or other facilities to B,

- (c) by not offering to provide training to B,
- (d) by terminating B's training, or
- (e) by subjecting B to any other detriment during the course of the training.

(2) A provider or arranger of vocational training must not, in relation to the provision of any of its services, victimise a person in any of the ways or circumstances set out in subsection (1).

(3) A provider or arranger of vocational training must not, in relation to the provision of any of its services, harass a person.

(4) In this section, "**vocational training**" means training for employment.

### **Partnerships.**

23. (1) A partnership ("A") must not discriminate against a person ("B") -

- (a) in the arrangements A makes for the purposes of determining to whom to offer the position of partner,
- (b) as to the terms on which A offers B that position,
- (c) by not offering B that position, or
- (d) in a case where B already holds that position -

- (i) by denying B access, or limiting B's access, to any benefit (including, without limitation, benefits consisting of the payment of money), arising from being a partner in the partnership,
- (ii) by expelling B from the partnership, or
- (iii) by subjecting B to any other detriment.

(2) Subsection (1) applies in relation to persons proposing to form themselves into a partnership as it applies in relation to a partnership.

(3) A partnership must not victimise a person in any of the ways or circumstances set out in subsection (1)(a) to (d).

(4) A partnership ("A") must not harass a person -

- (a) who is a partner within the partnership, or
- (b) who has applied to A for admission to the partnership, or who the partnership are considering inviting to become a partner.

(5) In this Ordinance, "**partnership**" means -

- (a) a partnership under the Partnership (Guernsey) Law, 1995<sup>e</sup>,

---

<sup>e</sup> Ordres en Conseil Vol. XXXVI, p. 179.

- (b) a limited partnership under the Limited Partnerships (Guernsey) Law, 1995<sup>f</sup>, in which case references in this section to a partner shall be construed as references to a general partner,
- (c) a limited liability partnership under the Limited Liability Partnerships (Guernsey) Law, 2013<sup>g</sup>, in which case references in this section to a partner shall be construed as references to a member, and
- (d) any other partnership operating in Guernsey that is established under the law of a country or territory outside Guernsey.

**Personal office holders.**

24. (1) For the purposes of this Ordinance, a "**personal office**" is an office or post -

- (a) to which a person is appointed to discharge a function personally under the direction of another person, and
- (b) in respect of which an appointed person is entitled to remuneration.

---

<sup>f</sup> Ordres en Conseil Vol. XXXVI, p.264; this enactment has been amended.

<sup>g</sup> Order in Council No. VI of 2014; this enactment has been amended.

(2) For the purposes of subsection (1)(a), a person is to be regarded as discharging functions personally under the direction of another person if that other person is entitled to direct the person as to when and where to discharge the functions.

(3) For the purposes of subsection (1)(b), a person is not to be regarded as entitled to remuneration merely because the person is entitled to payments -

(a) for expenses incurred by the person in discharging the functions of the office or post, or

(b) by way of compensation for the loss of income or benefits the person would or might have received had the person not been discharging the functions of the office or post.

(4) If a person appointed to a personal office is also an employee the person shall be treated as an employee for the purposes of this Ordinance.

(5) A person ("A") who has the power to make an appointment to a personal office must not discriminate against a person ("B") -

(a) in the arrangements A makes for deciding to whom to offer the appointment,

(b) as to the terms on which A offers B the appointment, or

(c) by not offering B the appointment.

(6) A person who has the power to make an appointment to a personal office must not victimise a person in any of the ways or circumstances set out in subsection (5)(a) to (c).

(7) A person who has the power to make an appointment to a personal office must not, in relation to the office, harass a person seeking, or being considered for, the appointment.

(8) A person who is a relevant person in relation to a personal office must not discriminate against a person ("C") appointed to the office -

- (a) as to the terms of C's appointment,
- (b) by denying C access, or limiting C's access, to opportunities for promotion, transfer or training, or for receiving any other benefit, facility or service,
- (c) by terminating C's appointment, or
- (d) by subjecting C to any other detriment.

(9) A relevant person in relation to a personal office, must not, in relation to that office, victimise a person in any of the ways or circumstances set out in subsection (8)(a) to (d).

(10) A relevant person in relation to a personal office must not, in relation to that office, harass a person appointed to it.

(11) A person is a relevant person in relation to a personal office if the person has the power to -

- (a) decide the terms of appointment to a personal office,

- (b) grant access to opportunities for promotion, transfer or training or to any other benefit, facility or service connected with the personal office, or
- (c) terminate an appointment to a personal office.

**Public office holders.**

25. (1) For the purposes of this Ordinance, a "**public office**" is an office or post, appointment to which is made by, on the recommendation of, or subject to the approval of -

- (a) the States of Deliberation,
- (b) the States of Election,
- (c) the States or any Committee thereof, or
- (d) the Royal Court,

but does not include the office of People's Deputy; and references in subsections (3) to (5) to the power to make an appointment to a public office are references to the power to make such an appointment either individually or with others.

(2) If a person appointed to a public office is also an employee that person shall be treated as an employee for the purposes of this Ordinance (and subsections (3) to (10) do not apply).

(3) A person ("A") who has the power to make an appointment to a public office must not discriminate against a person ("B") -

- (a) in the arrangements A makes for deciding to whom to offer the appointment,

(b) as to the terms on which A offers B the appointment, or

(c) by not offering B the appointment.

(4) A person who has the power to make an appointment to a public office must not victimise a person in any of the ways or circumstances set out in subsection (3)(a) to (c).

(5) A person who has the power to make an appointment to a public office must not, in relation to the office, harass a person seeking, or being considered for, the appointment.

(6) Subject to subsection (9), a person who is a relevant person in relation to a public office must not discriminate against a person ("C") appointed to the office -

(a) as to the terms of C's appointment,

(b) by denying C access, or limiting C's access, to opportunities for promotion, transfer or training, or for receiving any other benefit, facility or service,

(c) by terminating C's appointment, or

(d) by subjecting C to any other detriment.

(7) A relevant person in relation to a public office, must not, in relation to that office, victimise a person in any of the ways or circumstances set out in subsection (6)(a) to (d).

(8) A relevant person in relation to a public office must not, in relation to that office, harass a person appointed to it.



- (9) If the relevant person in relation to a public office -
- (a) is a member of the States of Deliberation or the States of Election, or a representative of the Royal Court, and
  - (b) the relevant person makes a decision, either individually or with others, to terminate a person's appointment to a public office,

then the relevant person is not subject to any liability under subsection (6) in respect of the decision.

(10) A person is a relevant person in relation to a public office if the person has the power, either individually or with others, to -

- (a) decide the terms of appointment to a public office,
- (b) grant access to opportunities for promotion, transfer or training or to any other benefit, facility or service connected with the public office, or
- (c) terminate an appointment to a public office.

**Professional or trade organisations.**

26. (1) A professional or trade organisation is -

- (a) an organisation of employees,
- (b) an organisation of employers, or

- (c) any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists.

(2) A professional or trade organisation ("A") must not discriminate against a person ("B") -

- (a) in the arrangements A makes for deciding to whom to offer membership,
- (b) as to the terms on which it is prepared to admit B as member, or
- (c) by not accepting B's application for membership.

(3) A professional or trade organisation must not discriminate against a member ("C") -

- (a) by denying C access, or limiting C's access, to opportunities for receiving a benefit, facility or service provided by the professional or trade organisation,
- (b) by depriving C of membership or varying the terms of membership, or
- (c) by subjecting C to any other detriment.

(4) A professional or trade organisation must not victimise a person or member, as the case may be, in any of the ways or circumstances set out in subsection (2)(a) to (c) or (3)(a) to (c).

(5) A professional or trade organisation must not harass -

- (a) a member, or
- (b) an applicant for membership.

**Professional bodies.**

27. (1) A professional body ("A") must not discriminate against a person ("B") -

- (a) in the arrangements A makes for deciding to whom to confer a qualification or authorisation,
- (b) as to the terms on which it is prepared to confer a relevant qualification or authorisation on B,
- (c) by not conferring a qualification or authorisation on B.

(2) A professional body must not discriminate against a person ("C") on whom A has conferred a relevant qualification or authorisation -

- (a) by withdrawing the qualification or authorisation from C, or
- (b) by varying the terms on which C holds the qualification or authorisation, or
- (c) by subjecting C to any other detriment.

(3) A professional body must not victimise a person in any of the ways or circumstances set out in subsection (1)(a) to (c) or (2)(a) to (c).

(4) A professional body must not harass -

- (a) a person who holds a qualification or authorisation, or
  - (b) a person who applies for a qualification or authorisation.
- (5) In this section -
- (a) "**a professional body**" means an authority or body that is empowered to confer, extend, renew or withdraw a qualification or authorisation, that is needed for or facilitates engagement in a particular profession, trade or occupation, and
  - (b) "**qualification or authorisation**" includes recognition, registration, enrolment, approval or certification.

## PART VI

### CONDUCT PROHIBITED IN OTHER CIRCUMSTANCES

#### Goods and services.

28. (1) A service provider ("A") must not discriminate against another person ("B") -
- (a) by refusing to provide goods, services or facilities to B,
  - (b) as to the terms on which A provides goods, services or facilities to B,
  - (c) in the manner in which A provides B with goods services, or facilities, or

- (d) by terminating the provision of goods, services or facilities to B, including by requiring B to leave premises.

(2) A service provider must not victimise a person in any of the ways or circumstances set out in subsection (1)(a) to (d).

(3) A service provider must not harass a person -

- (a) requesting the service, or
- (b) a person to whom the service provider provides the service.

(4) Nothing in this section requires a service provider to take a step which would fundamentally alter -

- (a) the nature of the service, or
- (b) the nature of the service provider's trade or profession.

(5) In this Ordinance -

- (a) "**service provider**" means a person who provides goods, services or facilities to the public or a section of the public (for payment or not), and
- (b) "**facilities**" includes access to premises or vehicles which is granted to the public or a section of the public (for payment or not).

**Education.**

29. (1) The responsible body of a school or education provider ("A") must not discriminate against a person ("B") -

- (a) in the arrangements A makes for deciding who is offered admission as a student,
- (b) as to the terms on which A offers to admit B as a student, or
- (c) by not admitting B as a student.

(2) The responsible body of a school or education provider ("A") must not discriminate against a student ("B") -

- (a) in the way A provides education to B,
- (b) by denying B access, or limiting B's access, to any benefit, facility or service,
- (c) by permanently excluding B, or
- (d) by subjecting B to any other detriment.

(3) The responsible body of a school or education provider must not victimise a person in any of the ways or circumstances set out in subsections (1)(a) to (c) or (2)(a) to (d).

(4) The responsible body of a school or education provider must not harass -

- (a) a student, or

(b) a person who has applied for admission as a student.

(5) Nothing in this section requires the responsible body of a school or education provider to take a step which would fundamentally alter the nature of the educational service provided.

(6) In this Ordinance -

(a) "**education provider**" means -

(i) an educational institution in Guernsey, or

(ii) an organisation which develops or accredits curricula or training courses for use by a school or educational institution in Guernsey,

(b) "**school**" has the meaning given in section 1 of the Education (Guernsey) Law, 1970<sup>h</sup>,

(c) "**educational institution**" means an institution in Guernsey at which education is provided for five or more students of any age, not being a school, and for the avoidance of doubt includes registered pre-schools and day nurseries,

(d) "**responsible body**" means the governing body, committee of management or the proprietor of the school or education provider, as the case may be.

---

<sup>h</sup> Ordres en Conseil Vol. XXII, p. 318; this enactment has been amended.

**Clubs and associations.**

30. (1) A club or association ("A") must not discriminate against a person ("B") -

- (a) in the arrangements A makes for deciding to whom to offer membership,
- (b) as to the terms on which A offers B membership, or
- (c) by not offering B membership.

(2) A club or association must not discriminate against a member of the club or association ("B") -

- (a) in the terms of membership that are afforded to B,
- (b) by refusing or failing to accept B's application for a particular class or type of membership,
- (c) by denying B access, or limiting B's access, to any benefit, facility or service provided by the club or association,
- (d) by depriving B of membership, or
- (e) by subjecting B to any other detriment.

(3) A club or association must not victimise a person in any of the ways or circumstances set out in subsections (1)(a) to (c) or (2)(a) to (e).

(4) A club or association must not harass -



(a) a member, or

(b) a person who has applied for membership.

(5) Nothing in this section requires a club or association to take a step which would fundamentally alter the nature of the club or association.

(6) In this section "**club or association**" means any association of persons, whether or not incorporated or whether or not carried on for profit, other than a professional or trade organisation, which has -

(a) at least 25 members, and

(b) rules regarding admission to membership, and where membership involves a process of selection,

and a club or association victimises or harasses a person for the purposes of this Ordinance if one or more employees of, or persons otherwise involved in the management of, the club or association victimise or harass the person in the course of that employment or management, or otherwise victimise or harass the person when acting or purporting to act on behalf of the club or association.

### **Accommodation.**

31. (1) An accommodation provider ("**A**") must not discriminate against another person ("**B**") -

(a) as to the terms on which A offers to dispose of premises to B,

(b) by not disposing of premises to B,

- (c) in A's treatment of B with respect to things done in relation to other persons seeking premises,
- (d) by not giving permission for the disposal of premises to B,
- (e) by denying B access, or limiting B's access, to any benefit, facility or service provided by the accommodation provider,
- (f) by evicting B (or taking steps for the purpose of securing B's eviction), or
- (g) by subjecting B to any other detriment in respect of the provision of accommodation.

(2) Subsection (1) does not apply to anything done in the exercise of a judicial function.

(3) An accommodation provider must not victimise a person in any of the ways or circumstances set out in subsection (1)(a) to (g).

(4) An accommodation provider must not harass, in relation to premises which the accommodation provider has the right to dispose of, or premises which the accommodation provider's permission is required for the disposal of -

- (a) a person who occupies premises,
- (b) a person who applies to occupy premises,
- (c) a person who applies for permission to dispose of premises, or

(d) a person to whom a disposal would be made if permission was given.

(5) For the purposes of this section -

(a) a reference to premises is a reference to the whole or part of the premises, and

(b) a reference to disposing of premises includes, in the case of premises subject to a tenancy, a reference to -

(i) assigning the premises,

(ii) sub-letting them, or

(iii) parting with possession of them.

(6) Nothing in this section requires an accommodation provider to take a step which would fundamentally alter -

(a) the nature of the accommodation service provided, or

(b) the nature of A's trade or profession.

(7) In this Ordinance, "**accommodation provider**" means a person who has the right to dispose of premises, a person whose permission is required for the disposal of premises and a person who manages premises which are occupied, and for the avoidance of doubt -

(a) includes any person who has the right to provide commercial or residential property to another person

whether by way of sale, tenancy or otherwise (including by granting a right to occupy), and

- (b) does not include a person who provides premises which fall within a visitor economy use class within the meaning of Schedule 1 to the Land Planning and Development (Use Classes) Ordinance, 2017<sup>i</sup>, namely a provider of serviced or non-serviced visitor accommodation.

## PART VII

### DUTIES - DISABILITY

#### **Duty to make reasonable adjustments for a disabled person.**

32. (1) The following persons are under a duty to make reasonable adjustments for a disabled person as described in subsection (2) in the circumstances set out therein -

- (a) an employer, including in relation to a person who has applied to the employer for employment or work experience,
- (b) a principal,
- (c) an employment agency,
- (d) a provider or arranger of vocational training,

---

<sup>i</sup> Ordinance No. IV of 2017; this enactment has been amended.

- (e) a partnership, including in relation to a person who has applied for admission to the partnership, or who the members of the partnership are considering inviting to become a partner,
- (f) a person who has the power to make an appointment to a personal office, in relation to a person seeking, or being considered for, the appointment,
- (g) a relevant person in relation to a personal office,
- (h) a person who has the power to make an appointment to a public office, in relation to a person seeking, or being considered for, the appointment,
- (i) a relevant person in relation to a public office,
- (j) a professional or trade organisation, including in relation to an applicant for membership,
- (k) a professional body, including in relation to a person who applies for a qualification or authorisation,
- (l) a service provider,
- (m) a school or education provider,
- (n) an accommodation provider, (save that the duty under paragraph (2)(b) does not apply to landlords, in respect of whom sections 34 to 36 apply), and

- (o) a club or society, including in relation to an applicant for membership.

(2) The duty to make reasonable adjustments for a disabled person is set out in paragraphs (a) to (c) below, and, in this section, a person on whom the duty is imposed is referred to as "**A**" -

- (a) where a provision, criterion or practice of A puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage,
- (b) where a physical feature puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled, for A to take such steps as it is reasonable to have to take to avoid the disadvantage,
- (c) where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

(3) Before A takes such steps as it is reasonable to have to take to avoid the disadvantage as set out in subsection (2)(a) to (c), A must consult the disabled person to ask their view as to what steps would avoid the disadvantage, and may also consult such other persons as A considers appropriate.

(4) In this section, an "**auxiliary aid**", in relation to a disabled person, means equipment or a service that -

- (a) is used by the person, and
- (b) provides assistance which compensates for or removes any disadvantage or inequality connected with the disability,

but does not include any item of personal equipment which the person would reasonably be expected to own.

(5) Subject to subsection (6), a failure on the part of A to take steps to avoid a disadvantage to a disabled person as set out in subsection (2)(a) to (c) is a failure to comply with a duty to make reasonable adjustments, and A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(6) A does not discriminate against a disabled person if -

- (a) A fails to take steps to avoid a disadvantage to a disabled person as set out in subsection (2)(a) to (c) if to do so would be a disproportionate burden on A, or
- (b) A does not know and could not reasonably be expected to know that the person was a disabled person.

(7) A may not require a disabled person to pay any or all of A's costs of complying with a duty to make reasonable adjustments.

(8) For the purposes of this Part, a physical feature means -

- (a) a feature arising from the design or construction of a building,

(b) a feature of an approach to, exit from or access to a building, or

(c) a fixture or fitting in or on premises.

(9) The Committee may by regulation amend the definition of physical feature in subsection (8), including to specify other physical elements or qualities which are physical features.

(10) For the purposes of subsection (2)(b), avoiding the substantial disadvantage includes -

(a) removing the physical feature in question,

(b) altering it, or

(c) providing a reasonable means of avoiding it.

(11) In this Part, "**substantial**" means more than minor or trivial.

**Reasonable adjustments: proactive duty of service providers, schools and education providers in respect of disabled persons generally.**

33. (1) In addition to the duty imposed by section 32, service providers, schools and education providers are also under the proactive duty to make reasonable adjustments for disabled persons described in subsections (2) and (3).

(2) The proactive duty imposed on service providers is the duty to make reasonable adjustments for disabled persons as set out in section 32, modified to apply as follows -



(a) for the references in section 32(2)(a) to (c) to a disabled person substitute references to disabled persons generally,

(b) in section 32(2)(b) for "to avoid the disadvantage" substitute -

"(i) to avoid the disadvantage, or

(ii) to adopt a reasonable alternative method of providing the service,"

(c) delete subsection (3),

(d) in subsection (5), for "a disabled person" the first time it occurs substitute "disabled persons", and

(e) for subsection (6), substitute -

"(6) A does not contravene this section if A fails to take steps to avoid a disadvantage to disabled persons as set out in subsection (2)(a) to (c) in circumstances where to do so would be a disproportionate burden on A."

(3) The proactive duty imposed on school or education providers is the duty to make reasonable adjustments for disabled persons as set out in section 32, modified to apply as follows -

(a) for the references in section 32(2)(a) to (c) to a disabled person, substitute references to disabled persons generally,

- (b) delete subsection (3),
- (c) in subsection (5), for "a disabled person" the first time it occurs substitute "disabled persons", and
- (d) for subsection (6), substitute -

"(6) A does not contravene this section if A fails to take steps to avoid a disadvantage to disabled persons as set out in subsection (2)(a) to (c) in circumstances where to do so would be a disproportionate burden on A."

**Duty to carry out minor improvements: commercial or residential landlords.**

34. (1) A landlord ("L") is under a duty to carry out minor improvements to property for a disabled person who is L's tenant, or who otherwise lives in the accommodation provided by L to L's tenant, as described in subsection (2) in the circumstances set out therein; and a disabled person who is L's tenant, or who otherwise lives in the accommodation provided by L to L's tenant, is referred to in this section as "T".

(2) The duty applies where the lack of a minor improvement to a property puts T at a substantial disadvantage in comparison with persons who are not disabled, and the duty is for L to carry out the minor improvement.

(3) In the case of a residential property disposed of by way of tenancy, the duty only applies if the property is T's principal residence.

(4) Subject to subsection (5), L discriminates against T if L fails to comply with the duty under subsection (1) in respect of T.

(5) L does not discriminate against T if L fails to carry out minor improvements if to do so would be a disproportionate burden on L.

(6) L may not require T to pay any or all of L's costs of complying with a duty to make minor improvements.

(7) In this section, "**minor improvement**" means any of the following -

- (a) the replacement or provision of a sign or notice,
- (b) the replacement of a tap or door handle,
- (c) the replacement, provision or adaptation of a doorbell or door entry system, and
- (d) changes to the colour of any wall, door or other surface.

(8) For the avoidance of doubt, for the purposes of this section it does not matter whether the property in question is commercial premises or residential premises.

(9) The Committee may by regulation amend the definition of minor improvement in subsection (7).

**Duty to allow reasonable adjustments to physical features: residential landlords.**

35. (1) A landlord ("L") is under a duty to allow reasonable adjustments to physical features for a disabled person who is L's tenant, or who otherwise lives in the accommodation provided by L to L's tenant, as described in subsection (2) in the circumstances set out therein; and a disabled person who is L's tenant, or who

otherwise lives in the accommodation provided by L to L's tenant, is referred to in this section as "T".

(2) The duty to allow reasonable adjustments for T applies where -

- (a) the accommodation provided by L to T is T's principal residence, and
- (b) a physical feature of the accommodation puts T at a substantial disadvantage in comparison with persons who are not disabled,

and the duty is for L to not unreasonably refuse permission for T to carry out works which are listed on the prescribed list of works which would compensate for or remove the disadvantage connected with T's disability.

(3) In granting permission for reasonable adjustments to a physical feature which is on the prescribed list of works, L may require T -

- (a) to pay any or all of the costs of any works on the prescribed list of works undertaken under this section,
- (b) to engage an appropriately qualified tradesperson to undertake the work on the prescribed list of works,
- (c) to demonstrate that T has or will have the resources to restore the property to its original condition at the end of the tenancy, and
- (d) to restore the property to its original condition at the end of the tenancy.

(4) An unreasonable refusal of permission to carry out works on the prescribed list of works on the part of L is a failure to comply with a duty to make reasonable adjustments, and L discriminates against a disabled person if L fails to comply with that duty in relation to that person.

(5) In this section the "**prescribed list of works**" means -

- (a) an alteration to, or the addition of, fixtures and fittings (including, without limitation, grab rails, special bathroom or sanitary fittings and stair lifts),
- (b) an alteration or addition to a physical feature connected with the provision of services to the accommodation, or
- (c) any other adjustment to a physical feature which the Committee prescribes by regulation for the purposes of this section.

**Duty to allow reasonable adjustments to physical features: commercial landlords.**

36. (1) A landlord ("L") is under a duty to allow reasonable adjustments to physical features for a disabled person who is L's tenant, or is an employee or service-user of L's tenant, as described in subsection (2) in the circumstances set out therein; and a disabled person who is L's tenant, or who is an employee or service-user of L's tenant, is referred to in this section as "**T**".

(2) The duty to allow reasonable adjustments for T applies where -

- (a) the accommodation provided by L to T is commercial premises, and

- (b) a physical feature of the accommodation puts T at a substantial disadvantage in comparison with persons who are not disabled,

and the duty is for L to not unreasonably refuse permission for T to carry out reasonable adjustments to a physical feature which would compensate for or remove the disadvantage connected with T's disability.

(3) In granting permission for reasonable adjustments to a physical feature, L may require T -

- (a) to pay any or all of the costs of any works undertaken under this section,
- (b) to engage an appropriately qualified tradesperson to undertake the work, and
- (c) to restore the property to its original condition at the end of the tenancy.

(4) An unreasonable refusal of permission to carry out works as described in this section on the part of L is a failure to comply with a duty to make reasonable adjustments, and L discriminates against a disabled person if L fails to comply with that duty in relation to that person.

(5) In this Ordinance, "**commercial premises**" means any premises which do not fall within a residential use class within the meaning of Schedule 1 to the Land Planning and Development (Use Classes) Ordinance, 2017.

**Disability: public sector duty to prepare accessibility action plans.**

37. (1) The Committee may by regulation impose a duty on public sector service providers and public sector school or education providers to prepare and implement an accessibility action plan, and regulations may, without limitation -

- (a) set out codes of practice in relation to accessibility action plans as set out in section 67,
- (b) provide for the Employment and Equal Opportunities Service to be able to issue a non-discrimination notice where a public sector service, school or education provider has not prepared or implemented an accessibility action plan,
- (c) provide that the duty does not apply in relation to access to ancient monuments.

(2) In this section -

- (a) "**accessibility action plan**" means a reasonable and adequate plan, proportionate to the size and financial and other circumstances of the service provider, school or education provider, in which the service provider, school or education provider sets out how they will improve access for disabled people to their service,

- (b) "**ancient monument**" means a protected monument within the meaning of the Land Planning and Development (Guernsey) Law, 2005<sup>j</sup>,
- (c) "**public sector service provider**" means a service provider which is owned, maintained, managed, funded or under the authority of the States or any Committee thereof, but does not include a service provider who receives partial funding from the States by way of grant, loan or otherwise,
- (d) "**public sector school or education provider**" means a school or education provider which is maintained by the States, and for the avoidance of doubt does not include -
  - (i) an independent school within the meaning given in section 1 of the Education (Guernsey) Law, 1970,
  - (ii) a school in respect of which grants are made by the States, or
  - (iii) a private education provider.

---

<sup>j</sup> Order in Council No. XVI of 2005; this enactment has been amended.



**Disability: accessibility of the public highway.**

38. (1) The States of Guernsey is under a duty in relation to disabled people as set out in subsection (2) in the circumstances set out therein.

(2) The duty is, where the States of Guernsey is constructing, altering or repairing a public highway, or where the States has engaged or will engage a contractor to construct, alter or repair a public highway -

(a) for the States to consider how the section of public highway which is being constructed, altered or repaired could be made more accessible for disabled people, and

(b) for the States to make any changes it considers appropriate to the section of public highway which will increase accessibility for disabled people.

(3) For the avoidance of doubt, the public highway is not a physical feature within the meaning of section 32(8) (duty to make reasonable adjustments for a disabled person).

(4) Proceedings in respect of a contravention of this section shall be brought only by the Director of the Employment and Equal Opportunities Service in accordance with Part IX.

(5) In this section, "**public highway**" means any road, street, lane or public place over which the public has, under the law of the Island, the right to pass and repass without let or hindrance, whether on foot or with animals or vehicles.

PART VIII  
COMPLAINTS PROCEDURE AND THE TRIBUNAL

**Restriction of proceedings for contravention of this Ordinance.**

39. Except as provided by this Ordinance, no proceedings, whether civil or criminal, lie against any person in respect of an act by reason that the act is prohibited by any provision of this Ordinance.

**Notification of potential complaint – goods and services etc.**

40. (1) A person ("A") who considers that another person ("B") has committed an act by which A's rights under this Ordinance are infringed in the circumstances set out in section 28, 29, 30 or 31 must, before making a complaint under section 42 -

- (a) within six weeks of the act occurring notify B in writing of the potential complaint, and
- (b) inform B that, if the potential complaint is not resolved within one month of the notification to B, A may exercise their right to make a complaint under this Ordinance.

(2) A may not make a complaint under section 42 until the one month period referred to in subsection (1)(b) has elapsed.

(3) For the avoidance of doubt, the application of this section is without prejudice to the application of sections 41 and 43.

**Pre-complaint conciliation.**

41. (1) If a person ("A") considers that another person ("B") has committed an act by which A's rights under this Ordinance are infringed (including,

but not limited to, an act falling within section 40(1)), A must, before making a complaint under this Ordinance, notify the Employment and Equal Opportunities Service of the intended complaint.

(2) On being notified under subsection (1), the Employment and Equal Opportunities Service shall ask A and B if they wish to engage in pre complaint conciliation; and if A and B wish to engage in pre-complaint conciliation, the Employment and Equal Opportunities Service shall facilitate it.

(3) In this section, "**pre-complaint conciliation**" means a voluntary process in which the Employment and Equal Opportunities Service uses its best endeavours to settle the potential complaint by giving such advice and assistance as it thinks necessary or expedient or by conciliation, which ends when either -

- (a) a settlement has been reached, or
- (b) the Employment and Equal Opportunities Service, being of the opinion that the complaint cannot be settled by those methods, issues a certificate to that effect to A.

#### **Making of complaints to the Tribunal.**

42. (1) Subject to sections 40, 41 and 43, a complaint by any person ("**the complainant**") that another person ("**the respondent**") -

- (a) has committed an act against the complainant which is prohibited by any provision of this Ordinance or
- (b) is, by virtue of section 68, to be treated as having committed such an act against the complainant,

may be made to the Employment and Discrimination Tribunal ("**the Tribunal**") by being presented to the Secretary to the Tribunal ("**the Secretary**").

(2) If section 40 applies, the complainant shall confirm to the Secretary that it has been complied with.

(3) The Secretary, on receipt of the complaint, shall immediately transmit it -

(a) to the Employment and Equal Opportunities Service in accordance with the provisions of section 47(1), and

(b) to the Convenor of the Panel to enable the appointment of a Tribunal under the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005<sup>k</sup>, to hear and determine the complaint.

(4) In this Ordinance, "**the Panel**" means the Employment and Discrimination Panel maintained under and in accordance with the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.

**Time limit for presenting complaints.**

43. (1) The Tribunal shall not hear and determine a complaint under this Ordinance unless it is presented to the Secretary -

---

<sup>k</sup> Order in Council No. XXX of 2005; this enactment has been amended.

- (a) subject to subsections (2) to (4), within a period of three months beginning on the day when the act complained of was done, or
- (b) within such further time as the Tribunal (constituted by a single member of the Panel) may, on the application of the complainant presented to the Secretary, allow in a case where -
  - (i) it is satisfied that it was not reasonably practicable for the complaint to be presented within three months, or
  - (ii) that it would be just and equitable in the circumstances of the case to allow the further time.

(2) In subsections (3) and (4) -

- (a) Day A is the day on which the complainant complies with the requirement in section 41(1) to notify the Employment and Equal Opportunities Service of the intended complaint, and
- (b) Day B is the day on which the complainant receives a certificate issued by the Employment and Equal Opportunities Service pursuant to section 41(3)

(3) In determining when the time limit set by subsection (1)(a) expires, the period beginning with the day after day A and ending with day B is not to be counted.

(4) If the time limit set by subsection (1)(a) would (if not extended by this subsection) expire during the period beginning with day A and ending one month after day B, the time limit expires instead at the end of that period.

(5) The power conferred on the Tribunal by subsection (1)(b) to extend the time limit set by section (1)(a) is exercisable in relation to that time limit as extended by subsections (3) and (4).

(6) The Secretary, on receipt of an application for further time under subsection (1)(b), shall immediately transmit it to the Convenor of the Panel (or if the Convenor is unavailable, the Deputy Convenor) to enable the appointment, from the membership of the Panel, of a Tribunal (constituted by a single member) to hear and determine the application.

(7) Where the Tribunal, on an application under subsection (1)(b) decides that further time should or should not be allowed for the presentation of a complaint -

- (a) the Tribunal's decision is subject to appeal in accordance with section 57, and
- (b) if the Tribunal (or the Royal Court on appeal) determines that further time should be allowed for the presentation of the complaint, the single member of the Tribunal who heard the application for further time shall not be appointed as one of the members of the Tribunal who are to hear and determine the complaint.

**Form of complaints.**

44. (1) A complaint under this Ordinance, an application for further time under section 43(1)(b) or a confirmation that section 40 has been complied with -

- (a) shall be presented to the Secretary in such form and manner, and
- (b) shall be supported by such information and documents,

as the Secretary may require either generally or in relation to a particular case.

(2) At any time after the receipt of a complaint or application for further time, the Secretary may require the complainant or applicant to provide such additional information and documents as the Secretary sees fit.

**Refusal to hear complaints.**

45. (1) The Tribunal shall not hear and determine a complaint under this Ordinance unless satisfied that the provisions of section 47 have been complied with.

(2) The Tribunal shall not hear and determine a complaint under this Ordinance or an application for further time under section 43(1)(b) if the complainant or applicant and respondent have signed a settlement agreement or a compromise agreement.

(3) The Tribunal may refuse to hear and determine a complaint under this Ordinance or an application for further time under section 43(1)(b) -

- (a) if any provision of, or requirement imposed under, section 44(1) or (2) is not complied with, or
- (b) if the Tribunal is satisfied that the parties have, otherwise than as mentioned in subsection (2), settled the complaint by a legally binding agreement.

(4) A settlement agreement -

(a) is binding on the parties, and

(b) in so far as it provides for any payment to be made -

(i) is enforceable as a judgment debt by the person to whom the payment is to be made against the other party, and

(ii) subject to the provisions of the agreement, carries interest at the rate for the time being prescribed under section 2 of the Judgements (Interest) (Bailiwick of Guernsey) Law, 1985<sup>1</sup> from the date of the agreement until the payment is satisfied; and the interest may be recovered as part of the payment.

(5) A compromise agreement must satisfy the following conditions -

(a) the agreement is in writing,

(b) the agreement relates to the particular complaint,

(c) the complainant has received advice from an independent adviser as to the terms and effect of the proposed agreement and in particular its effect on the

---

<sup>1</sup> Ordres en Conseil Vol. XXIX, p. 133; this enactment has been amended.



complainant's ability to pursue a complaint before the Tribunal,

- (d) the agreement identifies the adviser, and
- (e) the agreement states that the conditions set out in paragraphs (a) to (d) are satisfied.

(6) This section is without prejudice to the Employment and Discrimination Tribunal (Guernsey) Order, 2020<sup>m</sup>.

(7) In this section -

- (a) "**independent adviser**" means a lawyer, a representative of a trade union or person of another description specified in regulations of the Committee, and
- (b) "**lawyer**" means -
  - (i) an Advocate,
  - (ii) a member of the Bar of England and Wales, the Bar of Northern Ireland or the Faculty of Advocates in Scotland, or

---

<sup>m</sup> G.S.I. No. 91 of 2020.

- (iii) a Solicitor of the Supreme Court of England and Wales, of the Supreme Court of Judicature of Northern Ireland, or of Scotland.

(8) In this Ordinance -

- (a) "**settlement agreement**" means an agreement countersigned by the Employment and Equal Opportunities Service stating that the parties have settled the complaint, and
- (b) "**compromise agreement**" means an agreement to refrain from instituting or continuing any proceedings before the Tribunal which satisfies the conditions set out in subsection (5).

**Time when act complained of is done.**

46. For the purposes of this Part of the Ordinance -

- (a) without prejudice to the operation of sections 16(3) and 17(3), where including a term in a contract is an act which is prohibited by any provision of this Ordinance, that act shall be treated as extending throughout the duration of the contract,
- (b) other than when paragraph (a) applies, any act extending over a period shall be treated as done at the end of that period, and
- (c) a deliberate omission shall be treated as done when the person ("P") decided upon it,

and, in the absence of evidence establishing the contrary, P shall be taken for the purpose of paragraph (c) to decide upon an omission -

- (i) when P does an act inconsistent with doing the omitted act, or
- (ii) if P has done no such inconsistent act, when the period expires within which P might reasonably have been expected to do the omitted act.

**Conciliation services.**

47. (1) When a complaint under this Ordinance is presented to the Secretary under section 42(1), the Secretary shall immediately transmit it to the Employment and Equal Opportunities Service which shall -

- (a) use its best endeavours to settle the complaint by giving such advice and assistance as it thinks necessary or expedient or by conciliation, and thereafter
- (b) pass the complaint to the Secretary -
  - (i) if, in its opinion, the complaint cannot be settled by the methods set out in paragraph (a), or
  - (ii) in any case, if the complaint is not settled within six weeks of being transmitted to it (or, if an application for further time has been made under section 43(1)(b), within six weeks of final disposal of that application), unless in its

opinion conciliation or negotiations are in progress with a view to a settlement.

(2) Where the Employment and Equal Opportunities Service passes a complaint to the Secretary under subsection 1(b), the Secretary shall inform the Convenor of the Panel of the fact and the Convenor (or, if the Convenor is unavailable, the Deputy Convenor) shall, subject to section 43(7)(b), appoint from the membership of the Panel, a Tribunal constituted by three members to hear and determine the complaint.

(3) The opinion of the Employment and Equal Opportunities Service as to the matters set out in subsection (1)(b) is final.

(4) Nothing communicated to the Employment and Equal Opportunities Service or any officer thereof in relation to the performance of their functions under subsection (1)(a) is admissible in evidence in any proceedings before the Tribunal except with the consent of the person who so communicated it.

**Burden of proof before the Tribunal.**

48. (1) This section applies to any complaint under this Ordinance made to the Tribunal under section 42.

(2) Where, on the hearing of the complaint, the complainant proves facts from which the Tribunal could, in the absence of any other explanation, conclude that a person ("A") has contravened any provision of this Ordinance, the Tribunal shall find that the contravention occurred, unless A proves that A did not contravene the provision.

**Awards.**

49. (1) Where the Tribunal finds that a complaint under this Ordinance is well-founded, it shall make either or both of -

- (a) an award of compensation -
  - (i) which is recoverable as a judgment debt by the complainant from the respondent, and
  - (ii) which carries interest at the rate for the time being prescribed under the Judgements (Interest) (Bailiwick of Guernsey) Law, 1985 from the date of the award until the award is satisfied, and the interest may be recovered by the complainant as part of the award, and
- (b) a non-financial award.

(2) In this section "**non-financial award**" means an order that the respondent take, within a specified period, action appearing to the Tribunal to be practicable for the purposes of obviating or reducing the adverse effect on the complainant of any act to which the complaint relates, where the Tribunal considers the action not to be a disproportionate burden on the respondent.

**Amount of compensation - work.**

50. (1) Subject to the provisions of subsection (3) and section 54, the amount of an award of compensation under section 49(1)(a) for a contravention of section 14, 17 or 20 is an amount in the sum of -

- (a) up to six months' pay, or where the complainant is paid on a weekly basis, up to one week's pay multiplied by 26, and
- (b) an amount payable for injury to feelings, hurt or distress calculated by the Tribunal in accordance with

regulations prescribed by the Committee up to a maximum of £10,000.

(2) For the purposes of subsection (1)(a), the amount of a month's pay, or (as the case may be) a week's pay is, subject to the provisions of subsection (3), an amount equal to the complainant's average monthly pay during the six month period immediately preceding the relevant date or (where the complainant was paid on a weekly basis) the complainant's average weekly pay during the 26 week period immediately preceding that date.

(3) In a case where, in the opinion of the Tribunal, the basis set out in subsection (1)(a), as read with subsection (2), for calculating the element of the award based on pay is inappropriate because it results in an amount of a month's pay, or, as the case may be, a week's pay, which is more or less than the complainant's usual amount of pay over one month or one week, the award shall be calculated on such other basis as the Tribunal considers to be just and equitable in the circumstances of the case.

(4) For the purposes of subsection (2), the relevant date is -

- (a) the date of the act which founded the complaint in respect of which the award is made, or
- (b) where the act is one extending over a period of time, the latest date within that period which is prior to the date on which the complaint was presented to the Secretary.

**Amount of compensation - cases where pay or financial loss may be awarded.**

51. (1) Subject to subsection (2) and section 54, the amount of an award of compensation under section 49(1)(a) for a contravention of section 21, 22, 23, 24, 25, 26, 27 or 32 is an amount in the sum of -

- (a) up to six months' pay, or where the complainant is paid on a weekly basis, up to one week's pay multiplied by 26, and
- (b) an amount payable for injury to feelings, hurt or distress calculated by the Tribunal in accordance with regulations prescribed by the Committee up to a maximum of £10,000,

and section 50(2) to (4) apply to the calculation of an amount of an award of compensation under this section.

(2) In a case where, in the opinion of the Tribunal, the basis set out in subsection (1) for calculating the award based on pay is inappropriate, for instance because the complainant does not have a usual amount of pay, or has never received pay which relates to the facts and circumstances of the complaint, the Tribunal may, if it considers it to be just and equitable, award a sum equal to -

- (a) the amount of any financial loss suffered by the complainant as a result of the act complained of up to a maximum of £10,000, and
- (b) an amount payable for injury to feelings, hurt or distress calculated by the Tribunal in accordance with regulations prescribed by the Committee up to a maximum of £10,000.

**Amount of compensation - goods and services etc.**

52. Subject to section 54, the amount of award of compensation under section 49(1)(a) for a contravention of section 28, 29, 30, 31 or 33 is a sum equal to -

- (a) the amount of any financial loss suffered by the complainant as a result of the act complained of up to a maximum of £10,000, and
- (b) an amount payable for injury to feelings, hurt or distress calculated by the Tribunal in accordance with regulations prescribed by the Committee up to a maximum of £10,000.

**Amount of compensation – equal pay.**

53. (1) Subject to section 54 and subsection (2), the award of compensation under section 49 for a contravention of section 16 is a sum equal to arrears of pay, calculated as the sum which would have the effect of putting the complainant in all respects in the position in which the complainant would have been had an equal pay clause under section 16 been given effect to by the complainant's employer since the commencement of that section.

(2) The maximum time period during which a sum equal to arrears of pay can be calculated under subsection (1) is six years; but (for the avoidance of doubt) compensation shall not be granted in respect of any period prior to the commencement of section 16.

**Reduction of award in certain cases.**

54. Where in relation to a complaint under this Ordinance the Tribunal finds that the complainant has unreasonably refused an offer by the respondent which, if accepted, would have had the effect of putting the complainant in all respects in the position in which the complainant would have been had the act which founded



the complaint not occurred, the Tribunal shall reduce the amount of the award to such extent as it considers just and equitable having regard to that finding.

**Joined complaints under this Ordinance.**

55. (1) A person ("A") may make more than one complaint under this Ordinance against the same respondent ("B"), for example (and without limitation) where the complaints relate to different protected grounds under Part I.

(2) Where A makes more than one complaint against B, and the complaints relate to the same facts and circumstances, the Tribunal may decide to hear and determine the complaints at the same time ("**join the complaints**", and cognisant expressions shall be construed accordingly).

(3) Where A makes a complaint under this Ordinance against B and one or more other respondents, the Tribunal may decide to join the complaints where -

- (a) the complaints relate to the same facts and circumstances, and
- (b) the Tribunal is satisfied that there is sufficient connection between the respondents to make it expedient to join the complaints (for example, the respondents work for the same employer),

and in this Ordinance where complaints against several respondents are joined under this section, the respondents are referred to as "**connected respondents**".

(4) Where the Tribunal decides to join the complaints, the maximum total award which can be made under section 49(1)(a) is -

- (a) where the Tribunal considers a calculation of an award based on pay to be appropriate -
  - (i) nine months' pay (or where the complainant is paid on a weekly basis, one week's pay multiplied by 39), and
  - (ii) an amount payable for injury to feelings, hurt or distress calculated by the Tribunal in accordance with regulations prescribed by the Committee up to a maximum of £10,000, and
- (b) in any other case -
  - (i) £10,000 for financial loss, and
  - (ii) an amount payable for injury to feelings, hurt and distress calculated by the Tribunal in accordance with regulations prescribed by the Committee up to a maximum of £10,000,

save where there is a complaint of victimisation by A as part of the joined complaints, in which case the maximum award limits in paragraphs (a) and (b) do not apply to the victimisation complaint.

**Joined employment complaints.**

56. (1) Subjection to subsection (2), in any case where a person ("A") -
- (a) has made a complaint to the Tribunal against a respondent ("B") under this Ordinance, or has made more than one such complaint against B or connected

respondents which the Tribunal has decided to join under section 55, and

(b) has also made a complaint to the Tribunal against B as employer under either or both of the following provisions -

(i) section 16(1)(a), (b) or (c) of the Employment Protection (Guernsey) Law, 1998<sup>n</sup>,

(ii) section 38(1)(a) or (b) of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005<sup>o</sup>,

the Tribunal may, where the complaints relate to the same facts or circumstances, decide that it shall join the complaints.

(2) Subject to subsection (3), where the Tribunal decides to join the complaints under subsection (1), the provisions of -

(a) the Employment Protection (Guernsey) Law, 1998 apply in relation to any complaint under that Law, and

(b) the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 apply in relation to any complaint under that Ordinance,

---

<sup>n</sup> Ordres en Conseil Vol. XXXVIII, p. 239; this enactment has been amended.

<sup>o</sup> Ordinance No. XXXI of 2005; this enactment has been amended.

in all respects, save the maximum total award that can be made to a person in respect of the joined complaints is –

- (i) nine months' pay (or where the complainant is paid on a weekly basis, one week's pay multiplied by 39), and
- (ii) an amount payable for injury to feelings, hurt or distress calculated by the Tribunal in accordance with regulations prescribed by the Committee up to a maximum of £10,000.

(3) Where there is a complaint of victimisation under this Ordinance made by A as part of the joined complaints, the maximum award limits in subsection (2) do not apply to the victimisation complaint.

**Appeals from Tribunal to Royal Court.**

57. (1) A party aggrieved by a decision or award of the Tribunal on a question of law may, subject to the provisions of subsections (2) and (3), appeal to the Royal Court in such manner and within such period as may be prescribed by order of the Royal Court.

(2) No decision or award of the Tribunal shall be invalidated solely by reason of a procedural irregularity, unless the irregularity was such as to prevent any party to the proceedings from presenting a case fairly before the Tribunal.

(3) This section does not confer a right of appeal on a question of law which has been referred to the Royal Court under section 58.

**Reference of points of law to Royal Court.**

58. A question of law arising in connection with the hearing and determination by the Tribunal of a complaint under this Ordinance may, if the Tribunal thinks fit, be referred for decision to the Royal Court in such manner, and within such period as may be prescribed by order of the Royal Court.

**Appeals from Royal Court to Court of Appeal.**

59. (1) An appeal from a decision of the Royal Court made on an appeal under section 57 or on a reference under section 58 lies, with leave of the Royal Court or the Court of Appeal, to the Court of Appeal.

(2) Section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>P</sup> ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

PART IX

NON-DISCRIMINATION NOTICES

**Issue of non-discrimination notices.**

60. (1) This section applies to an act which is prohibited by any provision of Part IV, V, VI or VII (and so applies whether or not proceedings have been brought in respect of the act).

(2) If the Director of the Employment and Equal Opportunities Service ("**the Director**") is satisfied that a person ("**A**") is committing, or has committed

---

<sup>P</sup> Ordres en Conseil Vol. XVIII, p. 315; this enactment has been amended.

any such act, the Director may serve on A a notice (a "**non-discrimination notice**") requiring A -

- (a) not to continue committing, or not to commit again (as the case may be) any such act, and
- (b) where compliance with paragraph (a) involves changes in any of A's practices or other arrangements -
  - (i) to inform the Director when A has effected those changes and what those changes are, and
  - (ii) to take such steps as may reasonably be required by the notice to inform other concerned persons.

(3) A non-discrimination notice may also require A to provide the Director with such other information or documents as may reasonably be required by the Director in order to verify that the notice has been complied with.

(4) The non-discrimination notice may specify the time by which any information or document is to be provided to the Director, and the form and manner in which they are to be provided, but any time specified must be reasonable in all the circumstances of the case, and in any event not be later than five years after the notice was served.

(5) The Director shall not serve a non-discrimination notice on a person ("**A**") unless -

- (a) A has been notified that the Director is minded to issue a non-discrimination notice in respect of A, specifying

the grounds on which the Director contemplates doing so,

- (b) A has been offered an opportunity of making oral or written representations in the matter within a period of not less than one month specified in the notice, and
- (c) the Director has taken account of any representations so made.

(6) A person ("**B**") who, in providing any information or document in compliance or purported compliance with a non-discrimination notice -

- (a) makes a statement which B knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (c) produces or causes or permits to be produced any information or document which B knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) recklessly produces or recklessly causes or permits to be produced, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(7) A person who wilfully alters, suppresses, conceals or destroys a document required to be produced by a non-discrimination notice is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

**Discretionary financial penalties.**

61. (1) Where the Director is satisfied that a person has, without reasonable excuse, failed to comply with any requirement contained in a non-discrimination notice within the specified period (if any), the Director may (subject to the provisions of this section, section 62 and section 63) impose on that person a financial penalty in respect of the failure of such amount of such amount as the Director considers appropriate and proportionate, but not exceeding £10,000.

(2) In deciding whether or not to impose a penalty under this section and, if so, the amount thereof the Director must take into consideration the following factors -

- (a) whether the failure was brought to the attention of the Director by the person concerned,
- (b) the seriousness of the failure,
- (c) whether or not the failure was inadvertent,
- (d) what efforts, if any, have been made to rectify the failure and to prevent a recurrence,



- (e) the potential financial consequences to the person concerned and to third parties of imposing a penalty, and
- (f) the penalties imposed by the Director under this section in other cases (if any).

(3) Any financial penalty imposed under this section is payable to the States and is recoverable as a civil debt.

(4) Where the Director proposes to impose a financial penalty, the Director must notify in writing the person on whom the penalty is to be imposed of -

- (a) the proposed penalty, and the reasons for the same,
- (b) the date on which it is proposed, subject to sections 62 and 63, to impose the penalty, which must not be less than 21 days after the date of the notice, and
- (c) that person's right to make written representations to the Director under section 62(1).

(5) Where the Director imposes a financial penalty, the Director must -

- (a) issue to the person on whom the penalty is being imposed notice of the penalty, and
- (b) include in the notice a statement of the right of appeal under section 63.

**Representations prior to financial penalty.**

62. (1) The person on whom a notice is served under section 61(4) may make written representations to the Director concerning the proposed financial penalty within 14 days of the date of the notice.

(2) If the person in question exercises their right under subsection (1) the Director -

(a) must consider their representations, and

(b) may decide to -

(i) impose the penalty,

(ii) impose a penalty in a lesser amount,

(iii) withdraw the penalty, or

(iv) postpone the date for imposing the penalty,

but in any event the Director must inform that person of the decision in writing, and the Director's reasons for the same, before the date on which financial penalty is imposed or would otherwise have been imposed.

(3) Without prejudice to section 63(8), and for the avoidance of doubt, where the Director has imposed a financial penalty under section 61 the Director may not seek to recover payment of that penalty until -

(a) 28 days immediately following the date of the notice of the penalty issued under section 61(5)(a), or

- (b) if an appeal is instituted within that period, the final determination, or withdrawal, of that appeal,

and for the purposes of this subsection, an appeal shall be deemed not to have been finally determined until the expiration of the time allowed for the institution of an appeal to the Court of Appeal under the Court of Appeal (Guernsey) Law, 1961 or until the determination of any such appeal instituted within that time.

**Appeals against decisions to impose financial penalties.**

63. (1) A person aggrieved by a decision of the Director to impose a financial penalty may appeal to the Court against the decision.

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

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(3) Subject to subsection (4), an appeal under this section shall be instituted -

- (a) within a period of two months immediately following the date of the notice of the decision, and

- (b) by summons served on the Director stating the grounds and material facts on which the appellant relies.

(4) The period within which an appeal in respect of a decision of the Director to issue a notice of a financial penalty under section 61(5) shall be instituted is 28 days immediately following the date of the notice of the decision.

(5) The Director may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application the Court may -

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

The provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007<sup>9</sup>.

(6) On an appeal under this section the appellant shall have the burden of proof and the final right of reply.

(7) On an appeal under this section the Court may -

---

<sup>9</sup> O.R.C. No. IV of 2007; as amended by O.R.C. No. II of 2008.

- (a) set the decision aside and, if the Court considers it appropriate to do so, remit the matter to the Director with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.

(8) On an appeal under this section against a decision of the Director, the Court may, on the application of the appellant or the Director or of its own volition, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

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

(10) In this section and section 66, "**the Court**" means the Royal Court sitting as an Ordinary Court.

**Register of non-discrimination notices.**

**64.** (1) The Director shall establish and maintain a register of non-discrimination notices ("**the register**").

(2) Any person is entitled, on payment of such fee (if any) as may be determined by the Director -

- (a) to inspect the register at the principal offices of the Director during office hours, and to take copies of any entry, or
- (b) to obtain from the Director a copy, certified by the Director to be correct, of any entry in the register.

(3) The Director may, if the Director thinks fit -

(a) determine that the right to inspect the register and take copies of any entry conferred by subsection (2)(a) is exercisable in relation to a copy of the register instead of, or in addition to, the original,

(b) keep the register in electronic form.

(4) A non-discrimination notice shall not be included in the register until the time fixed by section 63 for appealing against the notice has expired or (where an appeal is instituted) until the appeal is finally disposed of.

(5) A non-discrimination notice shall be removed from the register on the expiry of the period of six years from the day it was included.

**Power to obtain information.**

65. (1) Where the Director believes that a person -

(a) may be committing or may have committed an act which is prohibited by any provision of Part IV, V, VI or VII, or

(b) may be failing or may have failed to comply with any requirement contained in a non-discrimination notice,

the Director may serve a notice (an "**information notice**") under this section.

(2) A notice under this section shall be in writing and may -

(a) require any person to provide such information or documents as may be described in the notice,

- (b) specify the time by which, and the manner and form in which, the information documents are to be provided, and
- (c) require any person to attend at such time and place as is specified in the notice and give oral information about, and produce all documents in possession or under the person's control relating to, any matter specified in the notice.

(3) A notice under this section must not require a person to give any information or to produce any evidence which the person could not be compelled to give in evidence, or produce, in civil proceedings before the Royal Court.

(4) A person who -

- (a) without reasonable excuse fails to comply with any provision of the notice served on him under this section, or
- (b) wilfully alters, suppresses, conceals or destroys a document required to be produced by notice under this section,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(5) A person who, in providing any information or document in compliance or purported compliance with a notice under this section -

- (a) makes a statement which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (c) produces, or causes to be produced, any information or document which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) recklessly produces, or recklessly causes or permits to be produced, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

**Appeals against notices.**

66. (1) Within a period of 28 days beginning on the day on which a non-discrimination notice or an information notice is served on any person, the person may appeal against any requirement of the non-discrimination or information notice, as the case may be, to the Tribunal.

(2) A person wishing to appeal under this section shall give notice of appeal to the Secretary, who shall immediately transmit the notice to the Convenor of the Panel to enable the Convenor (or, if the Convenor is unavailable, the Deputy



Convenor) to appoint from the membership of the Panel a Tribunal constituted by three members to hear and determine the appeal.

(3) Where the Tribunal considers a requirement in respect of which an appeal is brought under subsection (1) to be unreasonable because it is based on an incorrect finding of fact or for any other reason, the Tribunal shall quash the requirement.

(4) On quashing a requirement under subsection (3), the Tribunal may direct that the non-discrimination or information notice shall be treated as if, in place of the requirement quashed, it contained a requirement in the terms specified in the direction; and subsection (1) does not apply to a requirement treated as included in a non-discrimination or information notice by virtue of a direction under this subsection.

(5) A party aggrieved on a question of law by a decision of the Tribunal under this section, may appeal to the Court in such manner and within such period as may be prescribed by order of the Court, but this subsection does not confer a right of appeal on a question of law which has been referred to the Court under subsection (6).

(6) A question of law arising in connection with the hearing and determination by the Tribunal of an appeal against a non-discrimination or information notice may, if the Tribunal thinks fit, be referred for decision to the Court in such manner and within such period as may be prescribed by order of the Court.

(7) No requirement of a non-discrimination notice, requirement of an information notice, or decision of the Tribunal shall be quashed solely by reason of a procedural irregularity (whether on the part of the Director or the Tribunal), unless the irregularity was such as to prevent the person on whom the notice was served ("A") from presenting A's case fairly.

(8) An appeal from a decision of the Court made on an appeal or reference under this section lies, with leave of the Court or the Court of Appeal, to the Court of Appeal.

(9) Section 21 of the Court of Appeal (Guernsey) Law, 1961 ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

(10) Where under this section the Tribunal or (if there is an appeal from the Tribunal's decision) the Court or Court of Appeal quashes a non-discrimination notice, an information notice, or any requirement of either, the notice or (as the case may be) the requirement shall be deemed void ab initio.

## PART X

### MISCELLANEOUS AND FINAL

#### **Codes of practice and guidance.**

67. (1) The Committee may by regulation provide for codes of practice on the prevention of discrimination, or the promotion of equality, under this Ordinance.

(2) The Committee may issue guidance in respect of people's rights and duties under this Ordinance, and such guidance may, without limitation, provide information about what is required in an accessibility action plan as required by section 37, or otherwise specify established standards of accessibility which would fulfil the duty imposed by that section.

(3) The Committee shall publish or cause to be published codes of practice and guidance under this section on the States of Guernsey website.

(4) A court or tribunal may take into account codes of practice and guidance under this section when exercising functions conferred under this Ordinance and the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.

**Liability of employers and agents, etc.**

68. (1) Anything done by a person ("A") in the course of A's employment shall be treated for the purposes of this Ordinance as done by A's employer as well as by A, whether or not it was done with the employer's knowledge or approval.

(2) Anything done by a person ("B") as agent for a principal with the authority of that principal shall be treated for the purposes of this Ordinance as done by that principal as well as by B.

(3) In any proceedings (whether before the Tribunal or the court) brought under this Ordinance against any person ("C") in respect of an act alleged to have been done by an employee of C's it is a defence for C to prove that C took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of the employee's employment, acts of that description.

(4) An employee or agent ("D") does not contravene this Ordinance if -

(a) D is following the instructions or policy of the employer or principal, as the case may be, and

(b) it is reasonable for D to do so.

**Restrictions on contracting out.**

69. (1) Subject to subsection (2), any provision in an agreement (whether a contract of employment or not) is void in so far as it purports -

- (a) to exclude or limit the operation of any provision of this Ordinance, or
  - (b) to preclude a person from bringing proceedings under this Ordinance before the Tribunal.
- (2) Subsection (1) does not apply to -
- (a) a settlement agreement, including one made with the assistance of the Employment and Equal Opportunities Service pursuant to section 45, or
  - (b) a compromise agreement.

**Awards to be recoverable as preferred debts.**

70. For the purposes of section 1 of the Preferred Debts (Guernsey) Law, 1983<sup>r</sup> (the "**Preferred Debts Law**"), in the distribution of the property of a person whose affairs have been declared to be in a state of désastre at a meeting of arresting creditors held before a Jurat as Commissioner, and in the winding up of a company which is insolvent -

- (a) an award of compensation under section 49 of this Ordinance ranks equally with -
  - (i) the debts to which section 1(1)(b) of the Preferred Debts Law relates,

---

<sup>r</sup> Ordres en Conseil Vol. XXVIII, p. 184; this enactment has been amended.

(ii) an award under section 45 of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, and

(iii) any award under section 15K, 21 or 24 of the Employment Protection (Guernsey) Law, 1998,

and shall be paid in full, unless the assets are insufficient, in which case the award of compensation under section 49 of this Ordinance and the debts and award described in subparagraphs (i), (ii) and (iii) shall abate in equal proportions, and

(b) subject to the provisions of paragraph (a), an award of compensation under section 49 of this Ordinance is payable in priority to all debts other than debts to which section 1(1)(za) or (a) of the Preferred Debts Law relates.

**Proof of documents.**

71. In any legal proceedings (including, without limitation, proceedings under this Ordinance, whether before the Tribunal or otherwise) a document purporting to be a document issued for the purposes of this Ordinance by or on behalf of the Employment and Equal Opportunities Service or the Committee and to be signed by an officer, member or statutory official thereof -

(a) is admissible in evidence,

(b) shall, unless the contrary is proved, be deemed to be the document which it purports to be and to have been signed by the person by whom it purports to have been

signed, without proof of person's identity, signature or official capacity, and

(c) is evidence of the matters stated therein.

**Interpretation.**

72. (1) In this Ordinance, except where the context otherwise requires -

"**accessibility action plan**": see section 37,

"**accommodation provider**": see section 31,

"**ancient monument**": see section 37,

"**arrangements for selective admission**": see paragraph 23 of the Schedule,

"**assessed needs**": see paragraph 26 of the Schedule,

"**blood**": see paragraph 28 of the Schedule,

"**blood donation service**": see paragraph 28 of the Schedule,

"**caching services**": see paragraph 37 of the Schedule,

"**charity**": see paragraph 10 of the Schedule,

"**child**" includes a step-child and a foster child,

"**close relative**": see section 3,

"**club or association**": see section 30,

**"colleague"**: see section 19,

**"Commencement"** means 1<sup>st</sup> October 2023,

**"commercial premises"**: see section 36,

**"Committee"** means the States Committee for Employment & Social Security,

**"compromise agreement"**: see section 45,

**"contract of employment"**: see section 14,

**"contract work"**: see section 20,

**"contract worker"**: see section 20,

**"country"**: see paragraph 3 of the Schedule,

**"the Director"** means the Director of the Employment and Equal Opportunities Service,

**"diversity monitoring"**: see section 15,

**"education provider"**: see section 29,

**"educational institution"**: see section 29,

**"employee"**: see section 14,

**"employer"**: see section 14,

**"employment"**: see section 14,

**"employment agency"** means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purposes of finding employment for persons, or of supplying employers with persons to do work,

**"Employment and Equal Opportunities Service"** means the service which is headed by the Director of the Employment and Equal Opportunities Service,

**"enactment"**: in relation to acts done under legislative authority, see paragraph 2 of the Schedule, and in relation to immigration, see paragraph 5 of the Schedule,

**"estate agent"**: see paragraph 42 of the Schedule,

**"facilities"**: see section 28,

**"governing instrument"**: see paragraph 10 of the Schedule,

**"Guernsey"** includes Herm and Jethou,

**"hosting services"**: see paragraph 37 of the Schedule,

**"Immigration Acts"**: see paragraph 5 of the Schedule,

**"impairment"**: see section 1,

**"independent adviser"**: see section 45,

**"information society service"**: see paragraph 37 of the Schedule,



**"judge"**: see paragraph 2 of the Schedule,

**"landlord"** means an accommodation provider who has disposed of property by way of a tenancy to a tenant,

**"lawyer"**: see section 45,

**"minor improvement"**: see section 34,

**"national origins"**: see section 2,

**"non-discrimination notice"**; see section 60,

**"non-financial award"**: see section 49,

**"non profit organisation"**: see paragraph 10 of the Schedule,

**"the Panel"**: see section 42,

**"parent"** of a person ("**K**") means –

- (a) the genetic mother or father of K, or
- (b) where an adoption order has been made in respect of K, a person entitled under the order to adopt K,

and includes a step-parent or foster parent of K,

**"partner"**: see subsection (3),

**"partnership"**: see section 23,

"**pay**", in sections 16, 19, 50, 51, 53, 55, and 56, means all wages or salary (whether or not earned wholly or in part by way of commission) paid to the employee in question pursuant to the employee's contract of employment, including -

- (a) overtime rates, shift pay and holiday pay, and
- (b) any other pecuniary benefit paid to the employee in cash,

in each case before the making of any deductions from the gross amounts payable, whether in respect of income tax or social insurance contributions or otherwise,

"**a person who provides supported employment**": see paragraph 21 of the Schedule,

"**pre-complaint conciliation**": see section 41,

"**prescribed list of works**": see section 35,

"**prescribed organisation**": see paragraph 14 of the Schedule,

"**preventative public health services**": see paragraph 32 of the Schedule,

"**principal**", in relation to contract work: see section 20,

"**professional body**": see section 27,

"**public body**": see paragraph 7 of the Schedule,

**"public highway"**: see section 38,

**"public office"**: see section 25,

**"public sector school or education provider"**: see section 37,

**"public sector service provider"**: see section 37,

**"qualification or authorisation"**: see section 27,

**"recipient"**, in relation to information society services: see paragraph 37 of the Schedule,

**"recruitment process"**: see section 15,

**"registered health professional"** means -

- (a) a person entitled to practise as a medical practitioner within the meaning of the Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015<sup>s</sup>, or
- (b) a nurse, midwife or health visitor -
  - (i) registered with the UK's Nursing and Midwifery Council or
  - (ii) registered under any enactment in force in Guernsey concerning the required standards,

---

<sup>s</sup> Ordinance No. XXII of 2015; this enactment has been amended.

qualifications or registrations required to  
practise as a nurse, midwife or health visitor,

**"relevant financial service"**: see paragraph 34 of the Schedule,

**"relevant person"**, in relation to immigration: see paragraph 5 of the  
Schedule and in relation to population management: see paragraph 6 of the  
Schedule,

**"religious mutual association"**: see paragraph 35 of the Schedule,

**"religious organisation"**: see paragraph 12 of the Schedule,

**"religious premises"**: see paragraph 39 of the Schedule,

**"residential premises"**: see paragraph 42 of the Schedule,

**"responsible body"**, in relation to a school or education provider: see  
section 29,

**"risk assessment based relevant financial service"**: see paragraph 33  
of the Schedule,

**"school"**: see section 29,

**"the Secretary"**: see section 42,

**"service provider"**: see section 28,

**"services of a mere conduit"**: see paragraph 37 of the Schedule,

**"settlement agreement"**: see section 45,

"**sibling**" includes step-sibling,

"**social housing provider**": see paragraph 44 of the Schedule,

"**sport**": see paragraph 41 of the Schedule,

"**spouse**": see subsection (2),

the "**step-child**" of a person includes the issue of the first degree and the adopted child of that person's spouse or partner, and "**step-parent**" shall be construed accordingly,

"**States**" means the States of Guernsey,

"**substantial**", in relation to disadvantage: see section 32,

"**tenancy**" means a tenancy created (whether before or after the coming into force of this Ordinance) -

- (a) by a lease or sub-lease,
- (b) by an agreement for a lease or sub-lease, or
- (c) by a tenancy agreement,

in each case whether or not in writing, and "**tenant**" shall be construed accordingly.

"**the Tribunal**": see section 42, and

"**vocational training**": see section 22.

(2) For the purposes of this Ordinance, a marriage under the law of any country or territory is not prevented from being recognised only because it is the marriage of a same sex couple, and "**spouse**" shall be interpreted accordingly.

(3) For the purposes of this Ordinance, M is N's partner if M is N's civil partner, or if M and N live in the same household in a subsisting relationship that is akin to marriage or civil partnership; and "**civil partner**" means a person who has registered as the civil partner of another person under the Civil Partnership Act 2004<sup>t</sup>, or who is treated under that Act as having formed a civil partnership by virtue of having registered an overseas relationship within the meaning of that Act, and whose civil partnership, or registered overseas relationship, has not been dissolved or annulled.

(4) For the purposes of section 6(1), A treats B less favourably than A treats or would treat others because of a protected ground if the protected ground is one reason (and, for the avoidance of doubt, not necessarily the primary reason) for the less favourable treatment.

(5) For the purposes of section 7(a), A treats B, by virtue of the association referred to therein, less favourably than a person who is not so associated is, has been or would be treated, if that association is one reason (and, for the avoidance of doubt, not necessarily the primary reason) for the less favourable treatment.

(6) For the purposes of this Ordinance, employers are "**associated**" if they are associated companies within the meaning of the Companies (Guernsey)

---

<sup>t</sup> An Act of Parliament (2004 c. 33)

Law, 2008<sup>u</sup>, or, in the case of employers which are legal persons other than companies within the meaning of that Law -

- (a) one (directly or indirectly) has control of the other, or
- (b) a third person (directly or indirectly) has control of both,

and "**associate**" shall be construed accordingly.

(7) For the purposes of this Ordinance, and for the avoidance of doubt, unless the context otherwise requires a reference to an act includes an omission, and related words and expressions have corresponding meanings.

**Ships and aircraft.**

73. (1) Part V applies in relation to -

- (a) employment on board a ship, and
- (b) employment on aircraft,

only in such circumstances as are prescribed by regulations of the Committee.

(2) In this section –

- (a) "**ship**" has the same meaning as in the Merchant Shipping (Bailiwick of Guernsey) Law, 2002<sup>v</sup>, and

---

<sup>u</sup> Order in Council No. VIII of 2008; this enactment has been amended.

<sup>v</sup> Order in Council No. VIII of 2004; this enactment has been amended.

- (b) "aircraft" has the same meaning as in the Aviation Registry (Guernsey) Law, 2013<sup>w</sup>.

**Exceptions to the prohibitions in Parts IV to VII.**

74. The Schedule (Exceptions to the prohibitions in Parts IV to VII) has effect.

**General provisions as to subordinate legislation.**

75. (1) Regulations or an order under this Ordinance -
- (a) may be amended or repealed by subsequent regulations, or an order as the case may be, hereunder,
  - (b) may contain such consequential incidental supplemental and transitional provision (including provision for the payment of fees) as may appear to the Committee, or (as the case may be) to the Royal Court, to be necessary or expedient, and
  - (c) subject to subsection (2), in the case of regulations of the Committee, shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

---

<sup>w</sup> Order in Council No. XIII of 2013; this enactment has been amended.



(2) Any regulations made under paragraph 46 of the Schedule shall not have effect unless and until approved by a resolution of the States.

**Transitional provisions: contracts etc.**

76. Where a -

- (a) contract (other than a contract of employment),
- (b) lease or sub-lease, or
- (c) licence to occupy property,

has been entered into before Commencement and continues to have effect thereafter, no complaint may be made to the Tribunal under this Ordinance in respect of an act done to give effect to, or otherwise in accordance with, any provision of that contract, lease, sub-lease or licence until the expiry of two years from Commencement, and for the purposes of this section "**contract**" includes, but is not limited to, a contract for a financial services product such as a policy of insurance or a pension scheme (including a pension scheme which is based on a trust).

**Extent.**

77. This Ordinance has effect in Guernsey, Herm and Jethou.

**Citation.**

78. This Ordinance may be cited as the Prevention of Discrimination (Guernsey) Ordinance, 2022.

**Commencement.**

79. (1) Subject to the following provisions of this section, this Ordinance shall come into force on Commencement.

(2) Section 8 shall not come into force before 1<sup>st</sup> October 2028 insofar as the existence of a physical feature falling within section 32(2)(b) constitutes the application of a provision, criterion or practice falling within section 8(1), in which regard it shall come into force on the day appointed by regulations of the Committee, and different dates may be appointed for different provisions or parts thereof and for different purposes.

(3) Save as provided by subsections (4), (5) and (6)(b), sections 32 and 33, insofar as those sections impose a duty on a school or education provider, shall not come into force before 1<sup>st</sup> September 2025, and those sections insofar as they impose that duty will come into force on the day appointed by regulations of the Committee, and different dates may be appointed for different provisions or parts thereof and for different purposes.

(4) Section 33 shall not come into force before 1<sup>st</sup> October 2028 insofar as it imposes a proactive duty on service providers and school and education providers to make reasonable adjustments to physical features, and that section insofar as it imposes that duty will come into force on the day appointed by regulations of the Committee, and different dates may be appointed for different provisions or parts thereof and for different purposes.

(5) Subject to subsection (6), sections 29, 32(2)(b), 34, 35, 36, and 37 shall come into force on the day appointed by regulations of the Committee, and different dates may be appointed for different provisions or parts thereof and for different purposes.

(6) Regulations under subsection (5) may not provide for -

(a) section 29 to come into force before 1<sup>st</sup> September 2025,

- (b) section 32(2)(b) to come into force before  
1<sup>st</sup> October 2028, or
- (c) section 35, 36 or 37 to come into force before  
1<sup>st</sup> October 2028.

## SCHEDULE

Section 74

### PART I

#### GENERAL EXCEPTIONS TO THE PROHIBITIONS IN PARTS IV TO VII

##### **Positive action.**

1. This Ordinance does not prohibit a person ("P") from taking any action which -

- (a) P takes with the aim of ensuring equality, or a greater degree of equality, on any of the protected grounds, and
- (b) which P takes with the aim of achieving one of the following -
  - (i) the prevention, compensation for or removal of any disadvantage or inequality connected with a protected ground,
  - (ii) the promotion of equality of opportunity on any of the protected grounds, including in relation to recruitment and promotion, or
  - (iii) the catering for the special needs of persons, or a category of persons, who, because of a protected ground, may require facilities, arrangements, services or assistance not

required by persons who do not have those special needs.

**Act done under legislative or judicial authority.**

2. (1) This Ordinance does not prohibit a person from taking any action which is required by or under, or done for the purpose of complying with -

- (a) an enactment,
- (b) a requirement or condition imposed under an enactment, or
- (c) an order of a court or tribunal.

(2) This Ordinance does not apply to -

- (a) anything done in the exercise of a judicial function, including things done on the instructions of, or on behalf, of a judge, or
- (b) a decision whether or not to commence or continue criminal proceedings.

(3) In this Ordinance "**judge**" means the Bailiff, the Deputy Bailiff, a Lieutenant-Bailiff, a Judge or Deputy Judge of the Magistrate's Court, a Judge of the Royal Court, a Judge of the Court of Appeal or a Justice of the Judicial Committee of the Privy Council.

(4) In this paragraph, "**enactment**" includes -

- (a) an enactment of the United Kingdom having effect in Guernsey, and

- (b) any convention which is extended to or which otherwise has effect in Guernsey.

**Compliance with law of another country.**

3. (1) This Ordinance does not prohibit a person from taking any action which is done in Guernsey for the purposes of complying with the law of, or the order of a court or tribunal of, another country.

- (2) In this paragraph, "**country**" includes territory or jurisdiction.

**National security.**

4. A person does not contravene this Ordinance only by doing, for the purposes of safeguarding national security, anything it is proportionate to do for that purpose.

**Immigration.**

5. (1) This paragraph applies to discrimination on the protected grounds of race, disability, carer status and religious belief.

(2) Subject to subsection (3), this Ordinance does not prohibit a relevant person from taking any action which is done with the aim of giving effect to or in the exercise of functions exercisable under, in connection with or for the purposes of any -

- (a) enactment which relates to immigration, including but not limited to -

- (i) the Immigration Acts,

(ii) the Immigration (Bailiwick of Guernsey) Rules, 2008<sup>x</sup>,

(iii) the Directions of the Lieutenant Governor Concerning Leave to Enter and Remain, 2019, or

(b) a policy of the States of Guernsey or the Committee for Home Affairs which relates to immigration.

(3) Subsection (2) does not apply to the duty to make reasonable adjustments for a disabled person under sections 32 and 33.

(4) The duty to make reasonable adjustments for a disabled person under section 32 and 33 does not apply to a relevant person -

(a) taking a decision within subparagraph (5), or

(b) doing anything for the purposes of or in pursuance of a decision within that subparagraph.

(5) A decision is within this subparagraph if it is a decision to do any of the following on the ground that doing so is necessary for the public good -

(a) to refuse entry clearance,

(b) to refuse, cancel or vary leave to enter or remain,

---

<sup>x</sup> G.S.I. No. 26 of 2008; this enactment has been amended.

- (c) to refuse an application to vary leave to enter or remain.
- (6) In this section -
  - (a) "**enactment**" includes an enactment of the United Kingdom having effect in Guernsey, and
  - (b) "**relevant person**" includes, without limitation, the Committee for Home Affairs, the Lieutenant Governor, an immigration officer, a police officer and any person granting or refusing entry clearance within the meaning of the Immigration Act 1971<sup>y</sup> as extended to the Bailiwick,
  - (c) "**Immigration Acts**" means any Act of the United Kingdom Parliament extended (with modifications, if any) to the Bailiwick and relating to immigration, including but not limited to the following -
    - (i) the Immigration Act 1971,
    - (ii) the Immigration Act 1988<sup>z</sup>,
    - (iii) the Asylum and Immigration Act 1996<sup>aa</sup>,

---

<sup>y</sup> An Act of Parliament, 1971, c. 77; this enactment has been amended.

<sup>z</sup> An Act of Parliament, 1988, c. 14; this enactment has been amended.

<sup>aa</sup> An Act of Parliament, 1996, c. 49; this enactment has been amended.



- (iv) the Immigration and Asylum Act 1999<sup>bb</sup>,
- (v) the Nationality, Immigration and Asylum Act 2002<sup>cc</sup>,
- (vi) the Immigration, Asylum and Nationality Act 2006<sup>dd</sup>,
- (vii) the UK Borders Act 2007<sup>ee</sup>,
- (viii) the Immigration Act 2014<sup>ff</sup>, and
- (ix) the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020<sup>gg</sup>.

**Population Management.**

6. (1) This paragraph applies to discrimination on the protected grounds of race and carer status.

---

<sup>bb</sup> An Act of Parliament, 1999, c. 33; this enactment has been amended.

<sup>cc</sup> An Act of Parliament, 2002, c. 41; this enactment has been amended.

<sup>dd</sup> An Act of Parliament, 2006, c. 13; this enactment has been amended.

<sup>ee</sup> An Act of Parliament, 2007, c. 30; this enactment has been amended.

<sup>ff</sup> An Act of Parliament, 2014, c. 22; this enactment has been amended.

<sup>gg</sup> An Act of Parliament, 2020, c. 20; this enactment has been amended.

(2) This Ordinance does not prohibit a relevant person from taking any action which is done with the aim of giving effect to or in the exercise of functions exercisable under, in connection with or for the purposes of -

- (a) the Population Management (Guernsey) Law, 2016<sup>hh</sup>,  
or
- (b) any policy of the States of Guernsey or the Committee for Home Affairs which relates to population management,

provided that the action taken is a proportionate means of achieving that aim.

(3) In this section "**relevant person**" means a person who has functions related to population management conferred on them by the Population Management (Guernsey) Law, 2016 or another enactment, or by a policy mentioned in paragraph (2)(b) and includes, without limitation, the Administrator of Population Management.

**Crown employment, etc.**

7. (1) A person does not contravene this Ordinance by making, implementing, following, publishing or displaying rules or requirements restricting to persons of particular nationality, descent, residence, or birthplace -

- (a) Crown appointments or employment in the service of the Crown,

---

<sup>hh</sup> Order in Council No. VI of 2016; this enactment has been amended.

(b) employment by a public body, or

(c) the holding of a public office.

(2) In this paragraph -

(a) "**public body**" means a body (whether corporate or unincorporated) certain of whose functions are functions of a public nature, and

(b) "**public office**" has the same meaning as in section 25 save that it includes the office of People's Deputy.

**Protection from harm.**

8. A person does not contravene this Ordinance by doing anything in relation to a person who has a tendency to commit an act the commission of which is or may be a criminal offence punishable with imprisonment, if the thing done is -

(a) done for the purposes of protecting other people or property from harm, and

(b) is a proportionate means of achieving that aim.

**Race: act done pursuant to States' policy.**

9. (1) This paragraph applies to discrimination on the protected ground of race.

(2) This Ordinance does not prohibit a person from taking any action which is done pursuant to a policy adopted by the States or any Committee thereof where the implementation of that policy applies criteria based on a person's

place of birth or length of residence in Guernsey for the purposes of providing access to -

- (a) government services (including, without limitation, loans, grants and benefits), and
- (b) employment or other opportunities.

**Charities and non profit organisations.**

10. (1) A person does not contravene this Ordinance only by restricting the provision of benefits to persons who share a protected ground if -

- (a) the person acts in pursuance of a governing instrument, and
- (b) the provision of benefits is either a proportionate means of achieving a legitimate aim, or for the purpose of preventing or compensating for a disadvantage linked to the protected ground.

(2) If a governing instrument enables the provision of benefits to persons of a class defined by reference to colour, it has effect for all purposes as if it enabled the provision of such benefits -

- (a) to persons of the class which results if the reference to colour is ignored, or
- (b) if the original class is defined by reference only to colour, to persons generally.

(3) In this section -

- (a) "**charity**" has the same meaning as in the Charities etc. (Guernsey and Alderney) Ordinance, 2021<sup>ii</sup>,
- (b) "**governing instrument**" means an instrument establishing or governing a charity or non profit organisation (including an instrument made or having effect before the commencement of this section), and
- (c) "**non profit organisation**" has the same meaning as in the Charities etc. (Guernsey and Alderney) Ordinance, 2021 provided that the non profit organisation is established solely or principally for the purpose of preventing or compensating for a disadvantage linked to a protected ground.

#### **Acts of worship.**

11. This Ordinance, so far as relating to the protected ground of religious belief, does not apply in relation to anything done in connection with acts of worship or other religious observance.

#### **Religious organisations.**

12. (1) To the extent that a religious organisation falls within Parts V or VI of this Ordinance, the religious organisation does not contravene those Parts only by applying in relation to membership of or registration with the organisation, or appointment to a board or committee of the organisation, a requirement to be of a particular religion.

---

ii Ordinance No. XXIV of 2021; this enactment has been amended.

(2) In this paragraph, "**religious organisation**" means any organisation with an ethos based on religion.

**Tribunal members.**

13. This Ordinance does not prohibit a member of the Tribunal from taking any action which is done in the exercise of functions exercisable under, in connection with, or for the purposes of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.

**Animals.**

14. (1) A person does not contravene this Ordinance only by disallowing or putting restrictions in respect of an animal, unless the animal meets the criteria in subparagraph (2).

(2) The criteria are that the animal is a dog (or other animal prescribed for the purposes of this paragraph by regulations of the Committee) which has been trained by a prescribed organisation to -

- (a) guide a visually impaired person,
- (b) assist a hearing impaired person,
- (c) assist a person with epilepsy or diabetes,
- (d) assist a disabled person who has an impairment that affects the person's mobility, manual dexterity, physical co-ordination or ability to move everyday objects, or

- (e) assist a person who has a disability (other than one falling within subparagraphs (a) to (d)) of a kind as set out in regulations of the Committee.

(3) In this paragraph, a "**prescribed organisation**" is an organisation which trains dogs or other animals which has been prescribed for the purposes of this paragraph by regulations of the Committee.

## PART II

### SPECIFIC EXCEPTIONS - WORK

#### **Genuine and determining occupational requirement.**

15. (1) A person ("A") does not contravene a provision mentioned in Part V by applying in relation to work, a requirement for a person to have a particular protected ground, if A shows that, having regard to the nature or context of the work -

- (a) it is an occupational requirement,
- (b) the application of the requirement is a proportionate means of achieving a legitimate aim, and
- (c) the person to whom A applies the requirement does not meet it (or A has reasonable grounds for not being satisfied that the person meets it).

(2) The reference in paragraph (1) to work is a reference to employment, contract work, a position as partner, an appointment to a personal office or an appointment to a public office.

(3) Where A can show that their requirement for a person to have a particular protected ground is an occupational requirement falling within subsection

(1), an employment agency or provider of vocational training does not contravene any provision of this Ordinance by restricting their supply of persons to A to those that have the particular protected ground.

**Employment for the purposes of an organised religion.**

16. (1) An employer ("A") does not contravene section 14(1) or (2) in relation to work for A which is for the purposes of an organised religion by -

- (a) applying a requirement to be of a particular religion or religious denomination, or
- (b) having regard to any conduct on the employee's part which is incompatible with the precepts, or with the upholding of the tenets, of the religion or religious denomination in question.

(2) In this section, work is for the purposes of an organised religion if it involves representing or promoting the religion, including, but not limited to being a minister, celebrant, leader or youth worker of the religion.

**Senior leadership positions: schools with a religious ethos.**

17. (1) Section 14(1) and (2), so far as relating to religious belief, does not apply to a school which has a religious ethos, but only to the extent that -

- (a) preference may be given, in connection with the appointment, promotion or remuneration of any teacher in a senior leadership position at the school, to persons -



- (i) whose religious opinions are in accordance with the tenets of the religion or the religious denomination of the school,
  - (ii) who attend religious worship in accordance with those tenets, or
  - (iii) who give, or are willing to give, religious education at the school in accordance with those tenets, and
- (b) regard may be had, in connection with the termination of the employment of any teacher in a senior leadership position at the school, to any conduct on the teacher's part which is incompatible with the precepts, or with the upholding of the tenets, of the religion or religious denomination of the school.

(2) In this paragraph a "**senior leadership position**" means the position of head teacher, deputy head teacher, assistant head teacher or head of religious education in a school.

**Safeguarding (employment).**

18. For the avoidance of doubt, no provision in this Ordinance shall be construed as requiring an employer ("A") to recruit, retain in employment or promote, as the case may be, a person ("B") -

- (a) who is an employee of A's, or
- (b) who has applied to A for employment or work experience,

in circumstances where A believes reasonably that B has committed, or has a tendency to commit, an act the commission of which is or may be a criminal offence punishable with imprisonment, including but not limited to acts of physical or sexual abuse of other persons and the act of viewing indecent images of persons under 18.

**Employees and family situations.**

19. For the avoidance of doubt, an employer ("A") does not contravene any provision of this Ordinance by -

- (a) granting an employee's request for flexible working,
- (b) providing benefits for employees with care responsibilities for family members, including but not limited to parents of a child and those with the protected ground of carer status, and
- (c) providing benefits to employees for family situations, including but not limited to paid leave in the case of the illness of a family member.

**Qualifications.**

20. (1) This section applies to discrimination on the protected ground of race.

(2) An employer ("A") does not discriminate against an applicant for employment or an employee ("B"), as the case may be, by requiring B to hold a certain qualification in relation to a role which B holds or is applying for, in circumstances where-

- (a) the qualification is reasonably necessary for the role, and

(b) A requires, or would require, the same qualification of persons with whom B does not share a racial group.

(3) A provider of vocational training ("C") does not discriminate against an applicant for vocational training, or a person who is undertaking training ("D"), as the case may be, by requiring D to hold a certain qualification in relation to training which D is undertaking or is applying for, in circumstances where -

(a) the qualification is reasonably necessary for the training, and

(b) C requires, or would require, the same qualification of persons with whom D does not share a racial group.

**Employment of people with a particular disability.**

21. (1) It is not a contravention of this Ordinance for a person who provides supported employment to treat persons who have the same disability, or a disability of a description as prescribed by regulations of the Committee, more favourably than those who do not have that disability or a disability of such a description in providing such employment.

(2) In this paragraph, "a person who provides supported employment" means Grow Ltd, the Guernsey Employment Trust LBG and any other person specified from time to time for this purpose in regulations made by the Committee.

**No requirement to employ person who cannot fulfil essential functions of post.**

22. (1) For the avoidance of doubt, nothing in this Ordinance requires an employer ("A"), in relation to a person ("B"), to -

(a) offer employment to B,

- (b) promote B or retain B in employment, or
- (c) offer training or any other benefit associated with employment to B,

in circumstances where B cannot fulfil one or more of the essential functions of the post.

(2) Also for the avoidance of doubt, where B is a disabled person, B can fulfil the essential functions of the post if they are or would be able to do so after A has fulfilled any duty A has to B under section 32 (reasonable adjustments).

### PART III

#### SPECIFIC EXCEPTIONS - EDUCATION

##### **Disability: admission to schools.**

23. (1) A person does not contravene section 29(1) or (2) so far as relating to the protected ground of disability, only by applying arrangements for selective admission to a school.

(2) In this paragraph, "**arrangements for selective admission**" mean arrangements which provide for some or all of a school's pupils to be selected by reference to general or special ability or aptitude, with a view to admitting only pupils of high ability or aptitude.

##### **Religious belief: admission to schools.**

24. Section 29(1), so far as relating to religious belief, does not apply to a school with a religious ethos.

### **Curricula.**

25. (1) For the avoidance of doubt, an education provider or school does not contravene section 29(1) or (2) only by developing, accrediting, setting or teaching curricula which do not represent people of a particular protected ground.

(2) In relation to the protected ground of religious belief, a school with a religious ethos does not contravene section 29(1) or (2) by teaching a curriculum which focuses primarily on the religion of the school, provided that the curriculum also teaches that other religious beliefs exist and are deserving of respect.

### **Pupils with assessed needs.**

26. (1) A person does not contravene section 29(1) or (2) only by applying arrangements which provide for a pupil to receive additional or alternative educational services, where this is done in order to meet the assessed needs of that pupil.

(2) In this paragraph, "**assessed needs**" means the alternative or additional needs of a pupil which have been assessed by, or on behalf of, the responsible body of a school or education provider.

## **PART IV**

### **SPECIFIC EXCEPTIONS - HEALTH**

### **Infectious diseases.**

27. A person ("**A**") does not contravene this Ordinance if they discriminate against another person ("**B**") on the ground of B's disability if -

- (a) B's disability is an infectious disease, or
- (b) an assistance animal belonging to B has an infectious disease, and

- (c) the discrimination is necessary to protect public health.

**Blood donation services.**

28. (1) A person operating a blood donation service does not contravene section 28 only by refusing to accept a donation of an individual's blood if -

- (a) the refusal is because of an assessment of the risk to the public, or to the individual, based on clinical, epidemiological or other data obtained from a source on which it is reasonable to rely, and

- (b) the refusal is reasonable.

(2) In this paragraph -

- (a) a "**blood donation service**" is a service for the collection and distribution of human blood for the purposes of medical services, and

- (b) "**blood**" includes blood components.

**Care within the family.**

29. (1) A person ("A") does not contravene sections 28 or 31 only by participating in arrangements under which (whether or not for remuneration) A takes into A's home, and treats as a member of A's family, a person requiring particular care and attention.

(2) For the avoidance of doubt, for the purposes of subsection (1) it does not matter whether A has the protected ground of carer status or not.

**Clinical judgement.**

30. A registered health professional does not contravene section 28 only by treating a person ("A") differently solely in the exercise of a clinical judgement in connection with the diagnosis of illness of A's or medical treatment of A.

**Persons who lack capacity.**

31. A person does not contravene this Ordinance only by treating a person ("A") differently where -

- (a) A lacks capacity in relation to a matter within the meaning of the Capacity (Bailiwick of Guernsey) Law, 2020<sup>jj</sup>, and
- (b) for that reason, the treatment of A is reasonable in the particular case.

**Preventative health services.**

32. (1) A person does not contravene section 28 only by offering or providing a preventative public health service, where the service is offered or provided to the individual based on clinical, epidemiological or other relevant data obtained from a source on which it is reasonable to rely.

(2) In this section "**preventative public health services**" means any public health service aimed at preventing ill health or promoting good health and includes, but is not limited to -

- (a) programmes which screen individuals for disease,

---

<sup>jj</sup> Order in Council No. II of 2021; this enactment has been amended.

- (b) immunisation programmes,
- (c) mental health services,
- (d) services for diabetics such as chiropody and services relating to retinopathy,
- (e) sexual health services including the provision of free contraception.

## PART V

### SPECIFIC EXCEPTIONS – GOODS AND SERVICES

#### **Financial services involving an assessment of risk.**

33. (1) A person does not contravene this Ordinance, so far as relating to discrimination on the protected grounds of disability or race, by doing anything in connection with a risk assessment based relevant financial service if the thing is done by reference to information which is both relevant to the actuarial or other assessment of the risk in question and from a source on which it is reasonable to rely.

(2) In this paragraph, "**risk assessment based relevant financial service**" means -

- (a) a policy of insurance,
- (b) a service relating to membership of or benefits under an occupational or personal pension scheme,
- (c) an annuity, or
- (d) any other financial services product where it is necessary or expedient to carry out an assessment of



risk, whether actuarial or otherwise, for the purposes of providing the financial services product to a person.

**Financial services arranged by an employer and personal pension schemes.**

34. (1) This paragraph applies to the protected ground of disability.

(2) In the circumstances set out in subparagraph (3), a person ("A") does not contravene section 28 by making a payment in connection with a relevant financial service where -

- (a) the payment is made to a disabled person ("B") in respect of the disability which B has, and
- (b) A treats B more favourably than another disabled person to whom a payment has been, or is to be, made by A by making the payment.

(3) The circumstances referred to in subparagraph (2) are circumstances where -

- (a) the relevant financial service is provided in pursuance of arrangements made by an employer for the service provider to provide the service to the employer's employees as a consequence of the employment, or
- (b) the relevant financial service is a service relating to membership or benefits under a personal pension scheme not falling within item (a).

(4) For the avoidance of doubt, subparagraph (2) does not apply to making a payment if, in making the payment, A treats a disabled person less favourably than a person who is not disabled.

(5) In this paragraph -

(a) "**relevant financial service**" means -

(i) a policy of insurance,

(ii) a service relating to membership of or benefits under an occupational or personal pension scheme, or

(iii) an annuity, and

(b) references to the making of a payment include the conferral of a benefit.

**Financial services: religious mutual organisations.**

35. (1) A religious mutual association does not contravene section 28 or 30, on the ground of religious belief, only by restricting the provision of its services to persons of the particular religion or religious denomination to which the association is affiliated.

(2) In this paragraph, a "**religious mutual association**" means any mutual organisation (where members contribute funds in order to receive member benefits) which is affiliated to a particular religion or religious denomination.

**Television, radio and online broadcasting and distribution.**

36. (1) Section 28 does not apply to the provision of a content service (within the meaning given by section 32(7) of the Communications Act, 2003<sup>kk</sup> as extended to Guernsey by the Communications (Bailiwick of Guernsey) Order 2003)<sup>ll</sup>.

(2) Subparagraph (1) does not apply to the provision of an electronic communications network, electronic communications service or associated facility (each of which has the same meaning as in that Act as extended to Guernsey).

**Information society services.**

37. (1) An information society service provider does not contravene this Ordinance -

- (a) by providing the services of a mere conduit,
- (b) by providing caching services,
- (c) by providing hosting services.

(2) In this paragraph -

- (a) "**E-Commerce Directive**" means Directive 2000/31/EC of the European Parliament and of the Council of 8<sup>th</sup> June 2000,

---

<sup>kk</sup> An Act of Parliament, 2003, c. 21; this enactment has been amended.

<sup>ll</sup> U.K. S.I. 2004 No. 3195 registered on the records of the Island on 19<sup>th</sup> January, 2004.

- (b) "**information society service**" has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations),
- (c) "**services of a mere conduit**" means so much of an information society service as consists in the provision of access to a communications network, or the transmission in a communications network of information provided by the recipient of the service, but only where the service provider does not -
  - (i) initiate the transmission,
  - (ii) select the recipient of the transmission, or
  - (iii) select or modify the information contained in the transmission, and
- (d) "**recipient**" means a person who (whether for professional purposes or not) uses an information society service, in particular for seeking information or making it accessible.

(3) In this paragraph, "**caching services**" means so much of an information society service as consists of doing anything in connection with the automatic, intermediate and temporary storage of information provided by a recipient of the service, if the storage of the information is solely for the purpose of making

more efficient the onward transmission of the information to other recipients of the service at their request, and the service provider -

- (a) does not modify the information,
- (b) complies with such conditions as are attached to having access to the information, and
- (c) where subparagraph (4) applies, expeditiously removes the information or removes access to it.

(4) This subparagraph applies if the information society service provider obtains actual knowledge that -

- (a) the information at the initial source of the transmission has been removed from the network,
- (b) access to it has been disabled, or
- (c) a court or administrative authority has required the removal from the network of, or the disablement of access to, the information.

(5) In this paragraph "**hosting services**" means doing anything in providing so much of an information society service as consists in the storage of information provided by a recipient of the service, if -

- (a) the service provider had no actual knowledge when the information was provided that its provision amounted to a contravention of this Ordinance, or

- (b) on obtaining actual knowledge that the provision of the information amounted to a contravention of that section, the service provider expeditiously removed the information or disabled access to it.

(6) Subparagraph (1) does not apply to hosting services if the recipient of the service is acting under the authority or control of the service provider.

**Dramatic performances.**

38. A person does not contravene section 28 or 30, in relation to the protected grounds of disability or race, by doing anything in relation to a person which is reasonably required for reasons of authenticity, aesthetics, tradition or custom in connection with a dramatic performance or other entertainment.

**Goods and services: religious belief.**

39. (1) A service provider does not contravene section 28, in relation to the protected ground of religious belief, only by -

- (a) restricting the provision of goods or services which are for the purposes of a particular religious belief, to persons of that religious belief, or
- (b) restricting the use of religious premises by a person on the grounds that allowing the use would not comply with the doctrine of the religious belief.

(2) In this paragraph, "**religious premises**" means any building which is used for religious purposes, including but not limited to use -

- (a) as a place of worship,

- (b) as a place to advance the religious belief, or
- (c) as a place to teach the practice or principles of a religious belief.

PART VI  
SPECIFIC EXCEPTIONS – CLUBS AND SPORTS

**Clubs – restricted membership.**

40. (1) A club or association does not contravene section 30(1) by restricting membership to persons who share a protected ground.

(2) Subparagraph (1), so far as relating to race, does not apply in relation to colour.

**Sport – disability and nationality.**

41. (1) A person does not contravene this Ordinance only by -

- (a) excluding a disabled person from participation in a sport because the person is unable to perform the actions required by the rules of the sport, after (if applicable) a reasonable adjustment has been made in respect of the person, or
- (b) not selecting a disabled person as part of a sports team or to participate in a sporting event where there has been a fair and reasonable selection process for the team or event which provides for participants to be selected by reference to skill or ability.

(2) A person ("A") who does anything in relation to organising a sporting event or providing sporting facilities does not contravene this Ordinance in relation to the disability, nationality or national origins of another provided that the thing done by A is a proportionate means of achieving a legitimate aim, for instance because it is done in pursuance of the rules regarding who may represent a country, place or area.

(3) In this section, "**sport**" means a sport, game or other activity of a competitive nature.

## PART VII

### SPECIFIC EXCEPTIONS – ACCOMMODATION

#### **Private disposals of residential premises.**

42. (1) An accommodation provider does not contravene this Ordinance only by making a private disposal of residential premises.

(2) A disposal is a private disposal only if the accommodation provider does not -

- (a) use the services of an estate agent for the purpose of disposing of the premises, or
- (b) publish (or cause to be published) an advertisement in connection with their disposal.

(3) In this paragraph -

- (a) "**estate agent**" means a person who, by way of profession or trade, provides services for the purpose of -



- (i) finding premises for persons seeking them, or
  - (ii) assisting in the disposal of premises, and
- (b) "**residential premises**" means any premises used or usable for the purposes of human habitation.

**Accommodation provided in a person's home.**

43. (1) This paragraph applies where premises are the only or main home of a person ("A") or the only or main home of a close relative of A, and A (or A's close relative) resides, and intends to continue to reside, in the premises.

(2) A can do anything in relation to the disposal or occupation of rooms within the premises without contravening this Ordinance provided that -

- (a) the rooms disposed of or occupied do not comprise separate and self-contained accommodation, and
- (b) the premises is not a guest house or a house of multiple occupation.

(3) In this paragraph "**close relative**" has the same meaning as in section 3.

**Social housing.**

44. (1) This paragraph applies to the protective grounds of carer status, disability and race (but, in the case of the protected ground of race, only applies in relation to a person's place of birth or length of residency in Guernsey).

(2) A social housing provider does not contravene this Ordinance by taking any action which is done pursuant to a policy adopted by the social housing provider which allocates housing in accordance with a person's needs.

(3) In this paragraph, "**social housing provider**" means any provider of social housing in Guernsey, including, without limitation, the States and the Guernsey Housing Association LBG.

**Specialist accommodation.**

45. For the avoidance of doubt, a person ("P") does not contravene section 31 of this Ordinance only by providing accommodation which caters for the needs of persons who have a particular protected ground, where P takes this action in the circumstances set out in paragraph 1 of this Schedule.

**Power of Committee to amend Schedule.**

46. The Committee may by regulation amend this Schedule.

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

**COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY**

THE PREVENTION OF DISCRIMINATION (GUERNSEY) ORDINANCE, 2022

The President  
Policy & Resources Committee  
Sir Charles Frossard House  
La Charroterie  
St Peter Port  
GY1 1FH

19<sup>th</sup> August 2022

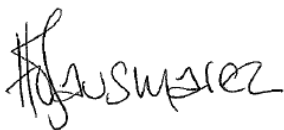
Dear Deputy Ferbrache

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

In accordance with Rule 4(3) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee *for* Employment & Social Security requests that the Prevention of Discrimination (Guernsey) Ordinance, 2022 ('the Ordinance') be considered at the States' meeting due to commence on 28<sup>th</sup> September 2022.

The Ordinance has been delayed from its original timetable by necessary process. Now it has been finalised the Committee requests that it be scheduled for the earliest States meeting at which it could be considered.

Yours faithfully



**Deputy L H de Sausmarez**

Vice-President

Peter Roffey  
President

Tina Bury, Steve Falla, John Gollop

Ross Le Brun, Mark Thompson  
Non-States' Members

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

**POLICY & RESOURCES COMMITTEE**

**THE BAILIWICK'S FURTHER PARTICIPATION IN UK FREE TRADE AGREEMENTS**

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled "The Bailiwick's Further Participation in UK Free Trade Agreements" dated 19<sup>th</sup> August, 2022, they are of the opinion:-

1. To approve in principle that Guernsey should seek to participate in the Comprehensive and Progressive Agreement on Trans-Pacific Partnership ('CPTPP') in its entirety (including provisions relating to trade in goods and to trade in services).
2. To authorise the Policy & Resources Committee (in respect of Guernsey and, subject to the necessary authorisations from Alderney and Sark, in respect of those islands) to finalise negotiations and agree to the terms of the Bailiwick's participation in the CPTPP (or the relevant provisions of the CPTPP), and to signal such agreement to HM Government in the UK.
3. To agree that the policy baseline in respect of Guernsey's participation in non-goods elements of any UK Free Trade Agreement ('FTA') (or other trade arrangement) shall be participation which is the same as, or is consistent with, that approved by the States of Deliberation in respect of the CPTPP.
4. To endorse the process and approach outlined in this Policy Letter regarding Guernsey's (and the wider Bailiwick's) participation in UK FTAs (or other trade arrangements).
5. To authorise the Policy & Resources Committee (in respect of Guernsey and, subject to the necessary authorisations from Alderney and Sark, in respect of those islands) to negotiate and agree to the Bailiwick's participation in UK FTAs (or other trade arrangements), or relevant provisions of them, in accordance with any policy baselines approved by the States of Deliberation in relation to Guernsey, the States of Alderney in relation to Alderney and the Chief Pleas of Sark in relation to Sark and to signal such agreement to HM Government in the UK.
6. To agree that there shall be implemented such measures (including legislative

measures) as the Policy & Resources Committee thinks fit for the purpose of ensuring that Guernsey may comply and remain in compliance with obligations that arise from participation in any UK FTA (or other trade arrangement).

7. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

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

**POLICY & RESOURCES COMMITTEE**

**THE BAILIWICK'S FURTHER PARTICIPATION IN UK FREE TRADE AGREEMENTS**

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

19<sup>th</sup> August, 2022

Dear Sir

**1 Executive Summary**

- 1.1 In September 2021, the States of Deliberation considered a Policy Letter ('the FTA Policy Letter (2021)') entitled 'The Bailiwick's Participation in UK Free Trade Agreements'<sup>1</sup> focusing on Guernsey's (and the wider Bailiwick's) participation in UK Free Trade Agreements ('FTAs') (including other trade arrangements) with other jurisdictions. That Policy Letter set out a baseline for inclusion in the goods elements of FTAs, and referred to possible future inclusion of Guernsey/the Bailiwick in the services, investment and supporting and enabling elements of FTAs.
- 1.2 In the FTA Policy Letter (2021), it was noted that it would be necessary to return to the States in the future to establish a baseline for inclusion in services, investment and supporting and enabling elements of FTAs, delegate authority to the Policy & Resources Committee ('the Committee') in this regard, and to guide the Committee as to the exercise of such delegated authority for Guernsey/ the Bailiwick. This second FTA-related Policy Letter is intended to fulfil those requirements.
- 1.3 Confidential, sensitive and complex negotiations on the UK's proposed accession to the Comprehensive and Progressive Agreement on Trans-Pacific Partnership ('CPTPP') have led to the Committee taking a policy position to seek participation for Guernsey in the full agreement (goods, services, and all supporting chapters)

---

<sup>1</sup> 'The Bailiwick's Participation in UK Free Trade Agreements', [Billet d'État XVII, 2021](#) and [Resolutions](#) of 10<sup>th</sup> September, 2021. The same Policy Letter was also considered in [Alderney 4<sup>th</sup> October 2021](#), and Sark 7<sup>th</sup> July 2021- available from the [archive of Chief Pleas papers](#).

from the date of the UK's accession to the CPTPP. An explanation of that decision and the likely consequential obligations for Guernsey are set out in Sections 3 and 4.

- 1.4 It is intended that the compliance requirements and comprehensive 'market access offer' (relating to inward market access for services and investment) in respect of the CPTPP would form the policy baseline for Guernsey's participation in non-goods elements of FTAs. The Committee will consider and, if appropriate signal consent to, the negotiated outcome for Guernsey's and (as appropriate) the Bailiwick's participation in CPTPP and any other FTA, using the baselines for goods (as set by decisions made on the FTA Policy Letter (2021)) and for services and all remaining chapters (as in this Policy Letter). The Committee will also have due regard to decisions made about any future international trade-related Policy Letter(s).
- 1.5 A number of other potential FTAs, in which Guernsey/the Bailiwick may participate in the future, are already under discussion between Guernsey and the UK and, where appropriate, being negotiated between the UK and its potential future trading partners.
- 1.6 The timing of this Policy Letter is important as approval of the principles by Guernsey's parliament is required before the UK has concluded negotiations on the CPTPP. In order to protect the constitutional relationship with the UK and provide a clear decision to the UK, it is necessary for the three jurisdictions of the Bailiwick to make decisions on the principles of this agreement. This is in order to avoid a constitutional lacuna. It is important the Committee can react swiftly and confidently to confirm Guernsey's participation in the CPTPP at the appropriate juncture and having the relevant facts and text of the negotiated agreement at its disposal.
- 1.7 This Policy Letter is being shared with the States of Alderney and Chief Pleas of Sark for consideration. The Committee will ensure that the Bailiwick-wide interests are taken forward within international negotiations. Consideration by all three Bailiwick parliaments and coordination amongst their governments can reduce the risk of unintended divergence which could have adverse consequences on intra-Bailiwick matters.

## **2 Introduction**

- 2.1 Since the UK's withdrawal from the EU on 31<sup>st</sup> January, 2020, the Committee has continued to ensure that the Bailiwick's interests are taken forward in the UK's wider international trade agenda, in particular by seeking to participate in the UK's FTA (including other trade arrangements) negotiations with other countries.
- 2.2 Owing to Guernsey's, and the wider Bailiwick's, historic and special relationship

with the Crown, the UK has constitutional responsibility for the islands' formal international relations and defence. This responsibility exists even where the Bailiwick's interests differ from those of the UK. In 2008, the UK and Guernsey agreed a framework<sup>2</sup> for the further development of Guernsey's international identity and the role of the UK Government in that context.

- 2.3 Guernsey and Bailiwick participation in FTAs between the UK and international partners would be in addition to the benefits and obligations arising from existing participation in the World Trade Organization ('WTO'). The UK's WTO membership was extended to the Bailiwick on 31<sup>st</sup> December, 2020<sup>3</sup>. The UK's Department for International Trade ('DIT') lead on the international trade policy and negotiations on behalf of the UK Government.
- 2.4 On 8<sup>th</sup> September, 2021, the States of Deliberation considered the Policy Letter entitled 'The Bailiwick's Participation in UK Free Trade Agreements'<sup>4</sup> ('the FTA Policy Letter (2021)') focusing on Guernsey's (and the wider Bailiwick's) participation in UK's FTAs with other jurisdictions. That FTA Policy Letter (2021) set out a baseline for the Bailiwick's inclusion in the goods-related elements of FTAs and delegated authority to the Committee to act in this regard.
- 2.5 The FTA Policy Letter (2021)<sup>5</sup> also referred to possible future inclusion in the services and investments elements of FTAs, as well as supporting and enabling provisions. The principles for inclusion, which were approved by the three Bailiwick parliaments in 2021, contained an option for the Committee to negotiate for territorial extension clauses in UK FTAs which would permit one or more of the Bailiwick's three jurisdictions to be included in services-related and other chapters at a later time (i.e., not necessarily on the same date that the FTA between the UK and a partner country came into force).

---

<sup>2</sup> [Framework for Developing the International Identity of Guernsey \(signed by UK and Guernsey in December 2008\)](#)

That framework includes the following principles:

- The UK will not act internationally on Guernsey's behalf without prior consultation.
- Guernsey has an international identity which is different from that of the UK.
- The UK has a role to play in assisting the development of Guernsey's international identity. The role is one of support not interference.
- The UK will clearly identify its priorities for delivery of its international obligations and agreements so that these are understood, and can be taken into account, by Guernsey in developing its own position.
- The UK when acting in the international arena should, so far as practicable and appropriate, have regard to Guernsey's international relations, policies and responsibilities.

<sup>3</sup> For further information see [WTO Policy Letter](#); [TCA Policy Letter](#); and paragraphs A1.6-A1.8 of the previous [FTA Policy Letter \(2021\)](#).

<sup>4</sup> 'The Bailiwick's Participation in UK Free Trade Agreements', [Billet d'État XVII, 2021](#) and [Resolutions](#) of 10<sup>th</sup> September 2021. The same Policy Letter was also considered in [Alderney 4<sup>th</sup> October 2021](#), and Sark 7<sup>th</sup> July 2021 - available from the [archive of Chief Pleas papers](#).

<sup>5</sup> Paragraph 2.32 of the [FTA Policy Letter \(2021\)](#)



- 2.6 It was noted in the FTA Policy Letter (2021)<sup>6</sup> that it would be necessary to return to the States in the future to establish a baseline for actual (rather than potential) inclusion in services and other elements of FTAs. The Bailiwick's parliaments could also provide approval so that the Committee could exercise its delegated authority so that Guernsey (or, where appropriate, the Bailiwick) could seek to utilise a territorial extension clause or seek to be included in services and other elements of new FTAs from the outset.
- 2.7 Since the FTA Policy Letter (2021), the UK has continued to negotiate FTAs with a number of partners. Guernsey officials have continued to work closely with DIT to ensure that the Bailiwick's interests are understood and advanced.
- 2.8 An FTA of particular focus for the UK and Guernsey is the CPTPP (as set out in Section 4). As an existing, multilateral FTA to which the UK seeks to accede (rather than a new FTA that the UK seeks to negotiate), the CPTPP presents a prime opportunity for Guernsey to consider full participation in an FTA and establish an enhanced baseline for potential inclusion in future FTAs.
- 2.9 As stated above, the parliaments in all three Bailiwick jurisdictions considered the FTA Policy Letter (2021) and approved the principles of their participation in relation to the trade in goods, including both tariff and non-tariff measures.
- 2.10 It is important that the States of Deliberation now has an opportunity to consider the principles of Guernsey's participation in FTAs beyond the previously set goods-only baseline. The Committee can then be confident of the position for Guernsey (and, as appropriate following parliamentary consideration in their own islands, Alderney and Sark) so that the Committee can make further decisions at relevant points in CPTPP and other FTA negotiations.

### **3. Free Trade Agreements**

- 3.1 FTAs are agreements which are created between two or more nations with the aim and purpose of removing or reducing trade restrictions and barriers in order to stimulate, encourage and diversify economic growth.
- 3.2 DIT's negotiations in relation to FTAs are moving at pace as they form a key part of the UK Government's trade policy. Preferential goods market access for the Bailiwick has already been successfully negotiated within the following UK FTAs: EU, EEA EFTA<sup>7</sup>, Japan, Australia<sup>8</sup> and New Zealand. In addition, the Bailiwick

---

<sup>6</sup> Paragraph 2.33 of the [FTA Policy Letter \(2021\)](#)

<sup>7</sup> As in [FTA Policy Letter \(2021\)](#), section 4.

<sup>8</sup> [UK-Australia FTA: associated documents - GOV.UK \(www.gov.uk\)](#)

continues to benefit from the UK's 'rolled over' FTAs<sup>9</sup>, which directly succeed EU agreements. Another trade-related agreement concerning digital trade has also been concluded between the UK and Singapore<sup>10</sup>.

- 3.3 When these FTAs enter into force, they allow Bailiwick businesses to immediately benefit from the preferential tariffs and reduction in barriers when trading goods as well as providing the other benefits outlined below.
- 3.4 The Bailiwick's participation in the FTAs mentioned above (paragraph 3.2) is presently restricted to the goods baseline as detailed in the FTA Policy Letter (2021). Subject to further negotiations in the future, it may be possible for Guernsey and the other two jurisdictions of the Bailiwick to participate in additional elements of these FTAs (as in paragraph 3.2) to include preferential treatment for cross-border trade in services (including financial services) and investment, as well as other cross-cutting chapters that support the functioning of FTAs. In order to participate, Guernsey, Alderney and Sark will need to satisfy the UK Government that the islands can and will continue to fulfil the compliance requirements; such work is ongoing. The Committee would need to agree formally to that extension in coverage on behalf of Guernsey (and, where appropriate and subject to the appropriate authorisations, Alderney and Sark).
- 3.5 As stated in the FTA Policy Letter (2021), the obligations and commitments for cross-border trade in services, investments and supporting and enabling provisions, "can be wide-reaching and vary according to each agreement. For example, they could include commitments and obligations ensuring fair market access, regarding various areas including environmental standards, labour laws and procurement, and are generally aimed at achieving the full benefits of liberalised trade. The FTA may also include obligations regarding equal access to financial services, digital and e-commerce sectors and others which require oversight and regulatory compliance."<sup>11</sup>
- 3.6 The Committee is conscious that various States' Committees are responsible for relevant policy areas, operations, legislation and regulation.
- 3.7 The Committee has maintained a dialogue with the Presidents of relevant Principal Committees (including the Committee *for* Economic Development, Committee *for the* Environment & Infrastructure and Committee *for* Home Affairs). Accordingly, those Committees have considered relevant briefing papers on FTAs.

---

<sup>9</sup> For more information on the Bailiwick's participation in 'rolled over' FTAs, please see [FTA Policy Letter \(2021\)](#) – particularly paragraphs 1.4, 2.11, 2.20, A1.2, A1.9-1.13, A2.5 and A2.6.

A list of 'rolled over' FTAs can be found at: [UK trade agreements with non-EU countries - GOV.UK \(www.gov.uk\)](#)

<sup>10</sup> [UK-Singapore Digital Economy Agreement](#)

<sup>11</sup> [FTA Policy Letter \(2021\)](#), paragraph 2.31

- 3.8 The Committee has also benefited from the input of the Trade Policy Forum<sup>12</sup> ('TPF') and from leading business representatives for Guernsey who have had an opportunity to consider how Bailiwick trade interests might best be served with regard to inclusion in potential future FTAs (including the CPTPP).
- 3.9 The TPF supports Guernsey/the Bailiwick's greater inclusion in FTAs (particularly in respect to the CPTPP, as in Section 4). The TPF's view is that it is critical to ensure that the Bailiwick can participate in relevant and appropriate FTAs/trade arrangements for trade security, as well as market opportunity. This will provide stability and predictability in existing markets and give options for Bailiwick-based businesses to expand into future markets and, in the process, allow the islands' business community to diversify. These benefits are also supported by recent detailed analysis undertaken by Frontier Economics<sup>13</sup> on behalf of the States of Guernsey. Frontier Economics' detailed research concluded that Guernsey's inclusion within FTAs, and the extension to it of the UK's WTO membership, has a number of advantages and benefits to Guernsey (and the wider Bailiwick) which include:
- providing stability and predictability in the rules governing trade between Guernsey and its partners, and conditions of market access in each - this sends a strong signal to businesses and investors;
  - demonstrating Guernsey's compliance and approach to international economic governance and regulation;
  - showing that Guernsey is an integral part of the 'British family' in terms of international profile and trading; and
  - indicating that Guernsey is willing to collaborate and participate within internationally recognised trade rules. This is increasingly important at a time of international economic fragmentation and increased sensitivity and selectivity by countries as to which jurisdictions they choose as partners for

---

<sup>12</sup> The TPF comprises political representatives from the Policy & Resources Committee, Committee *for* Economic Development and the Committee *for* Home Affairs, representatives from industry and external stakeholders. Other representatives are invited to attend as necessary. The group's purpose is to support discussions/negotiations with the UK in relation to such trade agreements by providing advice on the following:

- i. Trade continuity agreements
- ii. Global Free Trade Agreements
- iii. UK – EU Best in Class
- iv. Investment/BITs
- v. Competition
- vi. State aid
- vii. Intellectual property
- viii. Goods regulation
- ix. Digital/e-commerce

<sup>13</sup> The States of Guernsey commissioned a report in late 2021 which analysed the potential benefits of FTAs to Guernsey and assessed parts of the local economy. The report contains sensitive data (including commercial data) and, therefore, has not been published.

comprehensive economic relations.

- 3.10 In addition to the benefits already identified by stakeholders (via the TPF) and by Frontier Economics, which focus on outward trade opportunities, there is also the significant added benefit of being able to attract business into the Bailiwick from trading partner countries who, on a reciprocal basis, will be assured that the islands are stable and predictable jurisdictions to facilitate inward trade. Trade security is becoming increasingly important for businesses in the current economic environment.
- 3.11 The UK's forthcoming multilateral or bilateral trade agreements (or revisions to existing agreements) are likely to be all-encompassing and include trade in goods and services and investment provisions. FTAs currently under negotiation are listed on the UK Government website<sup>14</sup>.
- 3.12 The UK is also in the process of agreeing Memorandums of Understanding ('MoUs') with individual states within the USA. These MoUs are aimed at developing UK-US trade relations at state level with the first being signed with Indiana in May 2022<sup>15</sup>. Officers continue to work with DIT officers to ensure that Guernsey's interests are taken forward within future USA state-level MoU negotiations where possible.

#### **4 Comprehensive and Progressive Agreement on Trans-Pacific Partnership (CPTPP)**

- 4.1 The CPTPP<sup>16</sup> is an FTA which encompasses various countries within the Pacific region. Signatories to the CPTPP include Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam<sup>17</sup>. The UK is seeking to accede to the CPTPP. The potential inclusion in the CPTPP is therefore one negotiation but with the benefit of being an FTA with multiple countries. Other countries intending to accede include China, South Korea, Taiwan and Ecuador.
- 4.2 The combined economies of the CPTPP's current members mean that it is one

---

<sup>14</sup> [The UK's Trade Agreements](#)

<sup>15</sup> [UK Signs first US State-Level Agreement with Indiana](#)

<sup>16</sup> The CPTPP text is available on websites of the countries which have signed up to the agreement (the UK has not yet signed) – e.g. New Zealand – see [Comprehensive and Progressive Agreement for Trans-Pacific Partnership text and resources | New Zealand Ministry of Foreign Affairs and Trade \(mfat.govt.nz\)](#)

<sup>17</sup> The CPTPP evolved from the Trans-Pacific Partnership which had originally included the USA; that earlier agreement never entered into force due to the withdrawal of the USA. As in footnote 33 of '[UK Accession to CPTPP: The UK's Strategic Approach](#)' published by the Department for International Trade in April 2021.

of the world's largest free trade areas by Gross Domestic Product (GDP)<sup>18</sup>. It was worth an estimated £9tn in 2019. The region is also growing in geopolitical importance with the so-called 'tilt to the Indo-Pacific'.

- 4.3 The CPTPP is an all-encompassing agreement for trade purposes. It contains chapters covering many direct and indirect aspects of trade, such as: temporary entry and stay of natural persons, competition policy, regulatory coherence, customs facilitation, environment, intellectual property, states owned enterprises, digital, financial services, investment, business professional services, procurement, and labour standards.
- 4.4 Following engagement with DIT's Chief Negotiator for the UK's accession to the CPTPP, it became clear that the best achievable outcome for Guernsey was to seek full coverage of goods, services and all supporting chapters. That means that Guernsey will need to comply with the obligations included in all chapters of the agreement. The CPTPP agreement remains an important agreement for Guernsey as it would cement relationships with several countries (as in paragraph 4.1) through one agreement.
- 4.5 Since September 2021, confidential, sensitive and complex negotiations on the CPTPP accession have been ongoing. Guernsey has requested that participation in the full agreement (including trade in goods and services and supporting and enabling provisions) be negotiated, which, if agreed, would take effect from the date of the UK's accession to the CPTPP and its entry into force. This is subject to approval of the relevant principles by the States of Deliberation. The Committee considered and made that decision regarding participation in the full CPTPP using the Committee's mandated responsibilities, and in accordance with States' Resolutions on international agreements<sup>19</sup> and the States' Resolutions on participation in FTAs<sup>20</sup>. It is intended that the compliance obligations and market access offer in respect of the CPTPP would be used as a policy baseline for Guernsey's/the Bailiwick's participation in the services elements (and other supporting elements) of other FTAs (where appropriate and where agreed with DIT).
- 4.6 The Committee concluded that full extension of the UK's participation to the CPTPP to Guernsey would be in Guernsey's best interests. This would require the States of Guernsey to use its best endeavours to confirm or address any

---

<sup>18</sup> [UK approach to joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership \(CPTPP\)](#)

<sup>19</sup> An earlier States' Resolution on international agreements from 1987 (which was referred to in the previous FTA Policy Letter (2021)) was replaced by States' Resolutions on international agreements in December 2021. '[Consideration of Guernsey's participation in international agreements](#)' (Billet d'État XXV, 2021) and [Resolutions](#) of 16<sup>th</sup> December, 2021

<sup>20</sup> [FTA Policy Letter \(2021\)](#) – as noted in other footnotes, this Policy Letter was considered by Sark in July, Guernsey in September and Alderney in October 2021.

compliance and implementation issues in line with the UK and in time for the UK's accession to take effect.

4.7 The CPTPP negotiations are concluded in two phases: the first is to ensure that Guernsey can comply with the core provisions of the trade agreement; and the second phase is to develop and agree respective market access positions which detail the conditions and commitments agreed by parties for the entry of specific goods and services into their markets.

4.8 The CPTPP agreement requires a high level of compliance, ensuring that all parties comply with the same high regulatory and transparency standards, which limits the scope for trade distortion. Officers have been working with the relevant Committees on ensuring Guernsey meets all the standards contained within all thirty chapters of the agreement. Below is an indicative list of some of the chapter topics which are not already included in the Bailiwick's existing goods-only policy baseline:

- **Investment:** designed to liberalise and protect investments between contracting parties.
- **Cross-Border Trade in Services ('CBTS'):** designed to liberalise trade in services relating to Mode 1 (cross-border), Mode 2 (consumption abroad) and Mode 4 (temporary entry).
- **Financial Services:** topic-specific chapter that builds on the Investment & CBTS chapters and makes further specific provision.
- **Temporary Entry for Business Persons:** complements the substantive chapters relating to Investments & CBTS and makes more specific provision in relation to Mode 4.
- **Telecommunications:** another topic-specific, services-related chapter.
- **Electronic Commerce:** concerns 'digital' trade and related matters.
- **Government Procurement:** concerns how government and other public bodies purchase goods and services and seeks to liberalise such trade.
- **Competition Policy:** cross-cutting chapter, which includes consumer protection, and is designed to prevent anticompetitive practices so as to promote economic efficiency and consumer welfare.
- **State-Owned Enterprises and Designated Monopolies:** designed to avoid trade distortion created by State-Owned Enterprises or Designated Monopolies.
- **Intellectual Property:** another cross-cutting chapter that underpins the CPTPP and liberalised trade under it by requiring a high level of protection for IP protection.
- **Labour & Environment:** also cross-cutting and create a minimum level of labour and environmental protections.

- **Cooperation and Capacity Building & Competitiveness and Business Facilitation:** make high-level commitments to closer working for mutual benefit.
- **Development:** makes high-level commitments in relation to the use of trade and investment to promote development.
- **Small and Medium-Sized Enterprises:** makes additional commitments designed to assist SMEs in benefitting from the CPTPP.
- **Regulatory Coherence:** sets down best practice requirements when new regulatory measures are planned, created, or implemented.
- **Transparency and Anti-Corruption:** sets out cross-cutting commitments relating to transparency of regulatory information and, linked to this, measures to combat corrupt practices.

- 4.9 As well as working through and completing the compliance phase of the negotiations with DIT, officers have also been working on developing Guernsey's market access negotiation phase, which forms a critical part of the negotiations. As with the compliance phase, the market access negotiation phase is extremely sensitive, and the market access offer forms the basis of Guernsey's position in the negotiations. The market access offer relates to the conditions, including tariff and non-tariff measures, which Guernsey wants to apply for the entry of specific goods and services into the Island. Guernsey's market access offer will define the conditions under which businesses can trade in or into the Islands and any regulatory restrictions which may apply. Following consideration of this Policy Letter in the Bailiwick's three parliaments, the final outcome of the market access negotiations will be referred in due course to the Committee for approval and will become the future policy baseline for coverage in other FTAs/international trade arrangements.
- 4.10 The UK's negotiations towards acceding to the CPTPP continue with further negotiation rounds ahead. Officers continue to work with DIT to ensure that negotiators have the relevant compliance documents and information so that Guernsey's interests can be taken forward.
- 4.11 The timing of this Policy Letter is important as approval of the principles by Guernsey's parliament is required before the UK has concluded negotiations on the CPTPP. In order to protect the constitutional relationship with the UK and provide a clear decision to the UK, it is necessary for the three jurisdictions of the Bailiwick to make decisions now on the principles of participation in this agreement. This is to avoid a constitutional lacuna.
- 4.12 It is anticipated that the UK will seek Guernsey's final consent to participate in any negotiated accession within the next year, subject to negotiation timetables. This is to ensure that any participation by Guernsey/the Bailiwick can then be included in the final drafting of the accession agreement and before formal

ratification. These negotiations are strictly confidential, and Guernsey officers cannot influence the pace or the timetables. After negotiations are concluded and the basis of inclusion for Guernsey and the wider Bailiwick, together with any legal text relating to accession, has been (or is almost) finalised, the Committee will need to decide whether or not to approve Guernsey's and the wider Bailiwick's participation within the CPTPP. There may be an expedited process for the UK once negotiations have concluded with the other members of the CPTPP. It is important the Committee can react swiftly and confidently to confirm Guernsey's participation in the CPTPP at the appropriate juncture and having the relevant facts and text of the negotiated agreement at its disposal. Should the Committee conclude that it is not preferable for Guernsey to join the CPTPP, then this will need to be communicated as a matter of urgency to DIT negotiators.

- 4.13 As negotiations are confidential and as timescales are likely to continue to be very tight, asking the States to approve detailed final outcomes at that time is unlikely to be possible. This scenario had been anticipated and was also the reason that the FTA Policy Letter (2021) asked for the Committee to be given delegated authority to agree participation in the FTAs in respect of goods-related chapters without having to return for parliamentary approval (as long as participation in those FTAs did not significantly deviate from the existing established baselines).

## **5 Alderney and Sark**

- 5.1 It is intended that this Policy Letter can be used by all three parliaments in the Bailiwick, with appropriately tailored Propositions for each island. This approach has been agreed by representatives for Alderney and Sark.
- 5.2 As in Sections 2 and 4, it was noted in the FTA Policy Letter (2021) that, if negotiations were to progress beyond the original baselines (for trade in goods, together with an extension mechanism to effect enhanced participation, such as for future inclusion in trade in services), then it would be necessary to revert to the States of Deliberation, the States of Alderney and Chief Pleas of Sark. This Policy Letter is intended to address that progress beyond participation in goods elements of FTAs.
- 5.3 The Committee will ensure that the Bailiwick-wide interests are taken forward within international negotiations. Consideration by all three Bailiwick parliaments and coordination amongst their governments can reduce the risk of unintended divergence which could have adverse consequences on intra-Bailiwick matters.
- 5.4 It is unlikely that Alderney and Sark will be in a position to be able to participate in the services and investment elements of UK FTAs, as well as the supporting



chapters, at the present time (including the CPTPP) given their current legislative and regulatory frameworks, as well as other compliance requirements. However, both Alderney and Sark will continue to benefit from the protections of WTO membership, together with the goods baseline and extension mechanism in FTAs if these can be negotiated. In addition, Alderney and Sark will indirectly benefit from Guernsey's participation and the developing international identity of the Bailiwick that will flow from this. Officers will continue to work with counterparts in Alderney and Sark to develop their international trade position to consider whether further participation in UK FTAs would be in the interests of those islands and whether they can achieve compliance with the corresponding obligations. Lastly, even if not participating in additional aspects of UK FTAs, Alderney and Sark's interests can still be represented to the UK by Guernsey and, in turn, to FTA partners via the governance architecture arising under FTAs.

## **6 Legislation**

- 6.1 In order to participate in any FTA, the island(s) are required to demonstrate full compliance with the relevant provisions of that FTA to the UK Government and, sometimes, with treaty partners before an FTA can come into force in respect of the island(s). Compliance with the terms of an FTA may be demonstrated by existing international commitments, legislative provision, regulatory regimes, or administrative measures. This can be relayed through compliance matrices or narratives, papers & non-papers, or discussion. Every FTA is different and, therefore, the details of the compliance requirements are specific to each FTA. Likewise, FTAs are agreements that can evolve over time, such that measures may be required in future to ensure continuing compliance. Lastly, despite exhaustive compliance-related analysis, a dispute under an FTA may still arise and result in remedial action to correct a measure that is judged to be non-compliant.
- 6.2 Guernsey already complies with many areas (beyond the goods-related baseline) of the FTAs currently being negotiated with the UK's potential trading partners (including the CPTPP). However, there are some limited areas which have been identified where new legislation or other measures are required, or need to be amended, so that the island(s) fulfil the obligations of the CPTPP. Further, as noted above, additional legislative or other changes may be required in future for various reasons.
- 6.3 Topics which have already been identified for further consideration in respect of the CPTPP include: consumer protection, IP, environmental, protection of workers' rights, and temporary entry and stay of natural persons. Participation in the CPTPP is already included within the Government Work Plan<sup>21</sup>, and there

---

<sup>21</sup> Government Work Plan 2022, [Billet d'État X Volume 1, 2022](#) and [Resolutions](#) of 1<sup>st</sup> July, 2022.

are existing States' Resolutions or Committee plans which incorporate elements which will be required for compliance to be achieved. The Committee will act in its coordinating capacity and the relevant Principal Committees will be involved in bringing forward any legislative or other changes. Alderney and Sark's parliaments would also need to consider any relevant legislative or other changes, as required. Achieving such compliance to enable participation in the CPTPP will then provide the best possible foundation for broad participation in future UK FTAs.

- 6.4 Future compliance work – whether related to new FTAs, amendments to FTAs, or FTA-related disputes - will be assessed and coordinated by the Committee in a like capacity, undertaken in consultation with relevant Principal Committees.

## **7 Next Steps**

- 7.1 The Committee and Guernsey officers continue to ensure that Guernsey and the wider Bailiwick's interests are fully represented to the UK Government to ensure that the best negotiated outcomes are achieved. This is in accordance with the States' Resolutions about participation in FTAs<sup>22</sup> and about international agreements more generally<sup>23</sup>, priorities within the Government Work Plan as considered in 2021<sup>24</sup>, and the Government Work Plan<sup>25</sup> updated in 2022 which specifies that managing the effects of Brexit and seeking participation in UK FTAs is a priority (Priority 2).
- 7.2 The Committee will consider and, if appropriate signal consent to, the negotiated outcome for Guernsey's and (as appropriate) the Bailiwick's participation in CPTPP and any other FTA, using the baselines for goods (as set by decisions made on the FTA Policy Letter (2021)) and for services and all remaining chapters (as in this Policy Letter). The Committee will also have due regard to decisions made about any future international trade-related Policy Letter(s).
- 7.3 Once negotiations on the UK's (and Guernsey's/the Bailiwick's) participation in CPTPP have concluded, the Committee and the Committee *for* Economic Development and other Principal Committees will need to continue to consider and respond appropriately to ensure continued compliance with the provisions contained within the agreement across the Bailiwick. This may include future trade policy reviews.
- 7.4 It is important that effective governance arrangements continue to be in place

---

<sup>22</sup> The FTA Policy Letter (2021) (with tailored Propositions) was considered in Alderney on 4<sup>th</sup> October 2021, and Sark 7<sup>th</sup> July 2021.

<sup>23</sup> As in footnote 19 of this Policy Letter.

<sup>24</sup> Government Work Plan – Stage 1, [Billet d'État VI, 2021](#) and [Resolutions](#) of 26th March, 2021.

<sup>25</sup> Government Work Plan – Stage 2, [Billet d'État XV, 2021](#) and [Resolutions](#) of 23rd July, 2021.

for Guernsey, Alderney and Sark, for their particular participation in UK FTAs. The Committee will be guided by the baselines set by decisions made on the FTA Policy Letter (2021), this Policy Letter, and any future international trade-related Policy Letter(s). The Committee will continue to be supported by the States of Guernsey's international trade and external relations teams so that negotiations can be undertaken effectively to gain the best achievable outcomes and so that ongoing implementation and compliance work is undertaken.

## **8 Compliance with Rule 4**

- 8.1 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.
- 8.2 In accordance with Rule 4(1)(a), this Policy Letter and its Propositions are in line with States' objectives and policy plans. The outcomes following the UK's withdrawal from the EU and related matters, which include international trade, remain key external influences and policies for the Bailiwick. The States has confirmed, through its approval of the Government Work Plan in 2021 and as included in subsequent iterations of the Plan, that managing the effects of Brexit remains one of the four key strategic priorities for the States of Guernsey<sup>26</sup>.
- 8.3 In regard to Rule 4(1)(b), the Committee has undertaken consultation with the Committee *for* Economic Development, the Committee *for* Home Affairs and the Committee *for the* Environment & Infrastructure in the preparation of this Policy Letter and Propositions. Extensive joint working and consultation has taken place with stakeholders, including those Principal Committees, the TPF and trade experts in the Bailiwick during the development of Guernsey's approach to international trade and (when appropriate) in preparation for negotiations with the UK (and onward to the UK's potential trading partners). Close cross-Committee work at officer level, led by the international trade team, has been essential to progress this work throughout the consideration of Guernsey's possible participation in UK FTAs and other international trade arrangements and during the negotiations period to date. Cross-Committee work will need to continue to ensure that the island(s) can continue to benefit from participation in relevant and appropriate FTAs.
- 8.4 The Committee, other relevant Principal Committees and officers have worked closely and continue to work closely with various UK Government Departments

---

<sup>26</sup> The main priorities identified within Stage 1 of the Government Work Plan include, "Managing the effects of Brexit and our international obligations" which includes the continuing development of Guernsey's international identity and meeting international standards.

Government Work Plan – Stage 1, [Billet d'État VI, 2021](#) and [Resolutions](#) of 26th March, 2021.

Government Work Plan – Stage 2, [Billet d'État XV, 2021](#) and [Resolutions](#) of 23rd July, 2021.

Government Work Plan 2022, [Billet d'État X Volume 1, 2022](#) and [Resolutions](#) of 1st July, 2022.

and alongside the Crown Dependencies of Jersey and the Isle of Man in relation to FTAs as required. This Policy Letter cannot, however, reference the position of the other Crown Dependencies in relation to international trade agreements due to the sensitivity and confidentiality of negotiations. The Committee has kept the Policy & Finance Committees in Alderney and Sark apprised of developments where relevant and appropriate (as in Section 5).

- 8.5 In accordance with Rule 4(1)(c), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 8.6 In regard to Rule 4(1)(d), the Policy & Resources Committee and the Committee *for* Economic Development have monitored, and continue to monitor, the resources (including financial and human) used for FTA work. That will include work to help to mitigate and respond to any uncertain and changing operational, political and legal situations that may arise. This has meant and may continue to mean reviewing and changing legislation and assessing any opportunities or challenges that have arisen (or may arise) and for ensuring compliance with new requirements. Additional financial and human resources may continue to be required to ensure that the States can act swiftly to respond to new negotiations and implement any new arrangements. The use and need for additional resources to support this work, from across the organisation, will continue to be monitored and kept under review. The Committee may need to increase financial and human resources to take full advantage of the FTA work in a timely manner.
- 8.7 In accordance with Rule 4(2)(a), the Propositions relate to the Policy & Resources Committee's purpose and policy responsibilities because its mandate includes responsibilities to, "advise the States and to develop and implement policies and programmes relating to: (a) leadership and co-ordination of the work of the States" and "(c) external relations and international and constitutional affairs, which includes: ... 2. relations with the United Kingdom and other jurisdictions; 3. relations with the European Union and other supranational organisations; 4. relations with the other islands of the Bailiwick ...; [and] representing, or overseeing the representation of, and negotiating for, the Island; ..." The Committee considers that the measures outlined in this Policy Letter touch on all those aspects of its mandate.
- 8.8 In accordance with Rule 4(2)(b), it is confirmed that the Propositions have the unanimous support of the Committee.

Yours faithfully

P T R Ferbrache  
President

H J R Soulsby MBE

Vice-President

M A J Helyar

J P Le Tocq

D J Mahoney

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

**COMMITTEE *FOR* HEALTH & SOCIAL CARE**

REVIEW OF THE CHILDREN LAW AND OUTCOMES  
Improvements to the family care and justice system

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled 'Review of the Children Law and Outcomes, dated 19<sup>th</sup> August 2022, they are of the opinion:-

1. To agree that the family care and justice system should be improved to reduce delays in determining outcomes for children and to remove duplication within the system and that these improvements will be delivered through amending the Children (Guernsey and Alderney) Law, 2008 ("the Law"), as set out in Propositions 3 – 20 below and through changes to be made by all agencies operating within the system.
2. To agree that the policy principles underpinning the family care and justice system agreed by the States of Deliberation in 2004 ("the 2004 policy principles") and set out in the Law, remain valid.
3. To direct that the Law and the Children (Miscellaneous Provisions)(Guernsey and Alderney) Ordinance, 2009 ("the Children Ordinance") should be amended, as set out in paragraphs 6.4 – 6.6 of the Policy Letter, so that the Law includes the duties of the States of Guernsey currently set out in the Children Ordinance, provides for the details of the duties to be set out in secondary legislation, and provides greater clarity on the duty on the Committee *for* Health & Social Care to investigate where compulsory intervention may be necessary.
4. To direct that the Law should be amended, as set out in paragraphs 6.7 – 6.14 of the Policy Letter, to better reflect the 2004 policy principles relating to the 'duty to co-operate', so that the duty to co-operate is applicable to all agencies when assisting children and their families who are in need of help.
5. To direct that the Law should be amended to include a Commitment to Safeguarding, as set out in paragraphs 6.15 – 6.19 of the Policy Letter.
6. To direct that the Law should be amended to enable cases to be remitted from the court to the Child, Youth and Community Tribunal in appropriate cases, as set out in paragraphs 6.20 – 6.22 of the Policy Letter.

7. To direct that the Law should be amended to empower the court to retain and dispose of cases where it determines the facts on referral from the Children's Convenor, in appropriate cases, as set out in paragraphs 6.23 – 6.26 of the Policy Letter.
8. To direct that the Law should be amended to enable the Child, Youth and Community Tribunal proceedings to be paused or stopped when a Community Parenting Order application is being made to the court, and to avoid concurrent proceedings in these instances, as set out in paragraphs 6.27-6.29 of the Policy Letter.
9. To direct that the Law should be amended to place an obligation on relevant responsible adults to attend hearings of the Child Youth and Community Tribunal, unless excused or where their attendance is not considered necessary, and to confer a power on that Tribunal to fine those who fail to attend without a valid reason, as set out in paragraphs 6.30 – 6.39 of the Policy Letter.
10. To direct that the Law should be amended on the basis set out in paragraphs 6.40 – 6.43 of the Policy Letter, to:
  - a. Require the Committee *for* Health & Social Care to notify the Children's Convenor within a defined timescale when it has made an application to court to remove a child from its carers;
  - b. Require the Child, Youth and Community Tribunal to notify the Committee *for* Health & Social Care within a set timescale if a case it is considering passes the threshold for a court order; and
  - c. Prohibit the Children's Convenor, on being notified, from undertaking any investigation or action in relation to a case, unless the Children's Convenor has evidence or information that might be relevant to the case that should be disclosed.
11. To direct that the Law should be amended to remove the requirements for applications for adoption and special contact orders to be notified to the Children's Convenor, as set out in paragraphs 6.44 – 6.47 of the Policy Letter.
12. To approve the changes set out in paragraphs 6.48 - 6.84 of the Policy Letter, in relation to the legal orders and order thresholds, and, for the purpose of giving effect to those changes, to direct that the Law should be amended to:
  - a. Provide for separate legal thresholds for referrals to the Children's Convenor and legal orders made by the Child, Youth and Community Tribunal, and the court;

- b. Confer power on the court to make a 'Supervision Order' placing a child under the supervision of the Committee *for* Health & Social Care while the child still lives in the family home (or is placed with a relative);
  - c. Confer power on the court to make a 'Child Assessment Order', including providing for the court having the power to treat the application as one for an Emergency Child Protection Order if the application for the order is not complied with by those with parental responsibility for the child concerned;
  - d. Introduce new threshold criteria for making a Community Parenting Order ("CPO");
  - e. Make such further amendments to the provisions in respect of CPOs to ensure they are consistent with the revised threshold criteria and the purpose of the order as envisaged in the 2004 States Report;
  - f. Introduce statutory criteria for the making of an interim Community Parenting Order in line with the amended test for the CPO;
  - g. Remove the provision that a Parental Responsibility Order is automatically discharged by the making of a CPO; and
  - h. Remove the provision that an Emergency Child Protection Order is automatically discharged when the Child, Youth and Community Tribunal first sits to consider the child's case.
13. To approve the changes set out in paragraphs 6.85- 6.102 of the Policy Letter, and, for the purpose of giving effect to those changes, to direct that the Law should be amended to bring the thresholds for making an Emergency Child Protection Order and an Exclusion Order, and the exercise of Police Powers (to protect a child), in line with comparable jurisdictions, including consequential changes in respect of Recovery Orders.
14. To direct that the Law should be amended where it relates to care requirements, as set out in paragraphs: 6.3; 6.103-6.118 of the Policy Letter, to:
- a. Replace the term 'compulsory intervention' with 'care requirement' in the new threshold criteria for the Children's Convenor and Child, Youth and Community Tribunal;
  - b. Clarify the purpose of making a care requirement with the intent that it is used only in cases where there is a reasonable prospect of positive change, so that the child can either continue living within the family or be reunited within a relatively short period;
  - c. Remove the requirement that "there is no person being able or willing to exercise parental responsibility..." from the list of conditions that form part of the threshold for both the temporary intervention of the Child, Youth and Community Tribunal through a care requirement and the more permanent intervention of the court through the making of a CPO;
  - d. Rename the 'conditions' for a care requirement as 'grounds'; and
  - e. Update the list of such grounds as set out in Appendix G; and



- f. Remove the 28-day review requirement for renewal of a care requirement and establish a requirement for a review at a minimum of six months in its stead.
15. To direct that the Law should be amended to enable the involvement of Family Proceedings Advisers pre-proceedings where required for the welfare of the child, as set out in paragraphs 6.119-6.123 of the Policy Letter.
16. To direct that the Law is amended, as set out in paragraphs 7.22-7.25 of the Policy Letter, to reflect changes to the names of the statutory agencies as follows:
  - a. The Safeguarder Service to be known as the Family Proceedings Advisory Service;
  - b. The officers appointed as Safeguarders to be referred to as Family Proceedings Advisers; and
  - c. The 'Islands Child Protection Committee' to be known as the 'Islands Safeguarding Children Partnership'.
17. To direct that the Law should be amended to provide greater clarity as to its legal effect and intention in relation to information sharing, including the ability to capture and share information, between relevant agencies, relating to improving the welfare of the child, in line with the Data Protection (Bailiwick of Guernsey) Law, 2017, as set out in paragraphs 6.124-6.130 of the Policy Letter.
18. To note the establishment of Information Sharing Protocols, and to direct all relevant responsible Committees to ensure these are maintained and complied with.
19. To direct that the Children (Consequential Amendments etc) (Guernsey and Alderney) Ordinance, 2009 be amended so as to include persons who have care of a child but do not hold parental responsibility within the scope of the child cruelty offence in the Loi ayant rapport à la Protection des Enfants et des Jeunes Personnes 1917, as set out in paragraphs 7.26 – 7.28 of the Policy Letter.
20. To agree to amend the Children Ordinance as set out in paragraphs 7.3 – 7.21 of the Policy Letter, to:
  - a. Ensure the relevant sections are referred to in the Law;
  - b. Enable the Children's Convenor to suspend part of the conditions of a CR;
  - c. include a power for the Tribunal, to adjourn a CR hearing and make an interim variation of a CR;
  - d. Introduce a power for the Convenor to transfer a case to Her Majesty's Procureur;

- e. Amend the terms and conditions of the appointment of the President of the Tribunal;
  - f. Include an additional power for the Convenor to withhold information to protect any person from harm;
  - g. Recognise a wider range of family members as a party to proceedings, irrespective of their existing parental rights and responsibilities;
  - h. Grant discretion to the Tribunal to recognise wider persons who have had significant involvement in the child's upbringing as parties;
  - i. Enable the Convenor to make the decisions in relation to parties who can attend at the Convenor's Meeting, subject to a suitable right of appeal being established; and
  - j. Removal of upper and lower age limits for Tribunal member appointments.
21. To direct the Committee *for* Health & Social Care, in consultation with other relevant Committees, to scope the requirements of phase 2 of the Review Children Law, including the resource requirements, for consideration for inclusion in the 2023 Government Work Plan.
22. To direct the Committee *for* Health & Social Care, in consultation with the Committee *for* Home Affairs and the Committee *for* Education, Sport & Culture and all relevant agencies, to review operational procedures to ensure proportionate monitoring and reporting that will assist in determining the effectiveness of these changes on the family care and justice system and outcomes for children, as set out in section 9 of the Policy Letter.
23. To direct the Policy & Resources Committee to co-ordinate the work of the Committees *for* Employment & Social Security, Health & Social Care and Home Affairs, to:
- a. Frame and commission the review of the legal aid service set out in the Government Work Plan to also give due consideration to the systemic issues relating to the availability of Advocates and the use of alternative dispute resolution including mediation in the family care and justice system; and
  - b. Scope the resourcing requirements to respond to the recommendations of the review, for consideration for inclusion in the 2023 Government Work Plan.
24. To direct the Committee *for* Health & Social Care to establish a cycle of independent reviews of the family care and justice system, no less than every three to five years, starting from 2025, or a year after the commencement of the amended legislation, whichever occurs sooner.

25. To direct the preparation of such legislation as is necessary to give effect to the above decisions, including any necessary consequential, incidental or supplementary provision, and engagement with the court as to possible Practice Directions.

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

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

**COMMITTEE *FOR* HEALTH & SOCIAL CARE**

REVIEW OF THE CHILDREN LAW AND OUTCOMES  
Improvements to the family care and justice system

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

19<sup>th</sup> August, 2022

Dear Sir

**1. EXECUTIVE SUMMARY**

- 1.1 In 2004<sup>1</sup>, the States of Deliberation agreed the reforms to introduce a unique family care and justice system (“the system”) for Guernsey and Alderney. The system adopted some aspects of the Scottish Children’s Hearing system (the Tribunal and Children’s Convenor) and the court-based approach of England and Wales.
- 1.2 The reforms were set out in The Children (Guernsey & Alderney) Law, 2008<sup>2</sup> (“the Law”) which commenced in 2010. The reforms made significant changes to the system including the introduction of two new major and distinct bodies, the Children’s Convenor Board (“CCB”) and the Child, Youth and Community Tribunal (“the Tribunal”), which is similar to the Scottish Children’s Hearing system.
- 1.3 The introduction of the Law was a significant step in improving and modernising the legislation to protect the welfare of children. The Committee *for* Health & Social Care (“the Committee”) wishes to take this opportunity to commend the efforts and commitment of all those involved in the system for their contributions to improving the lives of children in often challenging circumstances.

---

<sup>1</sup> [Billet d’État XVII, of 2004 – Matters Affecting Children, Young People and Their Families](#)

<sup>2</sup> [The Children \(Guernsey & Alderney\) Law, 2008](#)

- 1.4 As with any fundamentally important legislation such as this one, best practice evolves and there is a need to consider changes to policy in response. For example, since the Law was enacted a formative review of the family justice system in England and Wales in 2001 (known as the Norgrove Review) highlighted the significant and long-term negative impacts of long delays in determining decisions for children in the court system. Coupled with the Committee's and professional agencies' experience of how the Law operates and the findings of several reviews into the effectiveness of the system, it is recognised that there are some areas where amendments to the Law and improvements in how the system operates are needed.
- 1.5 The need to progress the changes to the system has been recognised as a priority of government since 2019, as has the fact that different Committee mandates are employed within the system.
- 1.6 In 2021, the Committee, as the responsible Committee for the Law, in consultation with the Policy & Resources Committee and the Committees for: Home Affairs and Education, Sport & Culture, agreed that a cross-committee group should be created to expediate the work. The Children & Young People's Board<sup>3</sup> ("the Board") has representation from across the responsible Committees and has successfully steered this work, alongside acting in the capacity of the Corporate Parenting Board.
- 1.7 The Board has considered the findings from the various reviews, including the two most recent reviews: the Committee's own Children Law Consultation and the Outcomes Report for Children and Young People ("the Outcomes Report")<sup>4</sup>. The Board recognised there were many stakeholders involved in this complex system whose views were of equal importance and so adopted a collegiate approach to its engagements.
- 1.8 The Board recommended, and the Committee agreed, that the work be phased given the scale of the proposed changes. Priority was given to changes which would make the greatest and have the most immediate benefit for the most vulnerable children. Acknowledging the impact of delay on children in these situations, informed by the Norgrove Review, reducing delay within the system became the primary objective to meet in the first phase.
- 1.9 The recommendations in this Policy Letter all seek to reduce delays and make improvements to the system for the welfare of the child. The impact of some of the changes proposed is demonstrated through the appended case study to the

---

<sup>3</sup> [Update from cross-Committee Board steering improvements for vulnerable children and young people - States of Guernsey \(gov.gg\)](#)

<sup>4</sup> [Outcomes Report, 2021](#)

Policy Letter, alongside further supporting information and detail on each proposal for change and an indicative implementation plan.

- 1.10 While extensive consultation was carried out through the various reviews and to finalise the impact of the proposals, the Committee is aware that not all proposals set out in this Policy Letter will be welcomed by all stakeholders. However, the Committee is also of the view that regardless of the different positions on some of the proposed measures set out in this Policy Letter, it is imperative that the focus must be on improving outcomes for children.
- 1.11 It is accepted that the majority of changes can be resourced from within existing resources with some minor exceptions. Further work on scoping resource implications for some aspects are identified.
- 1.12 The Committee is grateful to the Board for its commitment and contributions to progressing this important work and would welcome its continued oversight of the completion of phase 1.
- 1.13 The changes recommended in this Policy Letter seek to:
- Ensure unnecessary delays are removed to improve outcomes for children;
  - Improve the operation of the Law by addressing some unintended consequences of the drafting of the Law and the resulting practices;
  - Provide greater protection to children by addressing identified gaps in provision in the Law;
  - Modernise and update the Law to reflect current best practice and compliance requirements with international conventions;
  - Establish a monitoring approach to track the impact of the changes to the system; and
  - Ensure more timely consideration of future changes needed to the system, by introducing a more frequent review cycle of every 3-5 years.

## **2. INTRODUCTION**

### **Background on the 2004 Reforms**

- 2.1 The current family care and justice system<sup>5</sup> (“the system”) in Guernsey and Alderney is unique to the islands. Its origins stem from policy decisions made by the States of Deliberation in October 2004, informed by the former Health and Social Services Department’s (HSSD’s) case for a new Children Law.

---

<sup>5</sup> [Family Care and Justice System - States of Guernsey \(gov.gg\)](https://www.gov.gg/family-care-and-justice-system)

- 2.2 Significant work to develop this new legislative framework was carried out over an extended period of time and involved extensive consultation with partner agencies and children in Guernsey and Alderney. The review at that time provided an opportunity to consider the more effective practices world-wide, alongside the need to comply with international treaty obligations around human rights and children's rights including juvenile justice rights.
- 2.3 The resulting Law incorporated parts of the English model of family justice, as well as aspects of the Scottish Children's Hearing System. See glossary of terms in Appendix A.
- 2.4 The Law moved away from the court model used in England and Wales, as set out in the Children Act 1989<sup>6</sup> ("the Act"), retaining some aspects such as those that relate to private law cases where children are involved and emergency protection orders.
- 2.5 The Scottish Children's Hearing system was introduced in 1971 and is set out in the Children's Hearings (Scotland) Act 2011<sup>7</sup> ("the 2011 Act"). The system seeks to "take an integrated and holistic approach to care and justice, in which the child's best interests are the paramount consideration"<sup>8</sup>. The principles that underpin the Scottish system are built on those identified in the Kilbrandon Report of 1964<sup>9</sup>, and takes account of international rights conventions. The 2004 Guernsey reforms drew heavily on these principles, and those that inform the legislation in England and Wales.
- 2.6 Similar to the Tribunal, the Children's Hearing operates as a lay tribunal that hears almost all cases relating to children, except the most serious criminal cases which are dealt with by the court directly. The Children's Hearing does not make any distinction between children who have broken the law, those who are viewed as being beyond control, and those who are at risk of, or suffering from abuse or neglect i.e. it considers needs as well as deeds.

### **The Children (Guernsey & Alderney) Law, 2008**

- 2.7 The Law came into force in January 2010 and aims to protect children from harm and to promote their health, welfare and development. The Law sets out the duties of parents, other carers and the States of Guernsey ("the States"). It establishes the roles and responsibilities of the different agencies within the system, for example the Law places duties on the States in relation to children in its care and care leavers.

---

<sup>6</sup> [Children Act 1989 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1989/41/contents/enacted)

<sup>7</sup> [Children's Hearings \(Scotland\) Act 2011 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2011/17/contents/enacted)

<sup>8</sup> [Children's hearings - Child protection - gov.scot \(www.gov.scot\)](http://www.gov.scot/Topics/childrenandyoungpeople/hearings)

<sup>9</sup> [INTRODUCTION - The KILBRANDON Report - gov.scot \(www.gov.scot\)](http://www.gov.scot/Topics/childrenandyoungpeople/hearings)

- 2.8 The Committee has the mandated responsibility for oversight of the Law and the related service areas which have the authority to deal with children and family services. The Law also touches on the mandated responsibilities of other Committees including the Committee *for* Home Affairs and the Committee *for* Education, Sport & Culture.
- 2.9 The introduction of the Law substantially reformed the ways in which professionals work together to secure the best outcomes for children and established new processes for working with children and families across the system. Most notable of these changes was the establishment of the Office of the Children’s Convenor including the statutory role of the Children’s Convenor (“the Convenor”), the Tribunal and the CCB<sup>10</sup>. The Committee recognises that the successful introduction of the Law is a result of the collective efforts of all the agencies involved.
- 2.10 The introduction of these new agencies in the system created an interface of two, separate but interrelated pathways through the system, for public family law matters, to support outcomes for children i.e. the court (long-term, more permanent or emergency interventions) and the Tribunal (temporary, short term interventions).
- 2.11 The Law also applies to matters before both the Magistrates Court (including the Juvenile Court) and the Royal Court. The courts have a decision-making and judicial monitoring role in matters relating to children and their families which is ultimately driven towards resolving problems. The court has a role in matters of private family law (disputes between individuals) and public family law (state support for, or intervention into, the lives of children and families). The public law aspects involve matters relating to emergency child protection, permanent removal of a child from their families<sup>11</sup>, secure accommodation, the recovery of children in care and appeals against the decisions of the Tribunal.
- 2.12 The introduction of the Tribunal recognised that the court is not always the most appropriate place to deal with matters relating to children. It gives vulnerable children, and those in need, the opportunity to have their case heard outside of a court environment, by a panel made up of a Chair and volunteers from across the community who deliberate on cases. The premise behind the Tribunal is to work with families to help them resolve their issues by taking short term measures that are for the welfare of the child and so in the child’s best interests. As with the court the Tribunal is bound by the principles underpinning the Law.

---

<sup>10</sup> [Convenor & Tribunal Board - Children’s Convenor - Children’s Convenor](#)

<sup>11</sup> Specifically this applies to those with parental responsibility for that child who could include grandparents, carers or guardians.



- 2.13 The primary principle of the Law is that the “child’s welfare is the paramount consideration”<sup>12</sup>, except where there is an immediate risk to the safety of another person. Where welfare is not paramount, then it should be a primary consideration. Furthermore this is the overriding principle that should take precedence over any other principle/s where there is a conflict.
- 2.14 The Law equally recognises that: some children will need additional services to achieve a reasonable standard of health and development; and some may need ‘compulsory intervention’. It recognises the difference between children who are ‘in need’ or ‘at risk’ and establishes a set of ‘child welfare principles’ and a ‘welfare checklist’, which guide decisions relating to a child’s upbringing.

#### **Previous reviews summary**

- 2.15 The Law has been in place for over ten years and has been subject to several reviews, the earliest of which was the internal review called the Children’s Services Diagnostic in 2014. A summary of the findings of the reviews is in Appendix B.
- 2.16 Consistent findings raised through the reviews include:
- Parts of the system work well;
  - There are opportunities to make improvements to the unique model used in Guernsey and Alderney;
  - There are unsatisfactory delays in the system that are negatively impacting outcomes for children, particularly in public family law cases;
  - Some parts of the Law have not been implemented as originally intended;
  - There are unintended consequences arising from its drafting that need to be addressed including gaps in the legislative framework that could usefully be filled to enable a timelier resolution for children and their families;
  - Further delays in agreeing amendments to the Law will not benefit outcomes for children;
  - To achieve better outcomes, it is imperative that all agencies in the system seek to remove delays and drive forward changes in their respective areas to meet this objective;
  - A collaborative and collegiate approach needs to be taken by all agencies so the system functions more effectively to the benefit of the children it serves;
  - Due consideration should be given to compliance with the relevant international treaties and conventions; and
  - The voice of the child and service users should be included in any proposals for change.

---

<sup>12</sup> The child welfare principles and child welfare checklist are set out respectively in [s.3 and s.4 of the Children Law](#)

- 2.17 The findings of all the related reviews have informed the proposals set out in this Policy Letter.

### **3. STRATEGIC CONTEXT**

- 3.1 The Committee has responsibility for advising the States and developing and implementing matters relating to ‘the welfare and protection of children, young people and their families’. The Committee oversees the delivery of the States’ operational functions relating to Children and Family Community Services which includes services to children in care and care leavers from a Corporate Parenting perspective as set out in the Corporate Parenting Framework 2021-2023<sup>13</sup>.
- 3.2 The Committee signalled its intention to review the Law in June 2019 and the States of Deliberation directed the Committee to progress this work expeditiously<sup>14</sup>. This intention was informed by the enhanced understanding of the negative impact of delay on children which has been a significant area for research in recent years. This has resulted in many neighbouring jurisdictions taking radical steps to reduce delay in the system with a view to improving outcomes for children and reducing the associated cost to the state of such delay. Much of this research post-dates the drafting of the Law. The most influential of the reviews was the findings of the 2011 Family Justice Review (“the Norgrove Review”) (see section 3.11).
- 3.3 The predecessor Committee was mindful that duplication of process is an area where delay occurs and to address this concern undertook a targeted consultation on possible amendments to the Law with practitioners in 2019. The general consensus was that the Law would benefit from updating as suggested by the Committee. Although there were some intricacies in the feedback provided, all of the changes put forward for consideration were supported by the majority of professionals.
- 3.4 In approving the Policy & Resource Plan - 2018 Review and 2019 Update, the States of Deliberation also directed the Policy & Resources Committee to work with the Committee, and with the Committee *for* Home Affairs, to expedite work to remove delays from the systems and processes relating to the delivery of services to children in need. The Chief Officer’s Child Protection Group responded by commissioning a report by an external reviewer on the wider system, resulting in the Outcomes Report.

---

<sup>13</sup> [Corporate Parenting Framework 2020-2023 - States of Guernsey \(gov.gg\)](https://www.gov.gg/Corporate-Parenting-Framework-2020-2023)

<sup>14</sup> [Billet d’État IX of 2019: Policy & Resource Plan - 2018 Review and 2019 Update](#)

### **Outcomes Report for Children and Young People (2021)**

- 3.5 This extensive review considered if there were any systemic obstacles preventing or impacting on beneficial outcomes for children. It aimed to make recommendations which:
- Reduce complexity and ensure each agency has clear roles, removing duplication or uncertainty of responsibilities;
  - Ensure a full and flexible suite of options were available for a child or young person entering the system to best meet their individual needs;
  - Ensure the judicial monitoring role of the court and Tribunal provided adequate protection of the rights of the child and the families; and
  - Remove unintended delay in the system.
- 3.6 The Outcomes Report, informed by the previous review's findings, included a substantial number of recommendations for change which ranged across policy, legislative amendments and operational matters that would affect more than one service area. The recommendations were not costed, and further work was recognised as being required to fully assess the impact of the recommendations.
- 3.7 Extensive consultation was carried out through the Outcomes Report, which documents in detail where there were differences of viewpoints and, in some cases, put forward potential alternative proposals for further consideration.
- 3.8 The Outcomes Report found that the current system 'worked for the majority of children' however, informed by the Committee's 2019 Children Law consultation, it supported the findings that unnecessary delays occurred in some cases, which should be addressed.

### **Government Work Plan**

- 3.9 In July 2021, the action Review Children Law and Outcomes was prioritised as a critical action of the Government Work Plan (GWP)<sup>15</sup> for progressing in the first six months. Policy resources were allocated accordingly to support this work.
- 3.10 The action seeks to "support vulnerable children through revision to the Children Law and action on the Outcomes Report", by finalising the amendments to the Law. Equally, through this action it is intended that any changes to operational matters which improve outcomes for children in the system will be developed and implemented. This may be in advance of the legislation reforms where practicable and where it can be delivered within existing resources. The work will align to the recently approved framework for justice (see 3.17-3.24 below).

---

<sup>15</sup> [Government Work Plan | States Of Guernsey \(ourfuture.gg\)](https://ourfuture.gg/government-work-plan)

### **Family Justice Review, 2011 – The Norgrove Review**

3.11 The Norgrove Review<sup>16</sup> identified the harm caused to children by delay in the Family Justice System in England and Wales and considered what new arrangements might be put in place to tackle the causes of delay and ensure better long-term prospects for children. The Norgrove Review provides important analysis of the impact of delay and concluded that:

- I. Long proceedings may deny children a chance of a permanent home.
- II. The longer proceedings last, the less likely that a child will find a secure and stable placement, particularly through adoption.
- III. Long proceedings can damage a child's development.
- IV. The longer proceedings last, the more likely children are to experience multiple placements.
- V. Placement disruption does not just cause distress in the short-term. It can directly impact on a child's long-term life chances by damaging their ability to form positive attachments. This can cause multiple problems in adolescence and later life.
- VI. Long proceedings may put maltreated and neglected children at risk. If children remain in the home during proceedings they may be exposed to more harmful parenting with long-term consequences.
- VII. Long proceedings can cause already damaged children distress and anxiety. Children live with uncertainty while possibly experiencing multiple placements, continuous assessments and distressing contact arrangements.

### **Guernsey: Children Law Review: Professor Kathleen Marshall Report, 2015**

3.12 The first significant review of the Law was commissioned by the former Scrutiny Committee and carried out by Professor Kathleen Marshall in 2015<sup>17</sup> (known as the Marshall Report).

3.13 The report highlighted particular issues around the ways in which various child protection processes interact with each other, including the nature of the respective cases referred to the Tribunal and to the court, and the interplay between these functions.

3.14 Professor Marshall made 21 recommendations relating to both private and public law proceedings. Some of these recommendations are fulfilled by the recommendations of this Policy Letter, where they align to the objectives of this action, and are discussed in further detail at the appropriate stages.

---

<sup>16</sup> [Family Justice Review](#)

<sup>17</sup> ['The Guernsey Children Law Review, 2015'](#) by Professor Kathleen Marshall

### **Children & Young People's Plan**

3.15 The Law places a duty on the Committee to prepare a Children & Young People's Plan ("CYPP")<sup>18</sup>, every three years, which sets out how services seek to meet the needs of children and their families. The CYPP sets out four priority outcomes for children, aligned to the United Nations Convention on the Rights of the Child ("UNCRC")<sup>19</sup>:

- Be Safe and Nurtured
- Be Included and Respected
- Achieve Individual and Economic Potential
- Be Healthy and Active

3.16 The CYPP captures the progress and impact of these changes to services which seek to improve outcomes for children. It recognises that early intervention and prevention, partnership working and a focus on outcomes are fundamentally important to improving the lives of children.

### **Justice Framework 2022-2029 and 2020 Guernsey Justice Review Report**

3.17 In April 2022, the States of Deliberation agreed the Justice Framework 2022-2029<sup>20</sup> ("the Justice Framework") presented by the Committee for Home Affairs. The Justice Framework sets out to guide and coordinate improvements to justice over the next seven years. It will be supported by the development of a Justice Action Plan which will include the actions being taken across the States and the community to reach the agreed justice outcomes.

3.18 This Framework sets out four justice pillars, one of which is family justice defined as:

"Support for families, parents and relationships that helps them avoid disputes as far as possible and which enables them to resolve disputes quickly should they arise, with minimum conflict and pain caused for all of those involved, particularly children."

3.19 The Justice Framework seeks to respond to the findings of the 2020 Guernsey Justice Review Report<sup>21</sup> ("the Justice Review") which made 41 recommendations for change, some of which centred on the system and the Law.

3.20 The Justice Review recognised the inter-relationship of family justice matters across the justice system and the important role the Law had as part of that

---

<sup>18</sup> Children & Young People's Plan 2019-2022 [Billet d'État III of 2019](#)

<sup>19</sup> [UN Convention on the Rights of the Child \("UNCRC"\) - UNICEF UK](#)

<sup>20</sup> [The Justice Framework Policy Letter - States of Guernsey \(gov.gg\)](#)

<sup>21</sup> [Billet d'État XV of 2020 - Justice Review Report](#)

system. With this in mind the Justice Framework includes the need to provide a greater emphasis on prevention and early intervention to improve wellbeing and life chances, delivering the right interventions at the right time, with a focus on improving outcomes for children.

- 3.21 The Justice Review echoes many of the Committee's own findings and experience in its review of the Law, in particular acknowledging the complex interrelationships within the family justice system and the important role played by a multitude of agencies and organisations. The Justice Review identified that improvements could be made by improving the co-ordination of effort of the multiple agencies in the system and the flow of data and information. Some of the recommendations of the Justice Review relate to those agencies that play a key role in the system and the implementation of the Law.
- 3.22 The Committee will work with the Committee *for* Home Affairs in future phases of the action to understand the broader impact of the youth justice provisions of the Law and the associated processes, in fulfilment of the relevant recommendation of the Justice Review.
- 3.23 There are further overlaps between these two areas of important work that could be mutually beneficial including:
- Exploring greater use of alternative dispute resolution ("ADR") measures which also featured frequently in different review findings;
  - Improved monitoring of outcomes for children in contact with the care system; and
  - Better data capture more generally.
- 3.24 The above considerations are included in the proposals covered in section 9 of this Policy Letter.

**Partnership of Purpose: Transforming Bailiwick health and care**

- 3.25 There are also many linkages between the CYPP, the Justice Framework and the strategic aims of the 'Partnership of Purpose'<sup>22</sup>, in the sense that they all recognise the need for a coordinated, multi-agency and multi-disciplinary approach and place greater emphasis on prevention by fully extending this principle into social care as for healthcare provision more generally.

---

<sup>22</sup> [Partnership of Purpose: Transforming Bailiwick Health and Care](#)

### **Matrimonial Causes Reforms**

- 3.26 In February 2020, the States of Deliberation agreed the reforms to the legislation covering divorce, judicial separations and annulments of a marriage<sup>23</sup> and recently approved the resulting legislation<sup>24</sup>. Through the review of this legislation it was recognised that more needed to be done “to improve access to information and support services for family law matters” (extant Resolution 2<sup>25</sup>). This was comparable to the findings of the Justice Review which identified the need to “remove delay from systems and processes relating to the delivery of services to children and young people in need, and to ensure that such systems and processes are centred on the best interests of the child or young person concerned”.
- 3.27 The extant Resolution 2 will be addressed in part through some of the proposals set out in this Policy Letter.

### **Legal Aid Review – Proposition 23**

- 3.28 Through this action, the Marshall Report and the development of the Justice Framework, various touch points with the Legal Aid Service and family justice have been identified.
- 3.29 Of particular concern are the systemic issues relating to the availability of Advocates to support family law cases and the impact this has on delays in determining outcomes for children. Some of these cases receive funding from legal aid.
- 3.30 Increasing the access and availability of trained mediators for family law matters is another consideration raised which could remove delays and reduce the number of cases proceeding to court.
- 3.31 It is recommended that due consideration is given to the systemic issues relating to the availability of Advocates and the use of ADR including mediation in the system identified through this work.
- 3.32 It is further recommended that any resourcing requirements identified are captured in the 2023 GWP prioritisation considerations.

### **International Conventions and Frameworks**

- 3.33 In line with best practice, Guernsey, Alderney and other jurisdictions seek to comply with international treaty obligations wherever possible and where

---

<sup>23</sup> [Billet d’État IV of 2020 - Reform of the Matrimonial Causes Law](#)

<sup>24</sup> [Billet d’État XII of 2022 - Reform of the Matrimonial Causes Law](#)

<sup>25</sup> [Resolutions Billet d’État IV of 2020](#)

extensions are sought or have been achieved. The 2004 reforms were informed by two international conventions as follows:

#### **European Convention on Human Rights and Fundamental Freedoms**

- 3.34 In 2004, it was recognised that the current family justice legal framework was insufficient in ensuring domestic law could meet its obligations under the European Convention on Human Rights and Fundamental Freedoms<sup>26</sup> (“ECHR”) that was soon to be legislated for under the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>27</sup>. The 2004 reforms brought about changes to ensure compliance with the ECHR and any future changes will have to take ECHR alignment into account.
- 3.35 Some orders set out in the Law involve significant interference with Article 8, the right to respect for private and family life. For example orders that result in the removal of a child from his or her parents’ care, either on an interim or permanent basis, and/or the cessation of contact between a child and their parent/s.
- 3.36 The other main ECHR Articles of relevance are Article 6, right to a fair trial and 13, right to an effective remedy, specifically when considering upholding people’s right to: a fair hearing; decisions being made based on appropriate evidence; and the appeals process.
- 3.37 In all considerations proportionality around the level of intervention consistent with the ECHR should be applied as appropriate to the circumstances of the case.

#### **United Nations Convention on the Rights of the Child 1989**

- 3.38 In 1990, the UK signed the UNCRC which sets out the rights of every child in the world to survive, grow, participate and fulfil their potential.
- 3.39 In 2016, the CYPP 2016-2022<sup>28</sup> set out a commitment to seek an extension of the UNCRC to Guernsey and Alderney which was formally confirmed in November 2020.
- 3.40 The UNCRC has a total of 54 articles covering every aspect of a child’s life and the various rights to which all children are entitled. The UNCRC equally sets out how adults and governments must work together to ensure that these rights are enjoyed by all children. Of the 54 articles four are known as ‘special’ general principles as follows:

---

<sup>26</sup> [The European Convention on Human Rights](#)

<sup>27</sup> [Human Rights \(Bailiwick of Guernsey\) Law, 2000](#)

<sup>28</sup> [Children and Young People's Plan \(CYPP\) - States of Guernsey \(gov.gg\)](#)



- Article 2 - Right to non-discrimination;
- Article 3 - Best interests of the child;
- Article 6 - Right to life, survival and development; and
- Article 12 - Right to be heard.

3.41 While all rights set out in the UNCRC should be duly considered when developing States' strategies and policies relating to children, the above and the following are of particular relevance to the Law and have informed the proposals set out in this Policy Letter;

- Article 9 - Separation from parents;
- Article 18 - Parental responsibilities and state assistance;
- Article 19 - Protection from violence, abuse and neglect;
- Article 20 - Children unable to live with their family;
- Article 25 - Review of treatment in care; and
- Article 40 - Juvenile justice

3.42 More recently, some jurisdictions have incorporated some of these articles into policy, for example, the recent changes made to the Children (Scotland) Act 2020<sup>29</sup>, saw Scotland become the first UK country to directly incorporate the UNCRC into legislation. While it is not recommended that a similar change is needed here, at this time, it should continue to be a matter for consideration as part of future phases of work and updates needed to the Law.

#### **4. CHILDREN LAW AND OUTCOMES ACTION APPROACH**

4.1 Given the cross-Committee nature of the Review Children Law and Outcomes action the Board was established in October 2020. The Board has representation from the Committees for: Health & Social Care, Education, Sport & Culture and Home Affairs and is chaired by a member of the Policy & Resources Committee.

4.2 The Committee would like to extend its thanks to all the members of the Board, and in turn their Principal Committees, for their commitment and contributions to progressing this priority work.

4.3 The initial approach and means to prioritise, resource and take forwards the work were considered and agreed by the Board. The considerations were premised on the principle that not everything recommended in the reviews of the Law and the wider system, including the outstanding secondary legislation associated with the Law, would be deliverable, at the same time, or at all. It also recognised that the resource implications for the proposals were yet to be

---

<sup>29</sup> [Children \(Scotland\) Act 2020 \(legislation.gov.uk\)](https://legislation.gov.uk)

determined and that this is an important element in informing the decisions for change, not least as the Board were aware of the significant pressures being experienced in Children and Family Community Services, as a result of a shortage of social workers in the UK<sup>30</sup>.

- 4.4 The Board recognised and shared the concerns raised through the reviews that unnecessary delays are unacceptable and cases should not take up to two years to reach an outcome. The Board were mindful that a day, week or month in the life of child has a much greater impact than the equivalent periods from an adult's perspective.
- 4.5 In Guernsey and Alderney, where instances of delay and duplication occur this results in children finding themselves:
- In the care of the authorities for longer than might otherwise be necessary;
  - Decisions on outcomes taking longer than is satisfactory;
  - Potentially, in at risk or harmful situations for longer; and
  - At risk of the disruption caused by statutory interventions in their daily lives having long-term consequences, as highlighted by the Norgrove Review.
- 4.6 It was also acknowledged that sufficient time must be allowed to enable due process to be followed and for the necessary information to be compiled so that decisions taken about children's welfare are not rushed. This in itself may cause further delays to rectify and/or pose a significant risk to the welfare of the child, for example if decisions need to be revisited or further evidence gathered.
- 4.7 It was also recognised that:
- Individual cases themselves are complex and often take their own unique paths through the system;
  - It is important to ensure that families are given the opportunity to work to effect positive change (within the child's timescale); and
  - Resources are often significantly stretched in some areas.
- 4.8 It was clear from the feedback received there is significant frustration that delay and duplication, at different stages, is a barrier to providing timely and satisfactory outcomes for children (see case study in Appendix C).

---

<sup>30</sup> [Children's social worker shortage reaches five-year high | Local Government Association](#)

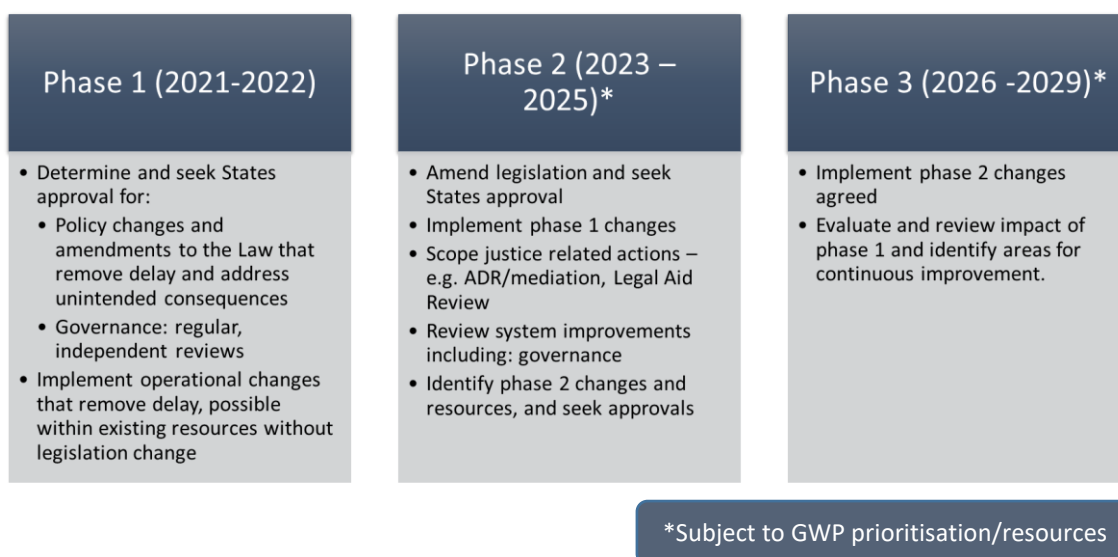
### Focus and objectives

4.9 The Board recommended to the Committee that the work was prioritised and phased on the basis of the outcomes to be realised by the amendments to the Law and the system. The outcomes and suggested weightings were:

1. Every opportunity is taken to remove the causes of delay to decision making for children in the system – 65%;
2. Any unintended consequences of the Law are addressed – 25%; and
3. Improved effectiveness of the governance of the system – 10%.

### Future phases of work – Proposition 21

4.10 The phases proposed for this programme of work are illustrated in image 1 below. It is recommended that the subsequent phases of the work are scoped and included for consideration in the relevant GWP discussions. The Committee is therefore committing to undertaking or supporting the scoping of phase 2, as set out below, and as relevant to its mandate, with a view to starting the work on phase 2 in 2024.



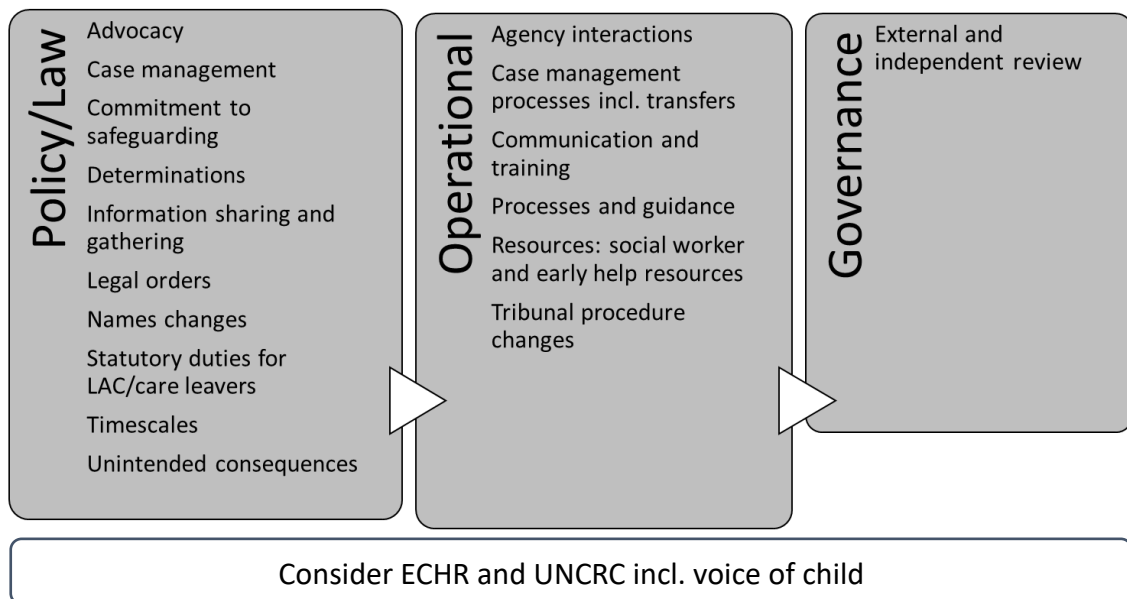
**Image 1: Review Children Law and Outcomes action phases**

### Sark

4.11 Alongside future phases of work a need has been identified for ongoing discussions with the Chief Pleas of Sark in relation to bringing forward and implementing in full its Child Protection Law. The Committee will continue to engage with Sark in this regard as and when Sark views this as necessary.

### Phase 1 - considerations

4.12 The matters considered by the Board are those proposals that address the main aims of phase 1, captured in image 2 below. These matters span policy and operational matters and have been subject to consultation.



**Image 2: Review Children Law and Outcomes actions – phase 1 proposals**

#### **Engagement and consultation**

- 4.13 The findings of the Committee’s consultation and the Outcomes Report raised further matters to be discussed in terms of new areas for improvement and some alternative proposals for consideration. It was also recognised that there was a need to fully assess the impacts of the changes including any resource implications. This latter consideration was an important one given the current international and domestic pressures on the States from a resource perspective.
- 4.14 To expediate the proposal impact assessment, a one day facilitated workshop with stakeholders was held in December 2021. The workshop explored the suggested proposals, other options for improvements and considered how best to implement the changes given the resourcing considerations.
- 4.15 While in the main there was majority support for most of the proposals, the Board were mindful that in some instances the views on specific proposals were divergent and strongly held in some cases. The Board agreed that it would take all views and responses into consideration including those of the Youth Forum, who were able to share their responses directly at a meeting of the Board.
- 4.16 The Board’s conclusions were presented to the Committee, who endorsed the proposals. The Committee then sought the views of the other lead Committees of: Policy & Resources, Home Affairs and Education, Sport & Culture, and the States of Alderney’s Policy & Finance Committee, who were supportive of the proposals put forwards.

4.17 In addition to the feedback received from the Committee’s consultation exercise and the findings of the various reviews, the Board and the Committee have considered other sources of information (see Appendix D), as follows:

- The findings of the Jersey Care Inquiry in July 2017 and the resulting Jersey Law Improvement Programme<sup>31</sup>;
- The ongoing review of Scottish family law and development of a Family Justice Modernisation Strategy.
- The ongoing review of public and private family law in England and Wales (cross-professional working groups having published interim reports, final reports pending)<sup>32</sup>

## **5. POLICY PROPOSALS FOR CHANGE THAT ARE NOT RECOMMENDED**

5.1 The Outcomes Report put forward two substantial proposals which were more far reaching in terms of reforms of the current system than the other changes. The Board and Committee are not recommending that these changes be progressed, but are of the view that it is important that the States of Deliberation are advised of the reasons for not supporting these changes, as they are relevant to the remaining proposals which are put forward for their approval.

5.2 The two proposals were:

**1) Revoke the Tribunal’s powers to remove a child from those with parental responsibility or sets out where the child should reside.**

5.3 The Outcomes Report states that the court should be exclusively responsible for the making of legal orders that remove children from those with parental responsibility. This position is on the basis ‘it is at this point of overlap between the temporary and the permanent outcomes where the problems have arisen, and this has directly contributed to the complexity of the system.’ Adding that ‘the difficult area is in relation to those cases that lie in the middle, the more so since, at the outset, the facts and circumstances are generally unclear and will only emerge over time. Key to removing delay and duplication in the system is making the right decisions at the right time and in the right place.’ The point of duplication is where the child and families are subject to different applications and processes at the same time through the Tribunal and the court, creating unacceptable delay, uncertainty, confusion and frustration.

---

<sup>31</sup> [Jersey Law Improvement Programme](#)

<sup>32</sup> <https://www.judiciary.uk/publications/consultation-children-cases-in-the-family-court-interim-proposals-for-reform/>

- 5.4 The data available suggests the majority of children subject to a Community Parenting Order (“CPO”)<sup>33</sup> during 2018-2020, were also at some point within the Tribunal system and subject to an Interim Care Requirement (“ICR”) or Care Requirement (“CR”)<sup>34</sup>. This would be expected as the decision to proceed to permanent removal is seen as a last resort and other attempts are made to provide the support necessary to enable the child to remain with their parents/carers where it is for their welfare to do so, and where it is not an emergency matter. The overlaps, conflicts and timing of when these cases are dealt with was an area identified for improvement. For example, the Tribunal can include a condition on a CR relating to where the child should reside, such as with someone other than the parents, including in the care of the Committee, whilst certain conditions or elements of the child’s plan are being worked out and resolved. This can overlap with an application for a CPO which may then be made, which must be made to the court not the Tribunal. In these cases, the child and its family could be subject to two different processes, in two different forums i.e. the Tribunal and the court.
- 5.5 The Outcomes Report review concluded that, as well as amending the thresholds, “any decision involving the removal of a child should only be taken by an experienced and qualified judge”. The main reason for this conclusion is that the temporary removal cases and/or the cessation of contact between a child and their parent currently dealt with by the Tribunal are often complex involving significant interference with the ECHR Article 8 rights of children and families (right to respect for private life, family life, home and correspondence).
- 5.6 The proposed change would remove that responsibility from the Tribunal so that it could not make a CR (including an ICR) or attach any conditions to a CR or ICR, in these cases i.e. it could not set a condition to remove a child from its carers on a temporary basis.
- 5.7 This proposal was viewed by some stakeholders as impacting the original 2004 intentions of the system and it would move away from the similar approach taken by the Scottish Children’s Hearing system, on which the 2004 reforms were partly based.

---

<sup>33</sup> A CPO is an order made by a relevant court granting the Committee parental responsibility for a child. They are meant to be used when it is likely that a child will need to be placed away from their family long term. A CPO will remain in place until the child reaches the age of 18 or marries prior to this age. A CPO can be issued on an interim basis for no more than 3 months (Interim CPO).

<sup>34</sup> A Care Requirement / Interim Care Requirement is the legal order made by the Tribunal placing a child under the temporary supervisory care of the States. It aims to protect the child and promote their welfare and to assist the parents or carers to provide appropriate care, protection, guidance and control for the child. A care requirement can include conditions, for example: where a child should live or with whom they have contact.

- 5.8 When considering the legislation's guiding principles arguments have been made that this proposal inhibits the principles of enabling:
- 'young people and their families being fully involved in the decision-making' as it moves all removal decision-making to the court. It is often cited that the court is a more adversarial forum and it could result in less involvement and participation from parents, carers and children. It would see all parties being able to have legal representation which runs the risk of creating further delays as more matters could be contested; and
  - 'children under 16 who offend or who are in need of care and protection are not dealt with by the court but by a lay panel', as if progressed this change would result in cases, currently heard by the Tribunal, being heard in court.
- 5.9 It is not possible to determine exactly how many of the care and protection cases the Tribunal considers annually (an average of 40 cases per year) will involve some form of removal without parental consent<sup>35</sup>. It was viewed by those consulted that if it was 10 or less that this would be manageable within existing capacity across all relevant service areas, noting that in some cases the workload is the same regardless of which forum considers the case. If case numbers are likely to be higher than 10 then this would be more concerning, specifically for the judiciary who have advised that there is limited capacity in the system currently to manage many more additional cases. The additional cases would not include cases which progress to be heard by the court i.e. applications for permanent removal through a CPO.
- 5.10 Some data exists on the outcomes of the cases involving temporary removal by the Tribunal and the Outcomes Report suggests that these indicate the "actual outcomes for the majority of cases were satisfactorily resolved under the current arrangements". Enhanced reporting on outcomes for children across the system is recognised as an area to be addressed.
- 5.11 Some concerns were raised that this proposal might result in more children being removed on a permanent basis than would have been the case. However, should cases involving temporary removal move to the court, it is equally bound by the child welfare principles including the 'no compulsory intervention principle' and would not make any order unless it was necessary to do so.
- 5.12 If the court were to consider cases where temporary removal was a factor it is likely that these cases would take longer to conclude than they currently do

---

<sup>35</sup> Where parents already consent to removal no legal order needs to be made, in line with the no compulsory intervention principle. It is understood that the arrangements for removal in these cases operates through a formal agreement with those with parental responsibility and the Committee for Health & Social Care, as opposed to a legal order being made.

through the Tribunal. The expected longer timeframes would be attributed to the current systemic issues which are outside of the scope of this action to address. The most pressing of these being constraints on the availability of Advocates and expert witnesses. There is a significant risk with this proposal in that the capacity of those who attend court proceedings (Advocates, Family Proceedings Advisory Service ("FPAS"), Judges etc.) is not sufficient enough to handle many more additional cases to disposal, in a reasonable timeframe, given current constraints. While it is noted that temporary removal decisions could be made more swiftly, the impact of increasing the overall numbers of cases heard in court is likely to result in more cases taking longer to reach a conclusion, incurring the associated negative outcomes for those children and so not meeting the objective of this review.

- 5.13 If this proposal were to proceed the availability of legal representation for court cases would need to be addressed before this proposal was implemented to avoid a bottleneck situation occurring in the court. Often these cases are funded by legal aid and is why it is recommended this issue be given due consideration as part of the Legal Aid Review (Proposition 23).
- 5.14 When the Board considered the impact assessment of this proposal it became apparent that the exact nature of the likely small number of cases where there were concerns would, in most cases, no longer be considered by the Tribunal once other amendments proposed were introduced. This is because, where permanent removal of a child was in question the case would not be heard by the Tribunal but would instead proceed more swiftly to court.
- 5.15 It was concluded that on balance the evidence suggests this proposal may not necessarily address the issues it intends to resolve and could in fact cause several unintended consequences. It was also noted that for this proposal to address the objectives of removing delays in determining outcomes for children the systemic causes of delays in the court system would need to be resolved so that unnecessary delays did not occur, otherwise this would not be in the child's best interests.
- 5.16 For those children with the greatest need and subject to the lengthiest delays it is suggested that other changes proposed in section 6 of the Policy Letter should resolve these issues, negating the need for such a substantial and fundamental change to the unique nature of the system.

5.17 **The Committee and the Board do not support the introduction of this proposal.**

## **2) Tribunal hearing findings of facts**

- 5.18 The Outcomes Report recommended that the "Tribunal should make its own findings of fact based on evidence presented to the Tribunal and the hearing of



the parties” so removing the requirement to refer the case to court to determine the facts.

- 5.19 Currently where parties do not agree on the statement of fact or the condition for referral, the Convenor or the Tribunal must refer the matter to the Juvenile Court to determine the statement of fact or whether the ground for referral is made out. If the facts are confirmed by the court the case reverts back to the Tribunal for disposal.
- 5.20 This process adds delay to determining the outcomes for children in these cases as time is needed to prepare for and hear the application in court. It is also possible that during that preparation period, the facts may have changed (for example new potential carers have come forward, or a relationship has broken up or been formed), resulting in more matters that may then not be agreed. In these instances the matter needs to be referred again to the court.
- 5.21 The current arrangement sees children and families moving between different legal forums, with different principles, approaches and processes, all of which contributes to the issues identified. There are also elements of duplication.
- 5.22 The proposal suggests that it would be preferable for the same forum (the Tribunal) to be used to determine facts and dispose of the hearings, to reduce delay.
- 5.23 The average number of cases where the Convenor’s statement of facts are disputed is 8, (based 2018-2022 data from the Convenor), of which an average of one case per year (over the last 12 years) has resulted in a court hearing. The majority of the disputes are resolved without the need for a court hearing.
- 5.24 It is suggested that to implement this change would require:
- Additional resources and legal training for Tribunal members to be sufficiently skilled to determine facts;
  - Measures to be put in place to compel witnesses amongst other practical requirements such as a suitable venue; and
  - It may also require the Tribunal to recruit a legally trained Chair who would oversee these hearings.
- 5.25 It is understood that it should be possible for the Office of the Children’s Convenor to provide any independent legal advice required in these circumstances.
- 5.26 From a values and principles perspective there is a concern that this proposal significantly alters the purpose and culture of the Tribunal to mirror the court’s

approach (seen as more adversarial by some) as opposed to the Tribunal's more inquisitorial approach. There is a view that the adversarial approach of the court is often recognised as perhaps the least favourable option for handling family law matters. This position is supported by the experience in private family law cases, as identified through the Matrimonial Causes Reforms, where disputing parties' positions can become entrenched leading to protracted cases where the child's welfare is not the primary consideration. However, there is a counter view that where the 'state' seeks to interfere in a person's fundamental human rights, for example removal of a child, that the court provides a more robust system of checks and balances.

5.27 It is understood that the majority of cases where the facts were disputed were those where removal was contested and many of those cases also resulted in a CPO being made at a later date. These cases are exactly those that the Outcomes Report sought to make improvements for through its recommendations as these are where the major concerns and delays sit.

5.28 It is likely that the change of responsibilities to enable the Tribunal to find facts would remove the priority issues of concern around delays, duplication and multiple forums. However, given the small number of cases identified it does not warrant the anticipated scale of investment and could have several unintended consequences.

5.29 **The Committee and the Board are of the view that other proposals under consideration, as set out below, more directly address the nature of the delay in these cases and so should be more effective in improving outcomes and meeting the objectives of this action.**

## **6. PROPOSALS PRESENTED FOR STATES APPROVAL REQUIRING LEGISLATIVE AMENDMENT**

6.1 The Committee is recommending the below proposals are taken forwards and the Law is amended to give effect to these decisions. Summary information on the proposals for approval and more detailed drafting instructions are in Appendices E and F.

### **Compulsory intervention - Proposition 15a**

6.2 Currently, the term 'compulsory intervention' is used to mean more than one thing within the Law. For example, in some instances it is used to mean a CR, including in section 35, which also applies to a CPO. This has caused issues with interpretation and was recognised by Professor Marshall as an area for improvement, to provide clarity around the criteria for referral to the Tribunal.

6.3 To address this cause of confusion, it is recommended that the term 'compulsory intervention' is amended to solely relate to intervention by the state in family

life and the Law makes the distinction clear between the different types of compulsory intervention i.e. temporary via a CR and permanent via a CPO.

### **Duties of the States of Guernsey and its Committees – Proposition 3**

- 6.4 The legal duties of the States in relation to children are found in both primary and secondary legislation (The Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009 (“the Children Ordinance”))<sup>36</sup>. There is no obvious reason as to why this occurred.
- 6.5 It is proposed that the respective sections in Part V of the Ordinance are moved to the primary Law and that the detail of how the duties of the States and/or the Committee is exercised in the secondary legislation (Ordinance or Regulations as appropriate).
- 6.6 It is also recommended that the heading of s.24 (Part V) of the Children Law is amended from “Duty of the States” to “Duty of the States in relation to children in need.” and that the wording of the duty on the Committee to investigate is redrafted to set out clearly when that duty has been established, in line with other proposed changes to the Law.

### **Duty to co-operate - Proposition 4**

- 6.7 The Outcomes Report and the subsequent discussions have identified a need for greater agency co-operation that puts the child’s welfare at the centre. In the original 2004 reforms the Policy Letter included the following:

“There will be a general duty on States agencies to work together to identify and assist families who have children who are in need of help at an early stage, thus preventing problems from developing or escalating”<sup>37</sup>

- 6.8 Section 27 of the Law, sets out:

“It shall be the duty of –

- (a) each employee of the States, and
- (b) all other persons,

whilst they are working with any child whom they reasonably believe is in need, or at risk, to take such action in relation to that child, and his circumstances, as may be required of them under this Law.”<sup>38</sup>

---

<sup>36</sup> [The Children \(Miscellaneous Provisions\) \(Guernsey and Alderney\) Ordinance, 2009](#)

<sup>37</sup> [Billet d’État XVII of 2004 - Matters Affecting Children, Young People and Their Families](#)

<sup>38</sup> [The Children \(Guernsey and Alderney\) Law, 2008.pdf](#)

- 6.9 In England this requirement is set out in legislation under the Children Act 2004, (section 10)<sup>39</sup> which includes an obligation on the local authority to promote co-operation between: itself; relevant partners; and appropriate person or bodies engaged in children's activities. This is with the aim of improving the well-being of children from multiple perspectives such as physical, educational and social.
- 6.10 This provision requires the local authority to have regard to the importance of parents and other persons caring for children. It specifies the specific relevant 'partners' (individuals, agencies and organisations) and what those 'partners' might do to improve well-being including providing staff, goods, services, accommodation or resources to another relevant person/body.
- 6.11 The duty in the Law, whilst broad in coverage, does not necessarily meet the 2004 policy intention agreed. The current duty is focused on action being taken in relation to the child, and not the family. It does not set out specifically the need for early help and intervention or that agencies should work together and co-operate to improve outcomes for children.
- 6.12 Professor Marshall highlighted that the intricacies of the system and the relative uniqueness of the Law in bringing together best practice from other jurisdictions presents challenges to fostering a shared understanding of the respective roles and duties under the Law.
- 6.13 The inclusion of this new duty should provide a greater emphasis and obligation on all agencies, States employees and individuals who work with children 'in need' or 'at risk', to work together for that child's welfare. Coupled with the 'commitment to safeguarding' proposal below and the preparation of detailed operational guidance, it should provide much greater clarity and understanding of the different roles and responsibilities of each agency and so provide greater and more efficient protection to children.
- 6.14 The Committee is in no doubt as to the commitment of all parties to work together; however, as highlighted by Professor Marshall, it considers that more could be done to support the effectiveness of the implementation of the Law through operational guidance and process (see section 9).

**Commitment to Safeguarding in the Law - Proposition 5**

- 6.15 A proposal put forward through the 2019 Children Law consultation, with professionals, was for a commitment to safeguarding to be included within the Law, in line with Section 11 of the Children Act 2004, in England.

---

<sup>39</sup> [Children Act 2004 \(legislation.gov.uk\)](https://legislation.gov.uk)

- 6.16 The purpose of setting out such a commitment on a statutory footing is to ensure greater collaboration and commitment from all the main agencies to work together for the welfare of children. To be effective this would need to translate into a Guernsey and Alderney equivalent framework similar to that of either the English ‘Working Together’<sup>40</sup> framework or the Scottish Getting it Right for Every Child (“GIRFEC”)<sup>41</sup> framework (see paragraph 9.14).
- 6.17 It is apparent that culturally the system does not operate as collegiately and collaboratively as the original 2004 reforms intended.
- 6.18 Whilst activity at the operational level is underway to make improvements in inter-agency working, it is at risk should individuals or priorities change. By including a statutory commitment it demonstrates and strengthens the intentions of the improvements proposed. It should improve system governance through identifying where there are gaps and issues to be addressed in practice.
- 6.19 The commitment in the Law, alongside the amended duty to cooperate, should encourage and demonstrate an expectation that agencies focus on safeguarding in all cases. The operational framework should provide greater clarity around processes and inter-agency working, which should reduce delays in some instances.

**Remit cases from the court to the Tribunal - Proposition 6**

- 6.20 A power for the court to remit cases to the Tribunal should be included in the Law so that it can refer the case to the Tribunal, in appropriate cases. This should reduce delays.
- 6.21 Where cases are remitted to the Tribunal from the court it should include the sharing of any facts established to prevent the evidence needing to be reheard by the Tribunal, causing duplication and delay.
- 6.22 This change will be supported by case transfer protocols but the powers to enable this to happen should be set out in the legislation, as necessary, to give it effect. A similar provision enabling the court to remit cases to the Tribunal already exists in relation to youth justice cases<sup>42</sup>.

---

<sup>40</sup> This is a statutory framework that the UK has implemented which guides inter-agency working to safeguard and promote the welfare of children. [Working together to safeguard children - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

<sup>41</sup> [Getting it right for every child \(GIRFEC\) - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>42</sup> section 7(1) (b) of [The Criminal Justice \(Children and Juvenile Court Reform\) \(Bailiwick of Guernsey\) Law, 2008](#).

**Court to retain and dispose of cases where it determines the facts in appropriate cases- Proposition 7**

- 6.23 This proposal would see any cases appearing before the court to determine facts, on behalf of the Convenor, to continue to be disposed of by the court rather than the Tribunal if facts are established. It could be achieved through providing the court with the power to make a CR or ICR, in appropriate cases, with any necessary and relevant conditions, as is currently permissible in appeal proceedings from decisions of the Tribunal. In some instances the case could be referred back to the Tribunal once a decision has been made by the court and the Tribunal could continue the case.
- 6.24 This proposal has the benefit of ensuring that the case continues towards a conclusion with the fewest changes in forum and it should reduce the time it takes to reach a decision on the case. It will provide a more formal decision route for those cases where removal is an issue and where parties do not agree with the Convenor's statement. The court would need to adjourn after the finding of facts hearing and reconvene to hear the evidence on the case in full. To ensure that delays are minimised the court will need to list the case hearing for disposal as a priority, in line with the objective to remove delay.
- 6.25 The introduction of this proposal could risk these cases taking much longer than currently to dispose of through the Tribunal. However, data from the Convenor suggests a low number of additional cases per year (estimated 1-2 cases) could be retained for disposal by the court. This is understood as being manageable by the judiciary.
- 6.26 The impact of this change, and all the other changes agreed, on case disposal times will be captured through the monitoring and reporting approach (see section 10). Remedial measures will be considered under phase 2 if the impact of the changes inhibits the welfare of the child.

**Concurrent proceedings - Propositions 8**

- 6.27 If there are current proceedings within the Tribunal at the time when a CPO application has been made to court, it is recommended that these are paused or stopped and that no further steps are taken by the Tribunal until the case has been heard by the court, with some limited exceptions.
- 6.28 This proposal seeks to reduce the instances where a case is being heard in more than one forum at the same time. However, matters unrelated to the substantive application to court, such as offending or school attendance matters, would still be considered by the Tribunal. There are concerns that this approach will result in matters relating to a child not being considered together and in separate forums which is not in align with the original principles. It would be expected that the other changes proposed to improve case management, with all relevant

agencies involved, sooner in the process will minimise the impact on the child's welfare.

- 6.29 The proposed change to allow cases to be more easily remitted between the Tribunal and the court will mean that if the court does not grant the order, it has the option to refer the case to the Tribunal for ongoing management. This could be where a CR is viewed as a more suitable solution to support the child and its family.

**Compulsory Attendance at Tribunal hearings for adults – Proposition 9**

- 6.30 At present the Tribunal does not have power to compel parents or children to attend hearings or apply sanctions for non-attendance. Professor Marshall identified that the current lack of compulsion for children and adults to attend Tribunal hearings could undermine the status of its interventions and decisions. She recommended that children and those with parental responsibility should be required to attend meetings of the Tribunal unless excused from attendance.
- 6.31 While the Tribunal system is fundamentally different in nature and approach to a court, the involvement of the Convenor and Tribunal are still formal and significant steps of intervention for children and families. The absence of powers to require responsible persons and children to attend the hearing is viewed by some, including Professor Marshall, as tipping the balance towards voluntary engagement and persuasion rather than compulsion.
- 6.32 In Scotland, there is a legal right and duty upon the 'relevant person'<sup>43</sup> or child to attend a Children's Hearing unless excused in certain specified circumstances or when the attendance is not considered necessary. In some instances the child may be excused from attending where it is considered the attendance may be harmful to the child, such as where the child would be placed at risk by attending, or would not be able to understand the proceedings. If the child does not attend and is not excused from attendance, there is an option of a warrant to be issued to secure the attendance of the child. The child may be held in a place of safety for up to seven days until they can be brought to a hearing. For the relevant person, this obligation is supported by the creation of an offence of failing to attend a hearing which is punishable by a fine.
- 6.33 The Children Law consultation and the Outcomes Report suggested the introduction of suitable legislative provisions to place an obligation upon relevant children and responsible adults to attend Tribunal hearings unless

---

<sup>43</sup> Equivalent to parties to the proceedings in Guernsey law, meaning those with parental responsibility who have duties to safeguard the child and promote their health, provide care and an upbringing, provide a home for the child and safeguard their property and, to maintain frequent and direct contact with the child (if they live separately).

excused or where their attendance is not considered necessary. It was further suggested that responsible adults should be subject to consequences for non-attendance through the introduction of penalties to be issued by the Tribunal.

- 6.34 The basis for this change was a need to emphasise the importance and seriousness of the Tribunal hearings to some parties in the case, as on occasion parties failed to turn up. When this occurs hearings may have to be adjourned to allow the party to attend, which causes a delay, wastes resources and is not in the child's best interests. The Outcomes Report noted this occurred most often in relation to educational absenteeism.
- 6.35 The case for introducing compulsory attendance and penalties at Tribunal hearings for children was not overwhelmingly supported by those consulted. There were concerns raised that compelling children in all cases could be detrimental to their welfare and there was little evidence to suggest that non-attendance by children was a significant cause of delay.
- 6.36 The more pressing concern was in relation to adults with parental responsibility not attending hearings and so the proposed change has been revised to apply to adults with parental responsibility only.
- 6.37 The revised proposal seeks to set out in the Law the requirement for those with parental responsibility to attend a Tribunal hearing, unless excused or not required to attend. The ability for the Tribunal to fine those who fail to attend without a valid reason would be enabled.
- 6.38 Those consulted, through the various reviews, who do not support compelling those with parental responsibility, were concerned it would encourage the wrong behaviours and attendance would be only to avoid a fine. Also, that it would most likely penalise those who are unable to afford a fine and could hamper the relationship with those with parental responsibility to a point that impacts negatively on outcomes for the child i.e. it could result in more delays as it creates resistance to the process overall. Other views included that it would go against the ethos of the Tribunal which seeks to work *with* parents and families.
- 6.39 While the concerns were noted, a deterrent such as compelling a parent to attend or be penalised could encourage the appropriate behaviours without having to actually be applied. The proposal includes the need for suitable safeguards to be in place to enable the Tribunal to use discretion on how it applies its penalty system, if at all. It would be expected that this would include consideration of the ability to pay and extenuating circumstances, amongst other considerations, which would be determined by the Tribunal.



**Notifications and referrals to the Convenor, Tribunal and Committee - Proposition 10**

- 6.40 Whenever either the Tribunal or the Committee recognises the need for a substantive application to be made to court, as the threshold for the permanent removal of a child is met, then the Tribunal and Committee should ensure that the other forum is appropriately notified.
- 6.41 Specifically, the Committee must notify the Convenor when it decides to apply to the court for an order that will have the effect of removing a child from their parents or family. When the Convenor is notified by the Committee that an Emergency Child Protection Order ("ECPO"), CPO or Interim CPO ("ICPO") application is being made it is recommended that the Convenor does not undertake an investigation or further action to avoid duplication, unless the Convenor has evidence or information that might be relevant to the case that should be disclosed. In instances where the Tribunal considers a case which it views passes the threshold for a court order, it should notify the Committee. The Committee can then take the necessary action.
- 6.42 This change supports and gives greater clarity to the effective sharing of information held by the Convenor that might be relevant to the child or family which could inform the court. As now, the sharing of relevant information would be subject to the necessary safeguards and further consideration will be given to the details of what information can be shared, with who and when (see paragraph 9.5).
- 6.43 The timescales within which these notifications should be made will be given further consideration through the proposal in paragraphs 9.6-9.10, to develop a system wide set of target timescales to meet based on the current capacity within the system.

**Adoption and special contact order notifications - Proposition 11**

- 6.44 The requirement to notify the Convenor of certain applications is set out in the Law, with the detail of how those notifications are to be made set out in Regulations.
- 6.45 The Law includes notifying the Convenor of some orders which the Convenor has, or will not be directly involved, so there is no clear reason why the notification is required. The specific applications are those relating to adoption and special contact orders.
- 6.46 It is suggested that these notifications are removed from the Law on the basis that notifying the Convenor of these matters is disproportionate and an unnecessary interference in private and family life.

- 6.47 It is understood that there are other notifications made to the Convenor, not set out in legislation. It is suggested that these notifications are reviewed and should form part of the discussions to be held in relation to the Information Sharing Agreements (see section 9).

### **Legal orders and thresholds incl. Police powers**

#### **Supervision order - Proposition 12b**

- 6.48 It is suggested that a Supervision Order ("SO") be introduced as an additional legal order a court can make in family proceedings. This would be along similar lines to a SO in England and Wales, whereby the local authority, through the court, supervises a child while they are still living in the family home (or placed with a relative), so as to ensure the child is well cared for. This order would provide the court with the power to make an order placing a child under the supervision of the Committee.
- 6.49 There was a SO that existed before the introduction of the Law which was not replicated in the current Children Law. Its removal is understood to be because the Law established the Tribunal giving it provision to make care requirements. CRs are temporary in nature and often provide a suitable short-term framework to provide the supervision previously provided through SOs. This shift in decision making from the court to the Tribunal was aligned to the intentions of the 2004 Policy Letter to remove cases from court, where appropriate.
- 6.50 It is understood there is approximately one case per annum in which the provision of a SO has the potential to provide timelier determinations and outcomes. Typically, these are cases where applications have been made to the court for a CPO, but the outcome is one in which the child could safely live with its parents or family members with some monitoring and support. At this time, the only option is to dismiss the application and for a subsequent application to be made to the Tribunal by way of a CR.
- 6.51 Effectively, a SO would be an additional power of the court to be considered when all other possible courses of action have been explored. This is important as the granting of a CPO is intended for use when it is likely that there is a need for a long-term placement for a child and represents a significant interference with their Article 8 Right (right to respect for private and family life).
- 6.52 The consultation responses received showed there were divergent views on the introduction of SOs and not all stakeholders agreed it was necessary to introduce such an order. The main reason given for not supporting this proposal was that the CR would be a better disposal route through the Tribunal in these cases. However, the purpose of a CR and the SO are subtly different in that, a CR (which temporarily grants parental responsibility to the Committee) is a much more significant intervention in family life than a SO (which does not grant parental

responsibility for the child to the Committee but enables the Committee to supervise the child as deemed necessary by the court).

- 6.53 On balance, it is suggested that there is merit in including this additional order within the legislation on the basis that it could result in more timely decisions for children who would have already been through the court process for the CPO. However, it is recognised that in some instances the case would be better managed through referral to the Tribunal, which will be an option also available to the court.

**Child Assessment Order - Proposition 12c**

- 6.54 It is suggested that a Child Assessment Order be introduced as an additional legal order, along similar lines to a Child Assessment Order in England, Wales and Scotland. This order allows a child to be seen by the relevant professionals and, where necessary, if there are concerns for a child, allows for an assessment of a child's health and development to be undertaken. This legal order will allow the Committee to conduct the necessary assessments to decide if further intervention is required to safeguard a child.
- 6.55 Currently, there is opportunity for delay and risk to children where a lack of cooperation from those with parental responsibility prevents the assessment of a child by suitable professionals to determine whether compulsory intervention is justified. For this reason, the introduction of this order has the potential to reduce delay within the system where there is a reasonable cause for concern about the child's welfare.
- 6.56 For example, a situation arises where there is professional concern that the child is not meeting its developmental milestones but the parents refuse to provide consent to the child being assessed by a medical professional, or for the child to meet with a social worker for the purpose of assessment of the child's need. This assessment might include a need for urgent intervention or safeguarding, or identify that there is no need for any further intervention much sooner and so minimise the possible disruption caused to the child, which is also important to consider.
- 6.57 It is proposed that the order will be a public law order which only the Committee would be authorised to apply to the court for in these cases. As an additional safeguard, if the application for the order is not complied with, by those with parental responsibility, the court may treat the application as one for an Emergency Child Protection Order.
- 6.58 An application for this order is still a significant interference in family life so it should be used proportionately. It would be expected that all attempts are made to work with the family before an application is made by the Committee. Those

with parental responsibility will be kept informed of their options at all stages of the proceedings and the findings of any assessments, as is the case now.

- 6.59 There was majority support for this proposal from those consulted.
- 6.60 It is understood that the use of this order would apply to very few cases but that it would provide the Committee with a useful legal option to ensure the welfare of the child is assessed so appropriate action can then be taken if it is proven to be needed.

**Community Parenting Orders - Proposition 12a, d and e**

- 6.61 A CPO is the appropriate order where there is no foreseeable prospect of a child being safely cared for by their family and so alternative provision is needed. Those with parental responsibility for the child (usually the child's mother and father) retain this, but the Committee is also granted parental responsibility and is responsible for planning the child's care in consultation with those with parental responsibility.
- 6.62 The threshold for the making of a CPO should be distinct to those of a CR, as noted in paragraph 6.3. With the CPO being recognised as a longer-term and more permanent order than a CR, the threshold to be met should be different and reflect its purpose.
- 6.63 Currently, it is not possible to apply for a CPO when extended family members remain under consideration as potential permanent carers, as evidence needs to be gathered first to meet the threshold as currently drafted. This can contribute to delay and cases remaining in the Tribunal when they might properly be before the court.
- 6.64 The proposals under consideration are that the legal threshold for the CPO is amended to ensure that it:
- Is distinct and separate from the criteria for referral to the Convenor or to make a CR, through removing the requirement for at least one of the conditions in the current section 35 to be made out, in line with Professor Marshall's recommendation 15;
  - Is comparable to the threshold in England and Wales but adapted as appropriate for Guernsey and Alderney, in line with the original intentions of the 2004 reforms; and
  - Removes the requirement for family assessments (reasonable prospect limb) having to be completed prior to an application being made to the Court. The requirement to complete these assessments prior to a final order being made will remain.

6.65 Those who do not support these proposals suggest that the test for any form of compulsory intervention resulting in removal of a child, regardless of whether it is temporary or permanent, should be the same as it involves such a significant interference in family life. Concern was also expressed that by changing the threshold for a CPO it may result in more cases being heard in court. The counter argument to these concerns are that wider safeguards exist, in that all agencies are bound by the consideration of the child welfare principles, i.e. no compulsory intervention and the ECHR in whatever decisions they make. All interventions should be proportionate and evidenced as being necessary. Removal of a child should be a last resort where nothing else will do. Amending the wording in the Law to make the thresholds distinct would not impact the wider parameters within which any legal decisions should be made.

6.66 In response to the concern of more cases being heard in court, it is suggested that this is a possibility but that this is because those cases should be heard in court and not by the Tribunal. This point was supported by Professor Marshall who advised that permanency cases should go direct to court and not pass through the Tribunal.

#### **Remove the reasonable prospect limb wording**

6.67 It is suggested that the CPO threshold is changed to remove the requirement to satisfy the reasonable prospect of the parents or family members being able to care for the child. This would allow for a CPO application to be made at an earlier stage and not waiting until after the family assessments have been completed. The requirement to fully assess all viable family members would remain one to be satisfied before the CPO order was made by the court, in line with the existing principle in the Law that a child's welfare is normally best served by being brought up within its own family.

6.68 Some concerns were raised about this change with some being of the view that this proposal seeks to address an operational issue with a structural change and argue that more could be done to instigate the assessment process sooner and manage their completion more effectively, for example. It would be expected that any operational improvements would take place regardless of any changes made to the Law. Any operational changes would not address the most pressing concern which is the stage at which a CPO application can be made to the court, which is governed by the threshold.

#### **Threshold changes summary**

6.69 In response to the issues raised it is recommended that the CPO threshold wording is amended, as follows:

- a. to remove the reference to section 35, which is also used for the making of CR;

b. to largely mirror the threshold test for permanent removal of children in other jurisdictions, where there are reasonable grounds to believe that:

- the child concerned is suffering, or is likely to suffer, significant harm; and
- that the harm, or likelihood of harm, is caused by:
  - the care given or likely to be given if not removed, by the parent or person with parental responsibility as would be reasonably expected of a parent; or
  - the child is beyond parental control.

and,

c. Remove the reasonable prospect limb wording; and

d. Retain the part of the threshold which enables a CPO to be made with consent (retaining the current provision).

6.70 Alongside the CPO threshold changes, the wider changes being put in place to make the transfer of cases between the Tribunal and court smoother and quicker should enable any case that is not in the most appropriate forum to be more easily transferred once that becomes apparent (see paragraphs 6.20-6.22).

6.71 In general, the changes proposed to the thresholds should ensure greater clarity and understanding of the different forum's roles and support cases being dealt with in the right forum at the right time. Combined with increased understanding and awareness of the purpose of the two forums, earlier referral to the Convenor and earlier intervention in general, should reduce overall the number of cases reaching the stage where permanent removal of children is a consideration.

#### **Interim Community Parenting Order - Proposition 12f**

6.72 Currently there is provision in the Law for the court to make an ICPO which is the same criteria as for the making of a CPO. However, there is concern that this does not reflect the position that an interim order is likely to be granted, at an earlier stage, as a protective measure pending resolution of the substantive issues at a CPO final hearing. It is recommended by some that the criteria test should be different which still takes account of the (amended) CPO test but properly recognises its interim nature.

6.73 This was recognised in the case of "re the S children"<sup>44</sup> where the Juvenile Court was satisfied that the test for an ICPO should be as follows:

---

<sup>44</sup> [Judgement 13/2010 "re the S children"](#)

“is whether the department can establish that there are reasonable grounds for believing the circumstances with respect to the child are as made out as in section 49 of the Law<sup>45</sup>.”

- 6.74 The proposal is that this is an opportunity to set out a more detailed version of the interim test.
- 6.75 There are some concerns that the threshold should not be different as suggested. Some are of the view that the CPO conditions should be met, not just ‘reasonable grounds to believe they have been met’, which is a lower threshold.
- 6.76 This brings into question what the purpose of this order is given all of the other changes being made. It is understood the order is meant to provide protection to children who are understood to be at risk of harm but do not meet the ECPO threshold such as in periods of crisis. An ICPO should only be used in cases where the child needs to be removed as a short-term protective measure, as there is a risk of harm and there is a strong likelihood that a CPO is needed but the case is not yet ready for a final hearing.
- 6.77 This order recognises that it is possible that following a period of crisis or intervention parent/s may be able to parent adequately without further state intervention and so do not proceed to a CPO. It would be expected in these circumstances that the case could be transferred to the Tribunal if further support was needed.

#### **Parental Responsibilities Order - Proposition 12g**

- 6.78 Currently a Parental Responsibility Order<sup>46</sup> is discharged automatically on the making of a CPO for that child. It was never the intention that the person who holds parental responsibility for that child, and who may have discharged that responsibility actively and over a long period of time, would automatically lose that responsibility if a CPO were made without any consideration given to this by the court. The proposed amendment would remove the automatic element but the decision to discharge a Parental Responsibility Order would remain one to be made by a court.
- 6.79 This change provides greater protection for those who hold a Parental Responsibility Order.

---

<sup>45</sup>Section 49 being the threshold test for a CPO

<sup>46</sup> Is a private law order made under s.17 of the Children Law granting “parental responsibility” to a person, usually a parent or carer.

**Emergency protection – automatic discharge by sitting of the Tribunal - Proposition 12h**

- 6.80 The Law introduced a number of powers designed to safeguard children in an emergency including the ECPO. This order is typically used for urgent situations where there is a high level of risk. It enables the Committee, with police assistance if necessary, to remove a child from a situation of serious harm (or potential serious harm) or to prevent their removal from a safe place. The order can only be applied for by the Committee and is dealt with by the court.
- 6.81 Under the Law the ECPO can remain in force for a maximum period of eight days unless it is terminated within the eight days because:
- a) 24 hours from the making of the order has passed and the Committee has not taken any steps to implement the order;
  - b) The Children’s Convenor with the consent of the Committee, releases the child from the order;
  - c) A relevant court discharges the order; or
  - d) The Tribunal first sits to consider the case of the child.
- 6.82 It is proposed that the provision for the automatic termination of an ECPO when the Tribunal sits to consider the case (d) is removed from the Law, as it has the potential to cause difficulties in that when the Tribunal sits the ECPO is effectively discharged and the protective arrangements for the child cease. This could potentially leave a child at risk without any legal protection in place. In practice this could mean that a parent could effectively leave the Tribunal and remove the child from any placement as there are no legal safeguards in place to prevent this happening.
- 6.83 In Scotland, the roles and responsibilities of the Children’s Hearing in these circumstances are very different and the act of the Children’s Hearing sitting does not in itself terminate the ECPO equivalent.
- 6.84 The majority of respondents were supportive of the proposal but some concerns were raised that this change might further confuse the distinct roles of the court and the Tribunal. It would be expected that the concerns could be alleviated through the improved clarity provided by the soon to be introduced operational guidance.

**Emergency Threshold changes: significant harm - Proposition 13**

- 6.85 The current wording in the Law sets out ‘that a child is suffering’ or that the child is ‘at imminent risk of suffering’, both of which require proof of the suffering or immediate risk of suffering, before an ECPO can be made. This results in a higher threshold for an ECPO in Guernsey and Alderney than in neighbouring jurisdictions and results in an apparent gap in the protection for children. This



gap can risk children being left in potentially unsafe care arrangements for too long before any formal intervention can be made.

- 6.86 The current protection available to these children has been through the making of a referral to the Convenor who determines whether to refer to the Tribunal who might make a CR. However, it was never the intention for the system to operate in this way i.e. the process for a CR is not designed to provide urgent protection in these cases.
- 6.87 It is possible that this was not a deliberate intention of the 2004 reforms and it would seem logical to amend the wording to include comparable terms used in other jurisdictions.
- 6.88 The proposal is to replace “serious harm” with “significant harm” in the threshold provisions for an ECPO, Exclusion Order and Police Powers (to protect a child). Equivalent provisions in the law in England, Wales and Jersey use the terminology “significant harm”.
- 6.89 The term ‘significant harm’ is used in other areas of the Law. Unlike other jurisdictions, the Law does not define either term. The absence of a definition in the Law and the different terms used to that in other jurisdictions could be a cause of confusion over what the threshold requires to be met. Also, the court and Tribunal do not have the ability to use the extensive case law and accompanying guidance from neighbouring jurisdictions to guide timely decision making.
- 6.90 The Act in England and Wales defines harm as the ill treatment or the impairment of health or development. It also introduced the concept of “significant harm” as the threshold that justifies compulsory intervention in family life in the best interests of children.
- 6.91 The Act recognises there is no absolute criteria for determining “significant” but outlines that harm can be considered such by “comparing a child’s health and development with what might be reasonably expected of a similar child”. This definition is similarly adopted by Jersey.
- 6.92 Scottish legislation has no legal definition of significant harm or the distinction between harm and significant harm. Similar to England and Jersey, the Scottish National guidance indicates that the extent to which harm is significant relates to the severity or anticipated severity of impact upon a child’s health and development. It is considered a matter of professional judgement, informed by assessments, frameworks and tools, as to whether the degree of harm is considered significant.

### **Reasonable grounds**

- 6.93 In addition to the amendment to the wording of the threshold to **significant harm**, it is proposed that additional amendments are made so that the threshold is comparable to that for the equivalent orders in England, Scotland and Wales.
- 6.94 In these jurisdictions the court needs to be satisfied there are **reasonable grounds to believe the child is likely to suffer**, or is suffering. Whereas the Law wording here sets out 'that a child is suffering' or that the child is 'at imminent risk of suffering', both of which require proof of the suffering or immediate risk of suffering, before an ECPO can be made. This results in a higher threshold for an ECPO in Guernsey and Alderney. It is possible that this was not a deliberate intention of the 2004 reforms and it would seem logical to amend the wording to include both terms that are used in other jurisdictions, as above.
- 6.95 The need to define these and other key terms in the Law remains an important change to increase clarity (See suggested definitions in Appendix F).

### **Imminent**

- 6.96 Removal of the word 'imminent' from the threshold test aligns more closely with other jurisdictions which consider the likelihood of significant harm being sufficient regardless of whether that likelihood is immediate or at some point in the future. This should provide greater protection for children in these circumstances.

### **Amend the Police Powers (to protect a child) and Recovery Order wording**

- 6.97 The Law also sets out the powers available to the Police to remove a child in cases of an emergency.
- 6.98 Through the consultation a further proposal was put forwards relating to the threshold for Police Powers to protect a child to bring the threshold in line with that of England, Wales and Scotland. The proposal suggests that additional wording of 'by force, if necessary' provides the police with greater power to use in instances where a child is believed to be at risk but where access to the child is being unreasonably refused.
- 6.99 The change, supported by the majority of those subsequently consulted, will ensure alignment to the other threshold changes proposed and provide greater clarity and protection for children by the Police in ECPO cases. The term 'by force, if necessary' is also applicable to cases where a child in the care of the Committee may need to be recovered, through the making of a Recovery Order. It is recommended that this wording is captured appropriately to give this effect.

### **Increase police powers of protection to 72 hours**

- 6.100 The Law sets out a test for the exercising of police powers of protection that is similar in nature to that in legislation in England and Wales, however the

timeframe is different. In England and Wales the time limit is 72 hours and it is 24 hours in Scotland.

6.101 Guernsey Police report that the fact that police powers are limited to 24 hours rather than 72 hours is a further significant barrier to them protecting children in emergency situations.

6.102 In summary, the proposals for changes to the thresholds are:

- a) Replace the term “serious harm” with “significant harm” in the threshold provisions for an ECPO, Exclusion Order and Police Powers (to protect a child) and add definitions in the Law.
- b) Remove the word ‘imminent’ in the threshold provisions for an ECPO, Exclusion Order and Police Powers (to protect a child).
- c) Remove the word ‘imminently’ and add the words ‘by force if necessary’ to the Police Powers (to protect (s.64) or recover a child (s.92));
- d) Increase the 24 hour limit for police protection to 72 hours once an ECPO has been made.

**Care Requirements – Distinct thresholds - Proposition 12a and 14b**

6.103 Currently, the Law sets out a list of conditions that form part of the threshold for both the temporary intervention of the Tribunal through a CR and the more permanent intervention of the court through the making of a CPO.

6.104 The use of the same conditions for two separate purposes has created an area of confusion. It is suggested that the Law is amended so that the criteria for the legal thresholds for CPOs and for the CR are separate and distinct, in line with Professor Marshall’s recommendations.

6.105 The 2004 Policy Letter sets out that “A care requirement will last for a maximum of a year, although it may be renewed. In general, it is intended for those cases where there is a reasonable prospect of positive change, which will enable the child either to continue living within the family or to be reunited within a relatively short period. Conditions attached to a care requirement may involve a substantial interference with parental rights and responsibilities, but these are only temporary, for as long as the care requirement and/or any conditions are in force.”

6.106 It is recommended that the term “compulsory intervention” is replaced with “care requirement” in the new threshold criteria for the Convenor and Tribunal to make this explicit (in line with the proposal in paragraph 6.3). The changes should improve clarity of the differences between a CR and a CPO, in line with the original intentions for a CR.

**Care Requirements - Remove no persons willing and able to exercise parental responsibility – Proposition 14c**

- 6.107 To address a cause of confusion over the existing threshold, the recommendation by Professor Marshall (2015), supported by subsequent reviews, is for the requirement to be satisfied that “there is no person able or willing to exercise parental responsibility...” to be removed.
- 6.108 Professor Marshall stated that this ‘has the air of permanence’ and sets ‘a high bar’ for temporary removal which is often difficult to satisfy. It is suggested that this similarity with the CPO threshold causes confusion for parents and in some cases suspicion that the Tribunal process will end in permanent removal of children. This latter point undermines the intentions and ethos of the Tribunal, to work with families and the children with the aim that they can remain with the family, and is understood to be a cause of delay, as parents do not agree to the conditions for referral on this basis.
- 6.109 The Committee supports the removal of this requirement from the Law.

**Care Requirements - Rename the ‘conditions’ for a care requirement as ‘grounds’ – Proposition 14d**

- 6.110 The Children Law consultation proposed the ‘conditions’ under s.35(2) of the Law be renamed as ‘grounds’ (term to be used from this point onwards) to better reflect the terminology in the comparable Scottish legislation and to remove any confusion with the term used in other parts of the Law to mean conditions attached to the CR. This proposal was supported by all those consulted.

**Care Requirements - Update the grounds – Proposition 14e**

- 6.111 The Children Law consultation and the Outcomes Report both identified the need for these grounds to be updated to more appropriately reflect the concerns which might lead to a referral for a child and to include additional grounds which could impact a child’s welfare such as a child being exposed to domestic abuse. There were recent revisions to the grounds in the 2011 Act which provided a useful template to inform changes to our grounds.
- 6.112 The proposed updates to the ‘grounds’ were determined in consultation with the Convenor, advice from St. James Chambers and the Committee. They are set out in Appendix G. The exact wording of the grounds may change, subject to the legislative drafters’ advice, but the changes proposed will:
- Amend the existing wording to align more closely to the Scottish legislation which was more recently reviewed and which better reflects the best practice (informed by case law) for referrals to be made to the Convenor;
  - Modernise the language and make it more explicit;
  - Make the wording of the grounds more trauma informed;

- Include new grounds which provide greater protection to children in instances where there are potential risks to their welfare, such as where they may come into contact with a person who has committed a 'specified offence' or domestic abuse; and
- Define and provide greater clarity on the terms used within the grounds to reduce ambiguity.

### **Specified offences**

6.113 In Scotland, the Law sets out 'specified offences'. These are certain criminal offences which have been determined to indicate that the perpetrator might pose a danger to children, for example murder, assault, indecent exposure and certain other sexual offences. They include offences against both children and adults.

6.114 The inclusion of a list of 'specified offences' is proposed in the revised grounds. The list would be a local equivalent to those in Scotland and other jurisdictions, suitably adapted for Guernsey and Alderney (see suggested list in Appendix G).

### **Close connection**

6.115 The new grounds proposed include that the child has, or is likely to have a 'close connection' with a person who has committed a 'specified offence' or has carried out domestic abuse. The intention is that this should provide greater protection for children in such circumstances. As with 'specified offences', 'close connection' will need to be defined in the Law. The ground is drawn from the updated Scottish legislation and so it is proposed that the definition is the same.

A close connection is defined as:

"a child is to be taken to have a close connection with a person if—

- a) the child is a member of the same household as the person, or
- b) the child is not a member of the same household as the person but the child has significant contact with the person."<sup>47</sup>

### **Interim Care Requirement - Remove the 28 day review requirement and set reviews at a minimum of six months – Proposition 14f**

6.116 There is strong support for the removal of the obligation to refer cases back to the Tribunal every 28 days for a renewal of a CR. The Outcomes Report suggests that a more appropriate timeframe for review would be a minimum of six months after the order was made. This would remove a cause of delay and enable the duration of the order to be tailored to the needs of the child. This

---

<sup>47</sup> [Children's Hearings \(Scotland\) Act 2011 \(legislation.gov.uk\)](#)- Section 67(3)

change would not restrict the Tribunal from reviewing a case more frequently than six months should that be required.

6.117 While some stakeholders suggested perhaps three months instead of six was timely, this timeframe would reduce the flexibility the Tribunal has in setting appropriate timetables for the individual case and therefore it is not recommended.

6.118 The above changes alongside the extension of the renewal of CR to a minimum of six months should enable the Tribunal to have greater flexibility in applying the order to individual cases.

**Involvement of Family Proceedings Advisers pre-proceedings - Proposition 15**

6.119 Currently, a Family Proceedings Advisor (“FPA”) (currently named Safeguarders in the Law) can only be appointed once proceedings have commenced. The suggestion is that it would be beneficial to involve FPA’s before proceedings commence in some instances to enable:

- FPA’s to be sighted in advance of any proceedings commencing and provide more timely support to the child; and
- FPA’s to offer voluntary ADR such as mediation.

6.120 For an FPA to be involved with a family pre-proceedings in public law matters it would require agreement by all those involved that the FPA could work with the family and so access the relevant information. This change would affect only certain cases identified by the Committee, where the Committee is considering issuing proceedings and where there is merit in an FPA being involved to provide independent advice and recommendations prior to the issue of proceedings. It is envisaged that the same FPA would then be formally appointed in proceedings should matters proceed this way. This approach could reduce delays in cases reaching a conclusion as the FPA would benefit from having knowledge of the family and the relevant issues. It also enables the FPA to make their recommendations at a much earlier stage which may result in cases being averted, as well as assisting cases to conclude sooner.

6.121 In terms of ADR including mediation, this would be voluntary as it is widely recognised that mediation is only effective if both parties are willing to engage with the process. This could result in cases taking less time to conclude, either in court or the Tribunal, where disputes between those with parental responsibility is a factor. These types of disputes are a known source of delays, particularly in private law cases.

6.122 The need to enable greater access to ADR including mediation across the system has been recognised by several different reviews. However, there are obvious

resourcing impacts which need to be further considered. It is suggested that consideration to improving access to ADR within legal justice matters forms part of the proposed Legal Aid Review.

- 6.123 It is suggested that the Law is amended to add a further function of the Safeguarder Service (to be renamed Family Proceedings Advisory Service) to provide information, advice and other support when family proceedings have commenced, are proposed or in some cases when they have concluded.

**Information sharing- Proposition 17**

- 6.124 The sharing of information efficiently and clearly is a fundamental aspect of an effective child protection system. Information sharing is also vital to safeguard and promote the welfare of children to ensure they receive appropriate support to achieve positive outcomes whilst having due regard to individuals' rights to respect for their private life.
- 6.125 The Law created a duty "to share information and work together" and was intended to:
- a) Place a duty on those working with children and families where there is a child in need or at risk to take action (as provided for by the Children Law), including the sharing of information; and
  - b) Provide protection to those sharing information, subject to the information being shared in good faith and in accordance with relevant guidance.
- 6.126 The wording of the section has created confusion amongst professionals in determining who may be under a duty, in particular the meaning of the term "whilst they are working with a child", and the extent of any duty and its inter-relationship with the Data Protection (Bailiwick of Guernsey) Law, 2017.
- 6.127 It is widely recognised that children witnessing domestic abuse are exposed to harm and risk and may be victims in their own right. Currently there is no specific provision in the Law that enables statutory agencies (predominantly the police) to collect and share information relating to children who witness domestic abuse. This statutory provision exists in England (Section 12 of the Children Act 2004)<sup>48</sup>.
- 6.128 The introduction of a provision within the Law, to place a duty on statutory agencies to collect and share information relating to children who witness domestic abuse to greater protect their well-being, provides a legal basis for this specific information to be captured. It should:

---

<sup>48</sup> [Children Act 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2004/31/section/12)

- Improve the support provided to children in these instances to protect their welfare and well-being; and
- Support the implementation of Operation Encompass<sup>49</sup> and the delivery of the Domestic Abuse Strategy.

6.129 The inclusion of such a provision would be for the welfare of the children generally. It would be a demonstrable change that enables agencies to share information with this aim in mind and support the child receiving the necessary interventions sooner, which aligns with the intentions of the original reforms.

6.130 It is recommended that the wording of section 27 be amended to clearly set out the parameters for information sharing under the Law including the capturing and sharing of information between agencies that relate to improving the welfare of the child. This would be with due regard to the Data Protection (Bailiwick of Guernsey) Law, 2017.

## **7. SUPPLEMENTARY AMENDMENTS TO THE LAW**

7.1 To bring the Law up to date with current practice and address some issues in the drafting a few minor amendments to the Law are proposed.

7.2 These supplementary and consequential amendments were fully supported by those consulted and should provide greater flexibility so that the Convenor and the Tribunal can respond in a timely way to changes needed for the child's welfare.

### **Ordinance changes - Proposition 20**

7.3 In addition to the above, there are a number of suggested legislative amendments required to the Children Ordinance including:

- Ensure the relevant sections are referred to in the Law;
- Enable the Children's Convenor to suspend part of the conditions of a CR;
- Include a power for the Tribunal, to adjourn a CR hearing and make an interim variation of a CR;
- Introduce a power for the Convenor to transfer a case to Her Majesty's Procureur;
- Amend the terms and conditions of the appointment of the President of the Tribunal;

---

<sup>49</sup> Operation Encompass is a police and education early information safeguarding partnership enabling preschools, nurseries and or schools to offer immediate support to children experiencing domestic abuse. To find out more about Operation Encompass or look at further online training, <https://www.operationencompass.org/>



- f. Include an additional power for the Convenor to withhold information to protect any person from harm;
- g. Recognise a wider range of family members as a party to proceedings, irrespective of their existing parental rights and responsibilities;
- h. Grant discretion to the Tribunal to recognise wider persons who have had significant involvement in the child's upbringing as parties;
- i. Enable the Convenor to make the decisions in relation to parties who can attend at the Convenor's Meeting, subject to a suitable right of appeal being established; and
- j. Removal of upper and lower age limits for Tribunal member appointments.

7.4 Where the above proposals are not addressing matters of drafting or aligning to best practice for Tribunals, further information on the rationale for the recommendations are set out below.

**Convenor's power to suspend part of a condition of a care requirement – Proposition 20b**

7.5 The Children Ordinance makes provision for the Convenor to suspend any condition of a CR. There is, however, no provision to suspend part of the condition.

7.6 In practice circumstances have arisen where it is necessary to suspend part of the condition. Allowing this change would provide greater flexibility to meet the individual circumstances of each case.

**Interim care requirement variation – Proposition 20c**

7.7 A further proposed change is recommended to give the Tribunal the power to make an interim variation to a CR, enabling the Tribunal to make minor changes to an order in response to further information or evidence. This could include a power to adjourn the hearing when reviewing the CR and a power to make an interim variation of the CR, in line with the timeframe agreed for that case.

**Power to transfer a case to Her Majesty's Procureur - Proposition 20d**

7.8 The introduction of this provision would enable cases to be moved to HMP at an appropriate time should the Convenor establish evidence that suggests there is a need for criminal prosecution.

**Withholding information to protect a person against the risk of serious harm – Proposition 20g**

7.9 The Children Ordinance enables the Convenor to withhold information from a child or other person where the Convenor considers that it is for the welfare of the child or it is necessary to protect a person against the risk of serious harm. As presently drafted, information can be withheld from a person where it is necessary to protect **that** person against the risk of serious harm.

7.10 The current wording omits the possibility that information should be withheld from a person in order to protect **another** person from serious harm. For example, in cases of domestic abuse where disclosure of information to the abuser that a person is accessing a domestic violence service may result in risk of serious harm to the victim.

7.11 It is recommended that the wording be amended to protect **any person** from harm.

**Parties to Tribunal proceedings – Propositions 20h-i**

7.12 The Children Ordinance sets out the parties that can attend the Tribunal proceedings and further persons who may attend who are not party to the proceedings. The parties to the proceedings are defined as:

1. The child to whom the matter relates;
2. Any individual who has parental responsibility of the child;
3. Any person who appears to ordinarily care for the child; and
4. Where a CPO is in force, the Committee.

7.13 Attendance of family members who are not party to the proceedings is allowed on the basis of:

- “any person the Tribunal believes may be able to assist the Tribunal in its consideration and determination of the child’s case” to attend, and
- “any person not falling within subparagraphs (a) to (f) whose attendance the Tribunal believes to be desirable for any reason” to attend.

7.14 In Scotland, the law as to who can attend as parties to proceedings was updated in 2011 to widen the parameters to enable a wider group of persons to attend, such as a father without parental responsibility or a parent’s partner. It was defined so that parties were those who ‘have, or recently have had, significant involvement in the upbringing of the child’.

7.15 Who is entitled and has the right to attend a Tribunal hearing is subject to Human Rights considerations, specifically Article 5 of the UNCRC and Article 8 of the ECHR.

7.16 As currently drafted, the Law gives the Tribunal sufficient discretion to permit the attendance of any persons at the hearing, which might include siblings, grandparents, or other relatives of the child. However, there is much less discretion in relation to recognising relatives or wider family members as parties to the proceedings. Duties and obligations to parties to proceedings are set out in the Law.

- 7.17 It is suggested that the Convenor should be granted permission to determine the parties' eligibility to attend, as opposed to the court. This would be the most effective and efficient approach.
- 7.18 A suitable right of appeal against any decisions by the Convenor, in relation to parties to proceedings, would be made available through the court.
- 7.19 In consultation with the Convenor, it is suggested that the definition of which parties can attend the Tribunal is revised to:
1. Recognise all parents as a party to proceedings (other than those who have had parental rights and responsibilities removed); and
  2. Grant discretion to the Convenor to recognise as a party a wider range of persons who have had significant involvement in the child's upbringing.
- 7.20 It will be important to ensure that suitable safeguards are in place to retain the position of parties attending being those that are for the child's welfare, subject to the policy position being agreed.

**Removal of upper and lower age limit for Tribunal member appointment - Proposition 20j**

- 7.21 The suggestion is that the current wording in the Law, which precludes a person being a member of the Tribunal if they are aged under 21 years or 70 years or more is no longer appropriate or necessary. Removing these limits places a stronger focus on a persons' capability to fulfil the role, regardless of their age. It also removes a future potential challenge under the second phase of the Discrimination Ordinance.

**Name Changes: Family Proceedings Advisory Service/Safeguards - Proposition 16a and b**

- 7.22 The Safeguarder Service was renamed the FPAS in March 2016 and the officers were renamed Family Proceedings Advisers. The reason for the change was that the titles set out in the Law, "Safeguarder" and "Safeguarding Service", were sources of confusion, with many stakeholders confusing the role and service with that of children social workers and Children and Family Community Services. The new titles were intended to better reflect the role. However, the legislation still refers to the Safeguarder Service and to Safeguards.
- 7.23 Additionally, the Convenor and Tribunal processes have retained the use of the name Safeguarder and for the officers appointed in those proceedings, including in documentation, training materials and other published resources. It is considered confusing for service users that a different title is used for these officers who are undertaking the same functions whether in the court or Tribunal.

### **Name Changes: Islands Safeguarding Children Partnership - Proposition 16c**

- 7.24 The Law establishes in statute the Islands Child Protection Committee (“ICPC”). In practice, the ICPC is now known as the Islands Safeguarding Children Partnership (“ISCP”). Therefore, it is suggested that a legislative amendment to the name is made.
- 7.25 Both proposed name changes would reflect terminology that has, for practical purposes, already been affected.

### **The Children (Consequential Amendments etc) (Guernsey and Alderney) Ordinance, 2009 - Proposition 19**

- 7.26 The Loi ayant rapport à la Protection des Enfants et des Jeunes Personnes 1917 (Law relating to the Protection of Children and Young Persons) made child cruelty an offence. This legislation was amended by The Children (Consequential Amendments etc) (Guernsey and Alderney) Ordinance, 2009 to align to the Law to update the legislation with modern definitions, including the move away from custody or care and control to parental responsibility.
- 7.27 The amendment unintentionally narrowed those persons falling within the scope of the offence. As a consequence, persons who have the care of a child but do not hold necessarily parental responsibility, such as a step-parent, unmarried father or a baby-sitter, now fall outside the scope of the law. This has put Guernsey and Alderney out of step with the United Kingdom.
- 7.28 An amendment to the legislation will allow for a return to the pre-amendment position. Doing so and widening those persons within scope of the child cruelty criminal offence will increase protection and ensure alignment with UK legislation.

## **8. OTHER RELATED LEGISLATION MATTERS**

### **Drafting of Secondary Regulations**

- 8.1 The Law was implemented in 2010 and makes provision for the development of secondary legislation where further detail is required for specific sections of the Law.
- 8.2 In 2015, Professor Marshall recommended that funding and personnel should be provided to draft the secondary legislation and guidance required to fully implement the Law.
- 8.3 Since the introduction of the Law, and due to competing priorities, the associated secondary legislation was developed but never finalised. These two sections are:
- **Section 25: The Duty of the States to Provide Accommodation for Children**  
Section 25 of the Law sets out that it is the duty of the Committee to provide,

or arrange for the provision of, accommodation for any child in accordance with regulations made under this section; and

- **Section 26: The Duty to Provide Services to Children and Others in the Care of the Committee**

Section 26 of the Law sets out that it is the duty of the States to provide services for:

- Any child who is in the care of the Committee, and
- Any person who has been in the care of the Committee (“Care Leavers”).

- 8.4 These two sections of the Law require Regulations to provide the necessary detail regarding the legal obligations for the States. In the absence of the Regulations service areas within Health & Social Care have followed the relevant equivalent laws and best practice guidance in neighbouring jurisdictions suitably adapted to the local context. However, this does not provide children and families with the same rights and security that Regulations would provide.
- 8.5 In line with the prioritised development of the Review Children Law and Outcomes action these two outstanding drafting matters have been progressed. Additional policy resource has been provided and it is expected that these two sets of Regulations will be considered by the Committee before the end of the year.

#### **Additional outstanding secondary legislation for consideration under phase 2**

##### **Private fostering**

- 8.6 The other outstanding legislative workstream which relates to the Law concerns Private Fostering arrangements.
- 8.7 Private fostering relates to a care arrangement where a child is cared for and provided with accommodation by a person who is not a family member or legal guardian for more than 28 days. It does not relate to children who are in the care of the States of Guernsey and provided with foster care.
- 8.8 Privately fostered children are a particularly vulnerable group and private fostering arrangements are currently regulated by the Child Protection (Guernsey) Law 1972 to ensure that such children are safe and properly cared for. Guernsey has a number of private fostering arrangements as a consequence of children from other islands living in Guernsey to access education placements.
- 8.9 Section 107 of the Children (Guernsey and Alderney) Law, 2008 enables the States by Ordinance to provide for the legislation to be updated in this area. This is in order to bring the legislation into line with modern regulatory provisions and child protection concepts. To date, no Ordinance has been made pursuant to

section 107 to modernise and regulate private fostering arrangements further. This is creating operational challenges for the service area responsible who are keen for the new Ordinance to be drafted and brought into force as soon as practicable.

- 8.10 This matter remains outstanding and will be scoped further in phase 2.

**Child minders and day care providers – registration and inspection**

- 8.11 The Children (Child Minders and Day Care Providers) (Guernsey and Alderney) Ordinance, 2015<sup>50</sup> sets out the provisions under the Law relating to the standards for registration and inspection of childcare settings. Further work is required to revisit the standards and resources needed to introduce such a regime as it has not been possible to enact it as drafted.
- 8.12 The Committee *for* Education, Sport & Culture recognised in its consultation response to the Law proposals that consideration of this need would provide a further opportunity for more integrated service provision. This matter has been included for consideration as part of future phases of work relating to the Law.

**9. PROPOSALS FOR CHANGE – OPERATIONAL**

- 9.1 Further discussions with the respective agencies and their interfaces have identified various improvements that can be taken forwards now within existing resources. For example pre-hearing meetings can be established between the main agencies involved to consider the proposed intentions for the case and to set out the main steps to resolve the case in a timely way.
- 9.2 It is suggested that where changes have been identified that improve outcomes for children and that can be made within existing resources, these are being progressed at the earliest opportunity.
- 9.3 It will be important for any changes to be implemented in a coordinated way to minimise as far as is reasonable any disruptions to service provision. It will also be important to ensure that changes are communicated clearly across the system and that the necessary guidance and supporting information is prepared in advance and easily accessible. Any training requirements will need to be planned for and delivered in advance of any substantial operational changes and any additional costs to be incurred understood to a sufficient extent to inform decisions.

---

<sup>50</sup> [The Children \(Child Minders and Day Care Providers\) \(Guernsey and Alderney\) Ordinance, 2015](#)

- 9.4 The main operational changes needed to support the implementation of the Law are set out below and in Appendix H.

**Information Sharing Protocols – Proposition 18**

- 9.5 To support the revision of the wording in the Law, it is suggested that Information Sharing Protocols should be established between the relevant agencies so there is clear guidance around roles and responsibilities when sharing information.

**Time limits and performance measures**

- 9.6 Various proposals were made for specific time limits to be included in the Law for various steps or stages of the process, as a means to address areas of delay. This included the suggestion that the court consider introducing the 26 week target, in line with the Public Law Outline for court cases approach used in England and Wales<sup>51</sup>.

- 9.7 After further consideration by stakeholders, it is suggested that while setting time limits in Law was possible, it may have unintended consequences, such as:

- It could have a restrictive effect and reduce flexibility to respond to the individuality of cases;
- It may not be for the welfare of the child;
- It could cause more delays through forcing errors; and
- It risks the timescales not being achieved given the known resource constraints.

- 9.8 The use of a 26 week indicator was strongly supported.

- 9.9 For time limits at the system level, an alternative suggestion was put forward, in that all agencies should agree a set of performance metrics including average time limits for specific parts of the system. These would then be used to gauge the performance of the changes and identify any areas where there are significant issues in meeting the desired timeframes, so that solutions can be sought. This would also allow for the other amendments and changes to the system to be introduced which seek to reduce delays. The Key Performance Indicators (“KPIs”) would offer a route to monitor the impact of the wider changes once they are embedded. Should those changes not result in the desired reduction in case timeframes then further consideration to statutory timeframes could be introduced by amendment to the legislation.

---

<sup>51</sup> [PRACTICE DIRECTION 12A - CARE, SUPERVISION AND OTHER PART 4 PROCEEDINGS: GUIDE TO CASE MANAGEMENT \(justice.gov.uk\)](https://www.justice.gov.uk/practice-directions/12a-care-supervision-and-other-part-4-proceedings-guide-to-case-management)

- 9.10 It is suggested that suitable KPIs and baseline measures be determined and used to track progress.

#### **Data collection and monitoring performance**

- 9.11 Data collection across the different organisations in the system has improved but it is challenging to examine data in a holistic way, given the different paths that individual cases take through the system. The Justice Review report similarly identified the shortage of robust data in the justice system.
- 9.12 As referenced earlier, the development of CYPP and associated performance measures shows that even where work is carried out on a cross-Committee and multi-agency basis, performance measures can be successfully developed to review outcomes and guide decision-making.
- 9.13 Within Children and Family Community Services a recently established post exists which is responsible for leading the development and effective delivery of a pre-proceedings model, and to monitor cases timescales. Developing performance information on family proceedings as a tool to drive performance improvement is a key duty of this post, and should provide more robust data moving forward for all parties to identify and understand the causes of delay.

#### **Commitment to Safeguarding operational guidance**

- 9.14 To put into effect the commitment to safeguarding it would be expected that relevant operational guidance setting out the roles and responsibilities of each agency within the system in this regard are developed. This guidance would be informed by the statutory guidance used in other jurisdictions but be on a non-statutory footing.

#### **Children's Convenor**

- 9.15 The Outcomes Report proposed that the Convenor's Meeting (as required by the Law and Ordinance) should be widened to offer an opportunity in those appropriate cases for mediation or other dispute resolution, and or discussion on other issues, for example issues of abuse or co-parenting, at the earliest practicable stage and before positions have become entrenched.
- 9.16 This matter is being taken forwards by the Convenor.

#### **The Convenor's Meeting**

- 9.17 The Convenor is giving consideration to the use of a planning meeting, held prior to the Convenor's meeting with a view to expediting cases.

#### **Tribunal**

- 9.18 It is proposed that additional safeguards are put in place in relation to the Tribunal hearings including, that:



- The child should be provided with the same level of advocacy as would be guaranteed in a court (i.e. a FPA) or independent advocacy such as that provided by the Youth Commission. This links to the proposals to involve FPAS in pre-proceedings and enhancing the advocacy support available (currently being scoped);
- The introduction of a new scheme to support adults who are required to attend Tribunal hearings, should they wish to access independent advocacy; and
- Regardless of whether the case involves removal, those with parental responsibility attending a hearing should be able to make a request for a hearing to be audio recorded.

9.19 These changes seek to strengthen the processes of the Tribunal when considering cases where removal, or setting out where a child should reside, is being considered, without undermining the informal nature of the forum.

## **10. GOVERNANCE, MONITORING AND REPORTING**

### **Children & Young People's Board**

10.1 The Committee is of the view that the cross-Committee steering group of the Board has proven a successful vehicle for moving forward at pace with a priority of government. The Committee is grateful to those Committees whose representatives are Members of the Board who have worked hard to familiarise themselves with a complex and challenging area of policy, and it values their individual and collective contributions to this work.

10.2 The Committee recognises that there are still several stages before the work to amend the Law and improve the system, as set out under phase 1, is complete. Equally, that there is further work under phases 2 and 3 to be progressed including in relation to the system's governance. The Committee therefore would welcome the continued support of the Board to oversee phase 1 to completion alongside its continued role as the Corporate Parenting Board.

10.3 In this capacity the Board would steer this phase of the work to a conclusion and report to the respective Committees whose mandates are engaged by this work, as appropriate. The Board would continue to be supported and advised by the lead agencies taking forward the changes agreed by the States of Deliberation.

### **Implementation plan**

10.4 An indicative implementation plan ("Plan") is set out in Appendix I and provides a basis on which the Board can monitor progress. The Plan includes and recognises the different agencies, resources and actions to be completed in phase 1. It is understood that this Plan can be resourced from within existing resources including pooling resources within the system, where required.

- 10.5 Progress will be reported to the Board on a quarterly basis and updates will be provided to the relevant Committees.
- 10.6 The development of suitable KPIs for the system will support the tracking of the impact of the changes agreed (see section 9). It would be expected that the impact of the changes will be reflected in these measures once the legislation has been amended and the changes embedded.
- 10.7 The estimated timeframe for the amended legislation to be commenced would be early 2024.

#### **External monitoring – Proposition 24**

- 10.8 The Outcomes Report also recommended that a regular and independent review of the system should be put in place. It is suggested that a regular time period of review is set and that funding is secured to enable this to happen. It is estimated that such a review would cost in the range of £10,000 to £15,000 per review. A review every three to five years would be sufficient to provide external assurance and challenge to the system. This is particularly important as regular reviews will inform the future phases of work that will consider the system's governance and how it is best scrutinised, as well as monitoring the impact of the changes implemented under phase 1.
- 10.9 This proposal is in line with best practice and is recommended to be supported. It is suggested that the next review takes place in 2025, or a year after the commencement of the amended legislation, whichever occurs sooner. This will enable the impact of the changes, including operational changes made since 2021, to be assessed.

### **11. FINANCIAL AND RESOURCE IMPLICATIONS**

- 11.1 The Committee is fully aware that the challenges to recruiting and retaining social workers remains a significant strategic risk to its work and is a cause of delay in some instances. It remains an ongoing issue that the Committee strives to address through various means with the support of several other Committees. The national shortage of social workers is well documented and other jurisdictions face similar challenges in managing their family care and justice systems.
- 11.2 The Committee has been cognisant of this system wide pressure when considering the proposals for change and the resourcing needs around implementation. The Committee recognises that resources have to be appropriately focused towards meeting day-to-day operational matters arising from heavy workloads, with practitioners understandably having to prioritise immediate pressures associated with providing the required support to children

and their families. This often leaves little capacity in the system to take forward and implement substantial changes or reforms. The Committee is grateful to the States for recognising the need for and making available the additional resources, through the top-10 prioritisation of this action in the GWP.

- 11.3 The recommendations above should have the collective effect of freeing up capacity in the system by removing duplication and overlap, reducing unnecessary steps and processes which are not for the child's welfare and improving clarity and understanding of the system overall.
- 11.4 In line with the above recommendations, it would be expected that the resourcing implications identified would be met by existing resources in phase 1, in that they can oversee and prepare for the implementation of the changes to the Law.
- 11.5 Some additional policy resource is required to support the coordination of the implementation of phase 1 and prepare for and scope the requirements for phase 2. This resource will be provided from Strategy and Policy function.
- 11.6 Many of the changes under phase 1 apply to more than one agency and so resourcing of these should be spread across those agencies and not sit within a single area.
- 11.7 In relation to advocacy and other areas where the resourcing implications are not yet fully scoped it would be expected that any future resource requirements will be considered under subsequent phases of the work and captured within the GWP, as appropriate.
- 11.8 Legislative drafting resource will be required to support the amendments to the Law and secondary legislation and guidance including court Practice Directions and completion of the outstanding Secondary Regulations, noted in section 8.
- 11.9 It is acknowledged that some of the recommendations to be scoped in phase 2 could have revenue implications such as the move to more preventative approaches and earlier interventions. This would better support the delivery of the system's principles of early intervention and engagement with children and families to improve the chances of addressing difficulties at a much earlier stage. Evidence demonstrates that this approach results in better outcomes for the child and their families and a reduction in the associated cost to the public purse.
- 11.10 Due consideration will be given to how these changes could instead be met through underway and funded transformation programmes or other existing budgets. The Committee proposes to monitor the impact of the changes arising from this Policy Letter, with assistance from the Board, and any specific

implications for the different agencies in the system. In doing so, it will continue to work closely with all those who operate within the system.

- 11.11 The Committee will report any significant resource challenges or suggested changes as part of phase 2.

## **12. CONCLUSION**

- 12.1 The Committee, informed by the findings of the Board and several reviews, sets out above a series of legislative amendments and operational changes that it recommends to the States to address some of the issues that have arisen from the implementation of the Law and to improve the functioning of the system.
- 12.2 The Committee recognises that further work is needed to continue to improve the system and will factor these needs into its future prioritisation of work, feeding these into the GWP discussions as required. It seeks the continued support of the Board as a steering group to support the completion of phase 1 and inform future phases of work.
- 12.3 While extensive consultation was carried out through the various reviews and to finalise the impact of the proposals to reach a conclusion, the Committee is aware that not all proposals set out will be welcomed by all stakeholders. However, the Committee is also of the view that regardless of the different positions on some of the proposed measures set out in this Policy Letter, the clear and unequivocal focus must be on improving outcomes for children. If the introduction of a new order, disposal option or legal definition adopted from elsewhere has the potential to lead to a timelier outcome in decision-making for a child, this should be progressed as a means of extending the range of tools available to support the full range of family proceeding matters.
- 12.4 The Committee recommends that the States approve the proposals set out in sections 6, 7 and 9.

## **13. COMPLIANCE WITH RULE 4**

- 13.1 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.
- 13.2 The following information is provided in conformity with Rule 4(1):
  - a) The Propositions accord with the States' objectives and policy plans to 'keep the island safe and secure' by ensuring 'young people can achieve their potential'. The conclusion and implementation of the improvements to the Children Law and the family justice system is a top-10 priority of government

agreed through the GWP 2021-2025. This action will 'support vulnerable children through revision to the Children Law and action on the Outcomes Report';

- b) The Committee has consulted with the Policy & Resources Committee, the Committees for: Home Affairs and Education, Sport & Culture, and the States of Alderney, as relevant to their responsibilities in this regard.
- c) The Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- d) The additional resources and potential resource requirements identified to implement these reforms are set out in section 11 of this Policy Letter. It is possible that future phases of work may require additional resources such as through the introduction of an adult advocacy service.

13.3 For the purposes of Rule 4(2)(a), it is confirmed that the Propositions relate to the responsibility of the Committee *for* Health & Social Care as set out in section (a) of its mandate, under its responsibility to 'protect, promote and improve the health and wellbeing of individuals and the community.

13.4 For the purposes of Rule 4(2)(b), it is confirmed that each of the Propositions is supported unanimously.

Yours faithfully

AH Brouard  
President

TL Bury  
Vice-President

ADS Matthews  
M P Leadbeater  
Alderney Representative AJ Snowdon

## **APPENDIX A: GLOSSARY OF TERMS**

- **Additional service** (s.23 of the Law)  
Services additional to the health, social, childcare and educational services that the States normally provide to, or in respect of, a child or family.
- **Adoption Order** (s.2 of the Adoption (Guernsey) Law, 1960)  
An application made to the court which enables the applicant to adopt an infant. They can be made by two spouses, as well as by the infant's mother or father.
- **Care Requirement (CR)** (s.43-47 of the Law)  
An order made by the Tribunal which places a child under the supervisory care of the States (Committee *for* Health & Social Care). A CR will impose conditions such as where and with whom the child shall or shall not live, who the child shall or shall not have contact with, the circumstances in which a person may have contact with the child and the placement of the child out of the jurisdiction. A CR will remain in force for no more than one year from the date of the final determination.
- **Child at risk** (s.23 of the Law)  
A child is at risk when there is reasonable cause to believe that grounds exist for compulsory intervention.
- **Child**  
A person who is under the age of 18 years of age.
- **Child Welfare Checklist** (s.4 of the Law)  
This is a list of factors that a public authority must pay regard to when determining any issue regarding the upbringing of a child or the application of the child welfare principles. These include; the child's wishes and feelings, the protected characteristics of the child, any harm the child has suffered or is at risk of suffering, the child's physical, emotional and educational needs, the parent(s)' (or anyone else with parental responsibility) capability of meeting the child's needs, the importance and effect of contact between the child and their family and the effect or likely effect of change in the child's circumstances including their removal from Guernsey or Alderney.
- **Child Welfare Principles** (s.3 of the Law)  
The Law sets out a number of child welfare principles which a public authority must take into account when exercising any of its functions. These welfare principles relate to the upbringing of the child, ensuring that no compulsory intervention is made unless it is necessary and that a child's welfare and upbringing is protected when a public authority carries out its function.

- **Child, Youth and Community Tribunal (Tribunal)** (s.33 of the Law)

The Tribunal deals with the majority of children when there is a need to protect them from harm or respond to concerns about their behaviour or welfare. Based on factual reports and information presented, Tribunal members decide what action is needed to assist parents in providing adequate care, protection, guidance and control for their child. It offers 'children in need' the opportunity to have their case heard outside of a court environment. If the Convenor decides compulsory intervention is needed the case will be referred to the Tribunal.
- **Children in need** (s.23 of the Law)

Where a child needs additional services to: achieve or maintain a reasonable standard of health or development; their health or development will be significantly or further impaired without additional services; they are disabled; or their parent or family member has a disability or illness which, without additional services, could adversely affect the child.
- **The Children's Convenor** (s.30 of the Law)

The Children's Convenor is a legally appointed individual who is the holder of the Office of the Children's Convenor. The Children's Convenor is responsible for investigating referrals where there is concern about a child and deciding whether they need to be referred to the Tribunal. The Convenor also has other legal responsibilities including drafting statement of the concerns, supporting the Tribunal process and conducting Tribunal related court proceedings.
- **Children's Convenor Board** (s.31 of the Law)

The Children's Convenor Board has the function of appointing the Children's Convenor and assists the Children's Convenor with carrying out their duties upon the request of the Children's Convenor. The Children's Convenor Board is comprised of between 5 and 8 individuals who are appointed by the Committee *for* Health & Social Care.
- **Community Parenting Order (CPO)** (s.48-54 of the Law)

An order made by a relevant court granting the Committee *for* Health & Social Care parental responsibility for a child. CPOs are used when it is likely that a child will need to be placed away from their family on a long-term basis. A CPO will remain in place until the child reaches the age of 18 years or marries prior to this age. A CPO can be issued on an interim basis for no more than three months.
- **Compulsory Intervention**

Intervention in the family life of a child by a public authority regardless of the consent of the child, their parents, or any person with an interest in the child amounting to family life.

- **Contact Order** (s.17 of the Law)  
An order which states a named person which a child must be allowed to visit, stay with or have contact with. This is a 'Section 17 Order'.
- **Duty of the States** (s.24 of the Law)  
Under the Law, the States has a duty to provide services to any 'child in need' that they are responsible for in order to promote their upbringing by their family and prevent them from becoming a child at risk.
- **Exclusion Order** (s.62 of the Law)  
This order provides an alternative mechanism to safeguard a child from serious harm by removing from the child's home the person presenting the risk rather than the child. For some children, this provides a more proportionate means of safeguarding their welfare but requires that there is a person remaining in the home capable of taking responsibility for the child's protection. The wording of the legal test (threshold) for an Exclusion Order has elements common to that for an Emergency CPO.
- **Family Care and Justice System**  
This is the justice system which supports children and their families in Guernsey and Alderney to try and resolve any disputes, observe and act on any welfare concerns for young people and children, and addresses youth offending. It includes a number of agencies including the courts, the Children's Convenor and the Tribunal amongst other agencies.
- **Family Proceedings Advisor (FPA)**  
An individual appointed by the Family Courts, Juvenile Court, the Tribunal or the Children's Convenor to advise and make recommendations on current applications to the courts. They work for the Court to safeguard and promote the interest of young people involved in Family Court proceedings. FPAs are currently called Safeguarders.
- **Father**  
This is the genetic father of a child (regardless of if he has parental responsibility) or, in the case of adoption, any man who is authorised under an Adoption Order to adopt the child.
- **Guardian**  
An individual who fulfils the role of a parent where a parent has died.
- **Interim Care Requirement (ICR)** (s.44 of the Law)  
An ICR is made when the Tribunal is not in a position to make a full Care Requirement (CR). These can be issued for no more than 28 days.



- **Islands Child Protection Committee (the Child Protection Committee)** (s. 29 of the Law)  
A committee made up of people from the public, private and voluntary sectors. Its primary purpose is to ensure agencies which provide services to children and families work co-operatively to enhance the safety of children and young people. The ICPC is now known as the Islands Safeguarding Children Partnership (ISCP).
- **Legal order**  
This refers to any order made under the Law.
- **Mother**  
This is the woman who gave birth to a child or, in the case of an Adoption Order, any woman who is authorised under the order to adopt the child.
- **Office of the Children’s Convenor** (s.30 of the Law)  
An office established under the Law, of which the Children’s Convenor is holder. This office carries out prescribed functions under the Law and appointment to the office is made by the Children’s Convenor Board.
- **Parent**  
This is a father or mother who has parental responsibility for a child.
- **Parental Responsibility** (s.5-11 of the Law)  
Those with parental responsibility for a child have a duty to: safeguard the child and promote their health, education, development and welfare; provide care, direction, guidance and control; determine the child’s upbringing; provide a home for the child; act as their legal representative and safeguard their property; and maintain frequent and direct contact with the child (if they live separately).
- **Parental Responsibility Order** (s.17 of the Law)  
An order granting someone parental responsibility of a child. This is a ‘Section 17 Order’.
- **Powers of police officers** (s.64 and s.66 of the Law)  
The Law provides a police officer with certain powers to safeguard a child if they believe the child is suffering, or is imminently likely to suffer, serious harm. A child taken into police protection (in practice into care provided by the Committee) may be kept in protection for a maximum of 24 hours.
- **Private Family Law**  
Court cases involving two or more individuals who are trying to resolve a dispute involving family relationship such as marriage, adoption, divorce and custody of a child.

- **Public Family Law**  
Cases where the State intervenes in the lives of children and their families. This is usually the Committee *for* Health & Social Care where there are child protection concerns but it may be Education Services where a child is failing to attend school.
- **Public Law Outline**  
This is a legal framework which aims to provide guidance for the court and the local authority on how to manage cases involving care proceedings.
- **Relative**  
A grandparent, sibling, uncle or aunt (be it full or half blood or by marriage), a father of an illegitimate child and that father's relatives.
- **Safeguarder Service** (s.83-84 of the Law)  
A service created to safeguard and promote the welfare of a child. Its Safeguarders (known as Family Proceedings Advisors) provide advice to the relevant court or the Tribunal about any application made in proceedings, provide advice to the Children's Convenor regarding any investigation and carry out any other functions as the rules of court specify. This service is known as the Family Proceedings Advisory Service.
- **Secure Accommodation** (s.68-73 of the Law)  
Accommodation which has been designated by the Committee *for* Health & Social Care and is designed to prevent unauthorised entry or exit, enables supervision and minimises opportunities for self-harm. A child can only be placed in secure accommodation by virtue of a Secure Accommodation Order.
- **Special Contact Order** (s.50 of the Law)  
An order which requires the Committee *for* Health & Social Care to allow a child to visit or stay with a named person or which requires the named child and a person to have contact with one another.
- **Unmarried Father** (s.6 of the Law)  
When a child's mother and father are not married at the time of the child's birth, the father does not have parental responsibility under the Law. However, they can acquire parental responsibility under s.7 of the Law.

## **APPENDIX B: SUMMARY OF FAMILY CARE AND JUSTICE SYSTEM REVIEW FINDINGS**

Below is a summary of the relevant findings of reviews of the family care and justice system including the Children Law, related to phase 1.

<b>Review</b>	<b>Overview</b>
<b>Children's Service Diagnostic, 2014</b>	<p>An internal review commissioned in November 2014 by Health and Social Care to provide a clear, evidence-based evaluation of the effectiveness of Children's Social Care.</p> <p>Findings:</p> <ul style="list-style-type: none"><li>• The average time for a child to be permanently placed with a family was two years</li><li>• The re-referral rates for families back into the Family Intervention Service was 37% +</li><li>• There was an inadequate understanding of the thresholds for referrals to the Convenor</li><li>• There were differences and contradictions in social care practice</li><li>• The legal threshold for urgent removal was extremely high and the court waiting time too long</li><li>• Secondary legislation for care leavers was not in place.</li></ul>
<b>The 'Guernsey: Children Law Review' in 2015, Marshall Report<sup>1</sup></b>	<p>This report, conducted by Professor Kathleen Marshall in 2015, was commissioned by the Scrutiny Management Committee. The review concerned the implementation of the Children Law and sought to identify whether the policy objectives of the new Law had been achieved.</p> <p>Findings:</p> <ul style="list-style-type: none"><li>• There were issues around the ways in which various child protection processes interacted with each other, including the nature of the respective cases referred to the Tribunal and to the court.</li></ul>

---

<sup>1</sup> ['The Guernsey Children Law Review, 2015'](#)

	<ul style="list-style-type: none"> <li>• Guernsey-specific guidance was not available causing issues with interpretation.</li> <li>• The thresholds for referrals to the Convenor and for permanency were too similar.</li> <li>• There were delays caused by timescales for Tribunal and court processes for the finding of facts.</li> </ul>
<b>FPAS inspection, 2017, carried out by Ofsted<sup>2</sup></b>	<p>As a result of a recommendation from Kathleen Marshall, an FPAS inspection was conducted and set out the strengths of the FPAS service and seven recommendations for service improvement, including wider system changes.</p> <p>The report states that ‘Delay is a complex phenomenon. All agencies across the family justice system contribute to it.’ and that ‘Too much delay for children is evident in Guernsey.’</p> <p>Ofsted noted that a quarter of current cases had a FPA involved for more than 12 months, with the average time that a case was open within the service was 18 months.</p>
<b>Committee for Home Affairs: Justice Review Report<sup>3</sup></b>	<p>The Justice Review Report (“the Justice Review”) was considered by the States as a green paper in 2020. Under the GWP, ‘scoping of the Justice Framework’ is a priority action. The Justice Review has 43 recommendations, some of which link to the wider family and criminal justice systems and should inform the work under the Children Law and Outcomes Report. The links and proposals identified predominantly focus on:</p> <ul style="list-style-type: none"> <li>• Alternative dispute resolution (ADR) including mediation</li> <li>• Youth justice including sentencing and links with the Children &amp; Young Peoples Plan</li> <li>• Use of restorative justice in family care and justice system</li> </ul>

<sup>2</sup> [FPAS inspection, 2017, carried out by Ofsted](#)

<sup>3</sup> [Justice Review Report](#)

<b>Outcomes Report, 2021, Martin Thornton<sup>4</sup></b>	<p>An independent report commissioned by the Chief Officer's Child Protection Group and conducted by Martin Thornton. This review focused on the wider system for children and young people's services across Guernsey and Alderney and identified several areas for improvement.</p> <p>There were a range of recommendations aimed at:</p> <ul style="list-style-type: none"> <li>• reducing system complexity and duplication;</li> <li>• ensuring the role undertaken by the courts and Tribunal provides protection of the rights of children young people and their families;</li> <li>• ensuring children and young people entering legal system have access to range of options and support; and</li> <li>• that cases be dealt with without delay and in appropriate timescales.</li> </ul>
---	--

---

<sup>4</sup> [Outcomes Report, 2021](#)

## **APPENDIX C – ILLUSTRATIVE CASE STUDY**

Children's Services received a referral from midwifery services. A 23-year-old young woman known to Children's Services had attended a midwifery appointment 12 weeks pregnant with her third child.

Due to extensive safeguarding concerns, the mother's two other children had been recently removed from her care. The concerns related to domestic abuse, risk of sexual abuse and substance and mental health related issues. Extensive involvement from professionals had taken place including the children being subject to a child protection plan and a referral was made to the Children's Convenor to seek a Care Requirement with conditions. However, it became apparent to social workers early in the case that given the level of risk it was likely that the children may need permanent care outside of their birth family. A serious incident followed, which led to the children being provided with emergency foster care.

Under the current Law all pre-proceedings work takes place before Tribunal. As such, a sexual risk assessment took place as well as a full psychological assessment of the mother and her partners ability to care for her children. It was concluded that she and her partner were not able to provide adequate care. The children's father did not wish to be considered to care for the children. The matter had been before Tribunal for some 15 months from the point of referral until all pre-proceeding assessments had been concluded including those of extended family members and friends.

Given the findings of the assessments it became necessary for an application to be made to court for a Community Parenting Order. The application before the court took nine months to conclude. The mother's lawyers requested a further psychological assessment, with the mother stating that she had ended the dangerous relationship and was no longer using substances. This was found not to be the case. A new extended family member, who had not previously wished to be considered to care for the children, then came forward. In total, the family proceedings had taken two years to conclude before a Community Parenting Order was granted allowing for the children to be placed for adoption.

Following the proposed changes to the Children Law, Children's Services would be able to apply for a permanent order much sooner in a child's journey through the family care and justice system where it considers there is reasonable cause to believe that the child cannot remain with their parent/families and long-term, more permanent arrangements are needed. For example, when it became apparent that it was more likely than not that the mother and her partner would not be able to provide adequate care, Children's Services would be able to make an application to court for an 'interim' Community Parenting Order. This change to the Law should have the effect of cases proceeding to court quicker and not first through the Tribunal, where more permanent arrangements for the children were likely. In doing so it is likely that considerable delay would be avoided. Pre-proceedings assessments would take place under the direction

of the court avoiding duplication and delay. All parties would be legally represented.

At the booking appointment for the mother's third baby, the mother reported that she had commenced a new relationship with another adult male who was believed to pose a sexual risk and that she was again a victim of domestic abuse. She was also continuing to abuse substances and was known to the Drug and Alcohol Team but was not engaging in active treatment. A pre-birth planning meeting was convened to consider the risk to the unborn baby which concluded that legal advice was required, and a legal planning meeting was called.

Under the current Children Law, despite extensive recent assessments, at this point a further referral to the Children's Convenor would be required to allow plans to be made to safeguard the unborn baby at birth. The unborn baby's father was different to that of the first two children and as such he was not previously assessed, so the legal test for an application for a Community Parenting Order would not be met. At this early stage the social workers had formed a view based on previous evidence and assessments that little had changed in relation to risk, and had reasonable cause to believe that the new baby may need a plan for permanence.

Following the proposed changes to the Children Law, Children's Services will be able to make an application to the court for an interim Community Parenting Order once the baby was born. The assessments on the baby's father and any of his family would then be carried out to determine if a final Community Parenting Order was required.

Given that care proceedings relating to the mother's two previous children had recently concluded and the social worker assessments had indicated that little had changed, an application to court at this point would seek to avoid the need for duplication of pre-proceedings assessments and reduce the delay in achieving an appropriate outcome for the new born baby.

## **APPENDIX D: OTHER JURISDICTIONS RECENT REVIEWS**

### **1. Independent review of Children's Social Care for England and Wales**

The Independent Review of Children's Social Care<sup>1</sup> sought to address the issues within the children's social care system in England and Wales. It concluded a 'radical reset' was required to address the current system of crisis intervention, which was delivering poor outcomes for children at a high cost.

The review sets out that the desired system is one that "provides intensive help to families in crisis, acts decisively in response to abuse, unlocks the potential of wider family networks to raise children, puts lifelong loving relationships at the heart of the care system and lays the foundations for a good life for those who have been in care."

It warns that without this reset outcomes will remain poor for children and families and estimates that more than 100,000 children will be in care within the decade (20,000 more children than now), costing £5 billion per year more than currently.

### **2. Independent Jersey Care Inquiry**

The Independent Jersey Care Inquiry<sup>2</sup> (IJCI) panel investigated the situation in Jersey's case system from 1945 to the present day. The panel presented its report to the States of Jersey on 3<sup>rd</sup> July 2017 which made recommendations for the future management and operation of Jersey's residential and foster homes to ensure the Island provides a safe and secure environment for the children in its care. The recommendations sought to address issues of the past but also the current provision of care for children in Jersey.

The inquiry found that eight basic lessons needed to be learnt:

- The welfare and interests of children are paramount and trump all other considerations;
- Give children a voice – and then listen to it;
- Be clear about what services are trying to do and the standards which they should attain;
- Independent scrutiny is essential;
- Stay connected
- Quality of leadership and professionalism are fundamental requirements; and
- Openness and transparency must characterise the culture of public services.

A follow-up review took place in 2019<sup>3</sup> which recognised the amount of work and improvements that had taken place over the previous two years and set out the prioritisation approach for future work through its Government Plan. The review

---

<sup>1</sup> [Final Report - The Independent Review of Children's Social Care \(independent-review.uk\)](https://www.independent-review.uk/)

<sup>2</sup> [r.59-2017 independent jersey care inquiry report -complete-.pdf \(gov.je\)](https://www.gov.je/r.59-2017-independent-jersey-care-inquiry-report-complete-.pdf)

<sup>3</sup> [Jersey Care Inquiry 2 Year Review 2019 \(gov.je\)](https://www.gov.je/jersey-care-inquiry-2-year-review-2019)



resulted in the underway Children's Legislation Programme<sup>4</sup>.

### **3. Independent Care Review – Scotland**

The Independent Care Review<sup>5</sup> was commissioned in February 2017 to be an independent root and branch review of the care system, and to look at “the underpinning legislation, practices, culture and ethos” of the care system in Scotland.

In 2020, five reports responding to the Review were published:

- The Promise reflected what over 5,500 care experienced children and adults, families and the paid and unpaid workforce told the Care Review;
- The Plan explained how change must happen;
- The Money and Follow the Money explained how Scotland could better invest in its children and families; and
- The Rules demonstrated the current legislative framework and how it must change to achieve The Promise.

The Promise<sup>6</sup> concluded that five foundations must be at the heart of a reorganisation of how Scotland thinks, plans and prioritises for children and their families, these are:

- Voice
- Family
- Care
- People
- Scaffolding

Most relevant to the Phase 1 considerations were the findings relating the Children's Hearing system as follows:

- “The principles that underpin Scotland's unique Children's Hearings System [Kilbrandon principles] must be upheld but there must be a more active consideration of underlying structures so that The Children's Hearings System is best placed to truly listen and uphold the legal rights of children and their families;
- The Children's Hearings System must test structural changes and analyse their impacts to explore its role in listening better and responding to what children and families told the Care Review.”

---

<sup>4</sup> [Children's Legislation Programme \(gov.ie\)](https://www.gov.scot/publications/childrens-legislation-programme/pages/default.aspx)

<sup>5</sup> <https://www.carereview.scot/>

<sup>6</sup> [The-Promise.pdf \(carereview.scot\)](https://www.carereview.scot/the-promise.pdf)

## **APPENDIX E: CHILDREN LAW AND OUTCOMES PROPOSALS SUMMARY – as at 19<sup>th</sup> August 2022**

### **1) POLICY CHANGES RECOMMENDED TO BE PROGRESSED**

The objectives to be met in Phase 1 are:

- 1) Every opportunity is taken to remove the causes of delay to decision making for children in the family justice system;
- 2) Any unintended consequences of the Law are addressed; and
- 3) Improved effectiveness of the governance of the system.

<b>No</b>	<b>Proposals – as refined by the review</b>	<b>Objective met</b>	<b>Impact</b>	<b>Majority stakeholder support*</b>	<b>Within existing resources</b>
<b>1.</b>	Compulsory attendance at Tribunal Hearings for adults parties to proceedings	Reduce delays	The ability for the Tribunal to penalise parties to a hearing for non-attendance will improve engagement and reduce delays, as the need to reschedule hearings will be reduced.  Meets the Professor Marshall's recommendation 13 in part.	Y	Y
<b>2.</b>	Review requirements to notify the Convenor	More effective governance	By removing this requirement it addresses a matter of risk of sharing sensitive information with an agency without a justified purpose. Data on number of orders will still be captured and reported for governance purposes.	Y	Y
<b>3.</b>	Committee to notify the Convenor of certain decisions and act within a defined timescale (re applications to	Reduce delays	The notifications will allow for all those involved in a case to know which forum they are in at all times.	Y	Y

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
	court to remove a child from their carers). Similarly the Tribunal must notify the Committee, within a defined period, if they are of the view the case in-front of them passes a court order threshold.		Links with Professor Marshall’s recommendations 14 and 17 - in part.		
4.	When the Convenor is notified by the Committee, as set out in proposal 3 above, the Convenor will not undertake any investigation or action in relation to that case unless it is necessary and proportionate.	Reduce delays	This will avoid any concurrent proceedings, but retains the ability for the Convenor to share information that may be relevant the case.	Y	Y
5.	Pause or stop Tribunal proceedings where a substantive application is being considered by the court in appropriate cases	Address an unintended consequence	Provide a sufficient framework to manage / avoid issues of duplication between the court and Tribunal such as concurrent proceedings, will avoid parties being subject to two different forums at the same time, in most cases. This is with the exception of matters not relevant to substantive applications such as offending or school attendance matters.	Y	Y
6.	Enable family cases to be remitted from court to the Tribunal and ensure that any	Reduce delays	This change provides further flexibility within the system to respond to the needs of the particular case, quicker than currently. It would remove the	Y	Y

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
	facts established by the court are communicated to the Tribunal		need to rehear evidence and it could mean cases are disposed of sooner.		
7.	Appointment of FPAs pre-proceedings where required for the welfare of the child.	Reduce delays	<p>Allowing Family Proceedings Advisors (FPAs) (currently named Safeguarders) to be appointed before proceedings commence, or after a case has concluded, will enable families and children to be supported at a much earlier stage and throughout the case's journey, for example when a case moves from the Tribunal to the court FPAs could continue to support the case throughout this period. This could result in more cases being resolved sooner or averted.</p> <p>Through offering voluntary mediation/Alternative Dispute Resolution (ADR) where there is a dispute it could reduce conflict and improve outcomes for children.</p> <p>It aligns to the principle of 'no compulsory intervention' and it being better for cases to be handled outside of the court or Tribunal, where possible.</p>	Y	Y

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
8.	Court to retain and dispose of cases where it determines facts in appropriate cases.	Reduce delays	Tribunal cases in which the underlying facts are disputed are referred to the court for determination and then returned to the Tribunal for disposal if the facts are found (i.e. for the Tribunal to decide whether or not to make a Care Requirement (CR)). There will be some cases in which it will reduce delay and be for the welfare of the child for the court determining the facts to proceed to make a CR or interim care requirement (ICR) and any relevant condition e.g. for removal or to avoid the risk to the safety of the child of any delay in waiting for the Tribunal to sit. The court already has a similar power in appeal proceedings from the Tribunal. To reduce delays, the court would need to list the case hearing quickly so that it can consider all the relevant evidence to reach a decision. In some instances the case could be referred back to the Tribunal once a decision has been made by the court.	Not widely consulted  Supported by the Judiciary	Y
9.	Demonstrate a commitment to Safeguarding in the Law	Reduce delays	The commitment in the Law will encourage and demonstrate an expectation that agencies focus on safeguarding in all cases. It will be underpinned by an operational framework to provide greater clarity around processes and inter-agency working to assist in reducing delays.	Y	Y

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
10.	Information sharing: capturing information relating to improving welfare	Reduce delays	Enabling agencies to capture and share certain information relating to improving the welfare or wellbeing of a child should improve the joined up working between agencies, so that the right support at the right time is made available to children who need it.	Y	Y
11.	Information sharing: redraft Section 27 of the Law	Reduce delays	To provide greater clarity as to its legal effect so that all agencies are clear on what information can be shared, when and with whom. To better support the efficient and timely disposal of cases.	Y	Y
12.	One meaning of ‘compulsory intervention’	Addresses an unintended consequence	To provide greater clarity and address an unintended consequence of the drafting of the Law where the term is used to mean different things within the Law.	Y	Y
13.	Legal orders: introduce Supervision Orders	Reduce delays	Provides an additional option for disposal for some cases in court where a Community Parenting Order (CPO) is not granted. This additional order should result in more timely determinations and outcomes for children.	Y	Y
14.	Legal orders: introduce a Child Assessment Order	Reduce delays	Removes the opportunity for delay and risk to a child caused by a lack of parental cooperation which can prevent assessments of a child taking place to establish if compulsory intervention is justified.	Y	Y

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
15.	Legal orders: amend the legal threshold for CPOs and remove the 'reasonable prospect' limb	Reduce delays	<p>To address those issues that have arisen in relation to the hearing of cases, to better reflect the threshold used in comparable jurisdictions for cases where a longer-term, more permanent order is needed, in line with the original 2004 intentions, and to remove the requirement for family assessments having to be completed prior to an application being made to the court.</p> <p>This will provide greater protection to a child where permanent removal is a strong likelihood, as the court will be in a position to ensure its directions are complied with in a timely manner. This should reduce delays in decision making in these cases. The requirement to complete the family assessments will remain before a final order can be made.</p> <p>Meets Professor Marshall's recommendation 15</p>	Y	Y
16.	Legal orders: interim CPO test to be amended in line with CPO test	Reduce delays	<p>This change will provide greater clarity around the threshold of an ICPO, in line with the proposed changes to the CPO threshold. It will provide a greater level of protection to children, at an earlier stage, where permanent removal from their</p>	Y	Y

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
			families is likely, but time is needed to fully complete the assessments.		
17.	Legal orders: threshold changes – ‘Serious Harm’ to ‘Significant Harm’ and adding ‘reasonable grounds to believe’	Reduce delays / Addresses an unintended consequence	This change will align the threshold with that of comparable jurisdictions. It will provide a greater level of protection than currently.	Y	Y
18.	Legal orders: discharge of Emergency Child Protection Orders (ECPO) (in relation to the Sitting of the Tribunal)	Reduce delays	Removes the provision that automatically discharges an ECPO by the when the Tribunal sits to consider the case which removes a risk to there being no legal protection available to the child in these instances.	Y	Y
19.	Legal orders: amendment regarding Parental Responsibility Orders on the making of a CPO	Addresses an unintended consequence	Addresses what appears to be a drafting error.	Y	Y
20.	Legal orders: duration of police powers of protection in emergency situations.	Reduce delays	This will increase the time limit for police powers of protection from 24 hours to 72 hours, in line with the protection in England and Wales. It will enable the Police to provide protection to a child for longer in emergency situations where there is a justified need.	Y	Y



No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
21.	Legal orders: amend the ECPO, Police powers to protect a child and Recovery of Children – by removing the word ‘imminently’ and adding ‘by force, if necessary’	Addresses an unintended consequence	<p>The Law as drafted has created unintended consequences which can create delays in protecting children in an emergency. This can be resolved by amending the wording without fundamentally changing the objective of the provisions.</p> <p>The current wording sets out ‘that a child is suffering’ or that the child is ‘at imminent risk of suffering’, both of which require proof of the suffering or immediate risk of suffering, before an ECPO can be made.</p> <p>These changes will ensure alignment with comparable jurisdictions’ legislation and provide greater clarity and protection for children by the Police in ECPO cases.</p>	Y	Y
22.	Legal orders: amend the CR/ICR so the thresholds are distinct	Reduce delays	Amending the threshold for a CR/ICR will address a cause of confusion around the overlaps between the threshold for a CPO and ensure clarity of its purpose which is different to a CPO. There will no longer be a common element with the criteria for a CPO. This is in line with the original intentions for a CR and Professor Marshall’s recommendation 15.	Y	Y

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
			Removing the 28 day review requirement meets the intentions of part of Professor Marshall's recommendation 17.		
23.	Legal orders: care requirements - rename the 'conditions' to 'grounds' and update the grounds.	Reduce delays and address an unintended consequence	<p>Renaming 'conditions' to 'grounds' will ensure they are distinct from other uses of the term 'condition' in the Law.</p> <p>Amending the grounds for referral i.e. threshold criteria will better reflect the nature of referrals and modernise these alongside best practice to provide a greater level of protection to all children where compulsory intervention is a question. The changes will address a known gap in cases where long-term neglect is a factor.</p>	Y	Y
24.	Name changes: amend the names for the Safeguarder Service and Safeguarders in the Law	n/a	Updates the Law in line with practice.	Y	Y
25.	Name changes: amend ISCP name in Law	n/a	Updates the Law in line with practice.	Y	Y
26.	Amend the duties of the States of Guernsey to the children of Guernsey and Alderney	Addresses an unintended consequence	Addresses a drafting error, provides greater clarity and is consistent with other changes to the Law.	Y	Y

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
27.	Duty to co-operate	Reduce delays and addresses an unintended consequence	More closely aligns to the original policy intention for there to be “a general duty on States agencies to work together to identify and assist families who have children who are in need of help at an early stage, thus preventing problems from developing or escalating.”	Not directly consulted	Y
28.	Child cruelty – unintended narrowing of the criminal offence	Addresses an unintended consequence	Returns the scope of persons falling within the offence of Child Cruelty back to the pre-2010 position, which aligns with the United Kingdom’s, increasing protection to children at risk.	Y	Y
29.	Provide the Tribunal with the powers to make an interim variation of a CR condition	Addresses an unintended consequence	The Tribunal will be able to make an interim variation to a CR condition where the existing arrangements may not be for the welfare of the child.	Y	Y
30.	Disposal and powers of the Tribunal on disposal	Addresses an unintended consequence	To address a drafting error.	Y	Y
31.	Provide the Convenor with the powers to suspend conditions of a care requirement, subject to suitable safeguards	Reduce delays	The Convenor can already suspend any condition of a CR, but it is not currently possible to suspend part of the condition. By enabling suspension of parts of a condition will provide greater flexibility to meet the welfare of the child.	Y	Y

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
32.	Introduce a power to transfer a case to Her Majesty's Procureur (HMP)	Reduce delays	This provision would allow the Convenor to transfer a case to HMP, where the report has been made to both the Convenor and HMP, where the Convenor considers that it may be necessary in the public interest to prosecute the child. This is in line with the principle behind the existing provision that the police can refer a matter to the Convenor alone rather than HMP and the Convenor in appropriate cases.	Y – HMP / St. James' Chambers and Convenor	Y
33.	Terms and conditions of the appointment of the President of the Tribunal.	Addresses an unintended consequence	To address a drafting error.	Y	Y
34.	Withholding information to protect a person against the risk of serious harm	Addresses an unintended consequence	The Convenor currently has the power to withhold information from a child or other person where the Convenor considers that it is for the welfare of the child, or it is necessary to protect a person against the risk of serious harm. As presently drafted, information can be withheld from a person where it is necessary to protect that person against the risk of serious harm. This is likely to be a drafting error as it is often the case that the information is withheld from a person to protect another person from serious harm. For example in cases of domestic abuse, disclosure of	Y	Y

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
			information to the abuser that a person is accessing a domestic violence service may result in risk of serious harm to the victim.		
35.	Parties to the Tribunal proceedings	Reduce delays	This change will extend and make clear who can attend Tribunal hearings as parties to proceedings or as interested parties to avoid any risk of unintentional discrimination. The change widens and updates the current parameters for the welfare of the child. It will include a suitable right of appeal to any decisions.	Y - Convenor, Law Officers and CfHSC	Y
36.	Removal of upper and lower age limit for Tribunal member appointment	Addresses an unintended consequence	Removes any age limit in the Law for Tribunal members. The basis on which a Tribunal member is recruited will be on their ability to fulfil the role's requirements.	Y	Y
37.	Complete the drafting of Secondary regulations	Reduce delays	<p>The relevant outstanding secondary legislation and guidance is drafted to support fully implementing the Children Law. It will provide greater clarity around rights of children in care and fulfils an objective of the Corporate Parenting Framework.</p> <p>Section 25 creates a duty on the Committee to provide, or arrange for the provision of accommodation for any child in accordance with regulations made. These regulations may include</p>	n/a	TBC

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
			<p>the circumstances in which, and the children in relation to whom, the duty arises and the type and standard of accommodation.</p> <p>Section 26 creates a duty on the States to provide services for any child in the care of the Committee and any person who has been in the care of the Committee. “In the care of the Committee” is wider than children accommodated by the Committee and includes children who are or have been subject to a CR and children who are accommodated by the Committee either through a compulsory route or voluntarily.</p> <p>Meets Professor Marshall’s recommendation 11</p>		
38.	External review	More effective governance	Establish a regular cycle of independent review of the system, every three to five years. It is expected that the first review will be in 2025.	Y	N – est. £10-15K every 3-5 years

**Table 1. Policy proposals for revisions to the Children Law.**

\*Refers the combined majority view of stakeholders who were consulted through the Committee’s targeted consultation on the Law, those consulted through the Outcomes Report and the subsequent impact assessments.

## 2) POLICY CHANGES NOT RECOMMENDED TO BE PROGRESSED

Category	Changes under consideration	Description / rationale for not progressing	Within existing resources
Case management	Tribunal makes own finding of facts	Discounted as not supported by majority of stakeholders, would incur additional resources and removes independent appeals process from court.	N
	Changes to the Convenor's role – target for initial enquiries 21 days	To be included in the operational approach set out above to understand implications/achievability of a 21 day target. <b>Keep under review.</b>	N
	Changes to the Convenor's role – if parties agree on the circumstances and proposed outcomes, the Convenor may dispose of the matter by way of an agreed order with the parties which is then approved by the Tribunal.	While this seeks to speed up disposing of cases there was concern that the outcomes for children could be negatively affected. <b>Keep under review.</b>	Y
	Changes to the Convenor's role – Convenor acts as legal advisor on the Law to the Tribunal	Concerns were raised over compliance with European Convention on Human Rights (ECHR) Article 6 given that the Convenor brings cases to the Tribunal to be heard. The Convenor will already intervene if the Tribunal seeks to act in a way that is contrary to the Law or fails to act in accordance with the Law.	Y
Jurisdiction change	All removal cases are dealt with by the court and not the Tribunal	Further consideration suggests that many of the cases subject to a CR which then proceed to a CPO application will be presented directly to court instead once the threshold changes have been implemented. The	N

		changes to order thresholds will provide the Committee with more options on how to proceed where permanent removal is most likely.	
<b>Legal Orders</b>	Introduction of a “Child Arrangements Order”	To replace residence and contact orders with the introduction of a child arrangements order. Not viewed as being necessary.	Y
<b>Names changes</b>	Rename the Tribunal and the Juvenile Court (in Guernsey and Alderney)	Rename the Tribunal ‘The Family Proceedings Tribunal’ and the Juvenile Court (in Guernsey and Alderney) ‘The Family Proceedings Court’. Discounted as case was not made for change.	N
<b>Principles</b>	Explore the introduction of a “No Order” Principle	The need to introduce an enabling provision to introduce amendments to the legislation and accompanying Rules of Court, to bolster the principle that formal legal proceedings will be a last resort was not viewed as necessary given the current principle of ‘no compulsory intervention’ is wider in coverage i.e. no state or agency intervention unless necessary.	Y
<b>Timescales</b>	Appeals - list an appeal to a court decision on a CPO within 14 days of it being lodged	An appeal should be listed within 14 days of the Appeal being lodged. This will then be subject to directions being given by the court for the prompt disposal of the case. Part of operational target setting. <b>Keep under review.</b>	N
	Appeals - Tribunal decisions re: CR – targets	Setting timescales for the Convenor to lodge the application regarding the dispute, such as within a period of 7 days after it has become clear that the dispute cannot be resolved by amendment of the Convenor’s statement or withdrawal of grounds or facts. Alongside a timeframe for the court hearing.  Also, reduce the decision timeframe to 21 days from application and the first hearing to be within 7 days as opposed to the current 14 days.	N



		To be considered following baseline capture to establish an appropriate target that is achievable. <b>Keep under review.</b>	
	Appeals - permit a time extension in some instances	Provision to be made for enabling a time extension for all appeals to be brought where required in the interests of justice. If targets are not to be introduced then no extension is necessary.	N
	Appeals - Against Juvenile Court's decisions - determinations of Disputed Conditions or Facts - reduce to 28 days	Instead, manage as set out for other target timescales. <b>Keep under review.</b>	N
	Introduce a statutory Public Law Outline.	In-principle support for the proposal for the court to introduce a set target number of weeks for cases to be completed, by Practice Direction, but not set out in legislation. However, given systemic causes of delays and a lack of data this option is not supported. <b>Keep under review.</b>  An alternative approach is proposed through the system wide performance measures to establish, monitor and track Guernsey relevant and achievable targets. <b>Keep under review.</b>	N

**Table 2. Proposals considered by the Board and the Committee but not recommended to be taken forwards at this time.**

**APPENDIX F: CHILDREN LAW PROPOSALS SUMMARY WITH LEGISLATIVE DRAFTING DETAILS as at 19<sup>th</sup> August 2022**

The below table sets out the specific drafting instructions for the proposals for changes to the Law.

No	Proposals for change	Description	Change through*
1.	Compulsory attendance at Tribunal hearings for adults parties to proceedings	<ul style="list-style-type: none"> <li>The introduction of suitable legislative provisions to place an obligation, right and duty upon relevant responsible adults to attend Tribunal hearings, unless excused or where their attendance is not considered necessary.</li> <li>The Tribunal to implement a penalty system for non-attendance at its hearings.</li> </ul>	Amending the Law – new right and duty, and establish the necessary Tribunal Rules of Procedures
2.	Review requirements to notify the Convenor	Remove requirements that applications for adoption and special contact orders must be notified to the Convenor.	Amending the Law: S.36(3)
3.	Committee to notify the Convenor of certain decisions and act within a defined timescale (re applications to court to remove a child from their carers). Similarly the Tribunal must notify the Committee, within a defined period, if they are of the view the case in-front of them passes a court order threshold.	<ul style="list-style-type: none"> <li>The Committee must notify the Convenor, within a to be defined timescale, when it decides to apply to the court for an order that will have the effect of removing a child from their parents or family (most likely a Community Parenting Order (('CPO') or Emergency Child Protection Order ('ECPO')).</li> <li>The Committee must make the application to remove a child within a to be defined timescale of the above notification. The Committee must notify the Convenor if it decides it no longer wishes to proceed with the application.</li> <li>If the Tribunal considers a case in their jurisdiction passes the threshold for an application to the court by the Committee, they must notify the</li> </ul>	Amending the Law: S.36(3)

No	Proposals for change	Description	Change through*
		Committee (within a to be defined timescale of coming to that view) so that the Committee can consider if an application should be made to the court.	
4.	When the Convenor is notified by the Committee, as set out in proposal 3 above, the Convenor will not undertake any investigation or action in relation to that case unless it is necessary and proportionate.	When the Committee notifies the Convenor that it has decided to apply to the court for an order that will have the effect of removing a child from his parents or family the Convenor will not undertake any investigation or action in relation to that case (as noted in 3) unless it is necessary and proportionate.	Amending the Law: S.37 – to ensure no investigation is undertaken unless parameters noted are met
5.	Pause or stop Tribunal proceedings where a substantive application is being considered by the court, in appropriate cases yon	If there are active proceedings within the Tribunal at the time when a CPO application has been made to the court:  (i) these are paused and no further Tribunal hearings will take place (by operation of s.46(3)) until the substantive application has been determined by the court except for matters not relating to the substantive application such as offending or school attendance matters; and/or (ii) any existing Care Requirement (CR) or Interim Care Requirement (ICR) can be discharged by the court (further to s.54) if the court is satisfied that the care requirement would no longer serve any useful purpose; and, (iii) court proceedings are given precedence over any paused or continuing Tribunal proceedings by the introduction of a provision similar to that of s.22(5) i.e. a CR (or ICR) shall have no effect in so far as it is inconsistent with a CPO (or Interim CPO).	Amending the Law:  Considering existing wording in the relevant sections to ensure clarity and amend to avoid issues of duplication between the court and Tribunal.

No	Proposals for change	Description	Change through*
			Introducing a provision similar to that of s.22(5)
6.	Enable family cases to be remitted from the court to the Tribunal and ensure that any facts established by the court are communicated to the Tribunal	Amend the legislation to enable cases to be remitted from the court to the Tribunal, in appropriate cases, similar to the precedent in youth justice cases. Ensure that any facts established by the court are communicated to the Tribunal.	Amending the Law:  Practice Directions
7.	Appointment of FPAs pre-proceedings where required for the welfare of the child.	Amend the Law to allow Family Proceedings Advisors (currently named Safeguarders) to be involved at the earliest possible stage before proceedings commence or following their conclusion, where required, to better support the welfare of the child. This will be along the lines of the wording in s.12(5) of the Criminal Justice and Court Services Act 2000. The appointment will be on the recommendation of the Committee or the Convenor, and subject to consent from all parties.	Amending the Law: s.84
8.	Court to retain and dispose of cases where it determines facts in appropriate cases.	Amend the Law to enable the court to proceed to make a CR or ICR and any relevant condition where it is determining the facts. The court already has a similar power in appeal proceedings from the Tribunal. It should be possible for the case to be referred back to the Tribunal once a decision has been made by the court, should the court deem it appropriate. The Tribunal could then make any further condition for removal where it was required but as a distinct decision from the court's judgement on removal.	Amending the Law:  New provision similar to power in appeal proceedings relating to the Tribunal

No	Proposals for change	Description	Change through*
9.	Demonstrate a commitment to Safeguarding in the Law	Inclusion of a provision to demonstrate an organisational commitment to Safeguarding Practices for all individuals and agencies involved in safeguarding. This should include the requirement for all functions, including those commissioned or procured from a third party, to be discharged having regard for the need to safeguard and promote the welfare of children.	Amending the Law:  New provision
10.	Information sharing: capturing information relating to improving welfare	There is currently no requirement in the Law for the police (or other Committee partners/persons or bodies who exercise functions/activities relating to children) to capture information relating to improving the welfare or wellbeing of a child unlike in the UK. The legislation should be amended to give effect to this power.	Amending s.27 of the Law to give effect to this power  Update practice guidance
11.	Information sharing: redraft Section 27 of the Law	To redraft s.27 to provide greater clarity as to its legal effect and intention and to work alongside updated practice guidance to reflect changes made by the Data Protection (Bailiwick of Guernsey) Law, 2017.	Amending the Law: s.27  Update practice guidance
12.	One meaning of 'compulsory intervention'	Amend the Law so that there is one meaning of 'compulsory intervention' as set out in the principles used throughout the Law. This will provide greater clarity and address an unintended consequence of the drafting of the Law. The term should solely relate to intervention by the State in family life.	Amending the Law: s.35
13.	Legal orders: introduce Supervision Orders	Introduce a power for the court to grant a 'Supervision Order' placing the child under the supervision of the Committee as a disposal in a CPO case.	Amending the Law:

No	Proposals for change	Description	Change through*
		The threshold criteria for making the order would reflect the amended CPO criteria and test.	New court power
14.	Legal orders: introduce a Child Assessment Order	Introduce a Child Assessment Order along similar lines to a Child Assessment Order in England and Wales with the court having the power to treat the application as one for an ECPO in appropriate cases. The order will be a public law order with only the Committee authorised to apply for it.	Amending the Law:  New court power
15.	Legal orders: amend the legal threshold for CPOs and remove the 'reasonable prospect' limb	<p>The legal threshold for CPOs should be amended to:</p> <ul style="list-style-type: none"> <li>• largely reflect the wording used in other jurisdictions, suitably adapted for Guernsey and Alderney, in line with the 2004 policy intentions where a CPO is used in cases where longer-term and more permanent alternative provision for a child is needed, for example through adoption or long-term foster care. Suggested threshold wording is as follows; <ul style="list-style-type: none"> <li>➤ there are reasonable grounds to believe that the child concerned is suffering, or is likely to suffer, significant harm; and</li> <li>➤ that the harm, or likelihood of harm, is caused by: <ul style="list-style-type: none"> <li>○ the care given or likely to be given if not removed, by the parent or person with parental responsibility as would be reasonably expected of a parent; or</li> <li>○ the child is beyond parental control.</li> </ul> </li> </ul> </li> <li>• remove the requirement for at least one of the conditions in the current Section 35 to be made out;</li> <li>• remove the reasonable prospect limb in full; and</li> </ul>	Amending the Law: s.49

No	Proposals for change	Description	Change through*
		<ul style="list-style-type: none"> <li>retain the part of the threshold which enables a CPO to be made with consent (retaining the current provision).</li> </ul>	
16.	Legal orders: interim CPO test to be amended in line with CPO test	<p>The test for making an interim CPO is set out in the legislation to mirror the case law but will incorporate the amended test for the CPO.</p> <p>It should include that:</p> <ul style="list-style-type: none"> <li>The ICPO has the same effect as a CPO: <ul style="list-style-type: none"> <li>It is for a shorter period</li> <li>It can be used at an earlier stage and as a protective measure in risk of harm cases where permanent removal is likely but time is needed to fully complete all assessments</li> </ul> </li> <li>There should be reasonable grounds for believing the CPO grounds are met.</li> </ul>	Amending the Law: s.53
17.	Legal orders: threshold changes – Serious or Significant Harm and adding ‘reasonable grounds to believe’	To replace the terms “serious harm” with “significant harm” in the threshold provisions for an ECPO, Exclusion Order and Police Powers (to protect a child). And, add the wording ‘reasonable grounds to believe the child is likely to suffer <u>significant harm</u> .’	Amending the Law: s.55 s.59 s.64
18.	Legal orders: discharge of ECPO (in relation to the Sitting of the Tribunal)	To amend the Law by removing the provision that automatically discharges an ECPO by the administrative act of the Tribunal sitting.	Amending the Law: s.55
19.	Legal orders: amendment regarding Parental Responsibility Orders on the making of a CPO	To amend the Children Law so that a parental responsibility order is not automatically discharged by the making of a CPO.	Amending the Law: s.17

No	Proposals for change	Description	Change through*
20.	Legal orders: duration of police powers of protection in emergency situations	Increase the 24 hour time limit for police protection for children in emergency situations to a maximum of 72 hours.	Amending the Law: s.66
21.	Legal orders: amend the ECPO, Police powers to protect a child and Recovery of Children – by removing the word ‘imminently’ and adding ‘by force, if necessary’	Amend wording so that “by force, if necessary” is added, and remove “imminent” for ECPO (“imminently” in the case of Police powers). The other threshold changes noted above to introduce ‘reasonable cause to believe’ means the imminent risk of significant harm will remain a consideration when making an ECPO, without the need to prove imminence of risk of suffering, as currently.	Amending the Law: s.55 s.59 s.64
22.	Legal orders: amend the CR/ ICR so the thresholds are distinct	<p>The relevant sections of the Law to be amended so it more closely aligns with the original policy intentions where a CR was: “intended for those cases where there is a reasonable prospect of positive change, which will enable the child either to continue living within the family or be reunited within a relatively short period.”</p> <p>The changes should include:</p> <ul style="list-style-type: none"> <li>o Removing the need to demonstrate ‘no person willing and able’ limb; and</li> <li>o Make the threshold distinct and cover its purpose (as above) and to ensure it: <ul style="list-style-type: none"> <li>• Protects a child from harm and promotes their health, welfare and development;</li> <li>• Is temporary in nature;</li> <li>• Assists parents or carers to be able to fulfil their care, protection, guidance and control responsibilities adequately;</li> </ul> </li> </ul>	Amending the Law: s.44 s.47



No	Proposals for change	Description	Change through*
		<ul style="list-style-type: none"> <li>Enables the Tribunal to make interim variations to a condition of a CR on a time limited basis; and</li> <li>Removes the 28 day review requirement and set reviews at a minimum of 6 months (with discretion for Tribunal to list at shorter interval if required).</li> </ul>	
23.	Legal orders: CRs– rename the ‘conditions’, ‘grounds’ and update the grounds.	<p>Rename the ‘conditions’ for a CR as ‘grounds’.</p> <p>Update the list of ‘grounds’:</p> <ul style="list-style-type: none"> <li>Along the lines of the changes set out in Appendix G;</li> <li>To include a list of ‘specified offences’; and</li> <li>To define the terms ‘specified offences’ and ‘close connection’ along the lines of the Scottish definitions.</li> </ul>	Amending s.35 and all relevant sections
24.	Name changes: amend the names for the Safeguarder Service and Safeguarders in the Law	Legislative amendment to amend the name of the Safeguarder Service to the Family Proceedings Advisory Service and the officers appointed as Safeguarders to Family Proceedings Advisers.	Amending Part XII of the Law (s83 to 85) and secondary legislation as necessary
25.	Name changes: amend ISCP name in Law	Legislative amendment so that the name of The Islands Child Protection Committee is changed to its current name “The Islands Safeguarding Children Partnership”.	Amend s.29 the Law
26.	Amend the duties of the States of Guernsey to the children of Guernsey and Alderney	<p>To move the following duties from The Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009 (“2009 Children Ordinance”) to the primary legislation (the revised Children Law):</p> <ul style="list-style-type: none"> <li>S22 Duty to identify children in need.</li> </ul>	Amending the Law:

No	Proposals for change	Description	Change through*
		<ul style="list-style-type: none"> <li>• S23 Duty of Departments to publish information about services.</li> <li>• S24 Assessment of need</li> <li>• S25 Duty to investigate.</li> </ul> <p>To set out the detail of how the duties on the States and/or the Committee are exercised in the secondary legislation (ordinance or Regulations as appropriate).</p> <p>To redraft the wording of the duty of the Committee to investigate to provide greater clarity and reflect consistently other changes to the Law. This should include when the duty to investigate is established, for example this could be when “the Committee has reasonable cause to suspect that a child is not receiving adequate care, protection, guidance or control or is suffering or likely to suffer significant harm”.</p>	Move s. 22, 23, 24 and 25 from the 2009 Ordinance to the Law under s.24
27.	Duty to co-operate	The 2004 Policy Letter set out that there will be “a general duty on States agencies to work together to identify and assist families who have children who are in need of help at an early stage, thus preventing problems from developing or escalating.” This is covered in part by the current wording in the Law but not to the extent as intended by the policy. This section should be reworded to better reflect the intended duty as agreed in 2004.	Amend s.27 the Law
28.	Child cruelty – unintended narrowing of the criminal offence	To amend the Children (Consequential Amendments etc) (Guernsey and Alderney) Ordinance, 2009 (Amendments Ordinance, 2009) so as to put the scope of persons falling within the offence of Child Cruelty back to the pre-2010 position. This is one where persons who have the care of a child but do not hold parental responsibility, such as a step-parent, unmarried father	Amending the Amendments Ordinance, 2009

No	Proposals for change	Description	Change through*
		without parental responsibility or a baby sitter, are included in the scope of the law.	
29.	Provide the Tribunal with the powers to make an interim variation of a care requirement	Amend the Law to enable the Tribunal, when a review hearing is adjourned, to make an interim variation of the care requirement pending further investigation of the child's circumstances or to allow a party to attend.	Amending s.47 of the Law
30.	Disposal and powers of the Tribunal on disposal	Amend Section 8 of the Third Schedule to the Children (Miscellaneous Provisions) (G&A) Ordinance 2009 which currently refers to section 44 of the Law relating to the test for making of a CR, as opposed to 'Action after investigation by the Children's Convenor, under s.42(1)	Amending the 2009 Ordinance s.8 of the Third Schedule
31.	Provide the Convenor with the powers to suspend part of a condition of a CR, subject to suitable safeguards	Amend the Law to enable the Convenor to suspend part of a condition of a CR. There will be a need to ensure that sufficient safeguards are in place to support the good governance of this amendment.	Amending the 2009 Ordinance s.12 of the First Schedule
32.	Introduce a power to transfer a case to Her Majesty's Procureur (HMP)	Amend the Criminal Justice (Children and Juvenile court reform) Law, 2008 to allow the Convenor to transmit a report to HMP where the report has been transmitted under section 4 (1).	Amending Section 4 (4) of the Criminal Justice (Children and Juvenile court reform) Law, 2008
33.	Terms and conditions of the appointment of the President of the Tribunal.	Amend the Law to replace the words "the Committee" with "the Children's Convenor and Tribunal Board".	Amend s.32(3) of the Law

No	Proposals for change	Description	Change through*
34.	Withholding information to protect a person against the risk of serious harm	To amend these provisions so that it is for the protection of <b>any person</b> .	Amending s.6 of the 2009 Ordinance of the First Schedule
35.	Parties to the Tribunal proceedings	<p>To refine the definition of who are parties to the Tribunal proceedings to:</p> <ol style="list-style-type: none"> <li>1. Recognise all parents as a party to proceedings (other than those who have had parental rights and responsibilities removed); and</li> <li>2. Grant discretion to the Convenor to recognise a wider range of persons who have had significant involvement in the child's upbringing as a party.</li> </ol> <p>Empower the Children's Convenor to make the decisions in relation to parties at the Convenor's meeting. Provide for a suitable right of appeal against any decisions on parties or interested parties who can attend.</p>	Amending s.1 of the Third Schedule of the 2009 Ordinance
36.	Removal of upper and lower age limit for Tribunal member appointment	Remove from the current wording in the Law which precludes a person from being a member of the Tribunal if they are aged 70 years or more or under 21 years of age.	Amending s.33(4)(g) and (h) of the Law
37.	Drafting of Secondary Regulations	Complete the relevant outstanding secondary legislation and guidance to support fully implementing the Law.	Drafting Regulations under s.25 and s.26 of the Law

**Table 1. Policy proposals and details on revisions to the Children Law to be considered by the States of Deliberation.**

\* Details are suggestive and will require further consideration by the legislative drafters.

## SUGGESTED KEY TERM DEFINITIONS

The below table sets out suggested definitions for the key terms in the Law, informed and aligned to other jurisdictions definitions. These definitions will be subject to further consideration by the legislative drafters.

Term	Suggested definition
Child abuse	"A form of maltreatment of a child. Somebody may abuse or neglect a child by inflicting harm, or by failing to act to prevent harm."
Physical abuse	"A form of abuse which may involve hitting, shaking, throwing, poisoning, burning or scalding, suffocating or otherwise causing physical harm to a child. Physical harm may also be caused when a parent or carer fabricates the symptoms of, or deliberately induces, illness in a child." <sup>1</sup>
Emotional abuse	"The persistent emotional maltreatment of a child such as to cause severe and persistent adverse effects on the child's health or development."
Sexual abuse	"Forcing or enticing a child or young person to take part in sexual activities, not necessarily involving a high level of violence, whether or not the child is aware of what is happening."
Neglect	"The persistent failure to meet a child's basic physical and/or psychological needs, likely to result in the serious impairment of the child's health or development."
Suffer	"Experience or be subjected to (something bad or unpleasant)". <sup>2</sup>
Harm	"The ill-treatment or impairment of the health or development of the child". <sup>3</sup>
Significant	"Sufficiently great or important to be worthy of attention; noteworthy". <sup>4</sup>

**Table 2. Suggested definitions for key terms in the Law.**

<sup>1</sup> [Working Together to Safeguard Children 2018](#), pp.106-107.

<sup>2</sup> [Merriam-Webster – Suffer](#): This definition has been drawn from the Merriam-Webster Dictionary, due to the absence of a clear legal definition in statute or legal guidance across the jurisdictions studied.

<sup>3</sup> Definition drawn from [Section 31\(9\) of the Children Act 1989](#) (England & Wales) and [Children \(Jersey\) Law, 2002, Article 24\(6\)](#) (Jersey).

<sup>4</sup> As defined by Oxford Languages. This definition was chosen as a consequence of the Convenor's Statement, 2022.

**APPENDIX G: PROPOSED CHANGES TO THE GROUNDS FOR REFERRAL TO THE CONVENOR**

Current 'Conditions'	Proposed new 'Grounds'	Supporting rational
(a) the child has suffered, or is likely to suffer, significant impairment to his health or development,	(a) (i) the child has suffered <u>unnecessarily</u> , or is likely to suffer <u>unnecessarily</u> , or (ii) <u>the health or development of the child has been or is likely to be significantly impaired</u>	<p>The inclusion of 'suffer unnecessarily' aligns with the Scottish equivalent and reduces the current high evidential burden of requiring evidence of 'significant impairment'. Currently, cases where children have experienced suffering, either physical or emotional, is not covered as it does not meet the threshold to refer a case to the Convenor. This is a risk and a gap in protection e.g. neglect cases where the child is not clothed or fed appropriately, lives in an unhealthy environment or exposed to danger such as not obtaining medical care when it is needed.</p> <p>No case law exists to interpret 'significant impairment'. Adding in 'unnecessary suffering' as a separate limb removes any uncertainty and removes the need to rely on the Court adopting a wide/broad interpretation of significant impairment.</p>
(b) the child has suffered, or is likely to suffer, sexual or physical abuse,	(b) the child has suffered, or is likely to suffer, sexual or physical abuse.	Retaining this ground and adding in the new ground 'h' enables action to be taken to protect against abusive behaviours before a criminal conviction may be made i.e. it provides protection when criminal cases are progressing through the court and also where a conviction is not found. See example (h) below.
(c) the child has – (i) misused drugs or alcohol, or (ii) deliberately inhaled a volatile substance,	(c) the child has – (i) misused drugs or alcohol, or (ii) deliberately inhaled a volatile substance,	Retain as currently.

Current 'Conditions'	Proposed new 'Grounds'	Supporting rational
<i>(d) the child is exposed, or is likely to be exposed, to moral danger,</i>		<p>After further consideration it is suggested that this ground is removed as the revised wording in grounds (a) and (b) provide the same protection.</p> <p>In Scotland the same (a) and (b) grounds are only applicable to parents, so an additional ground is needed. However, this would not be the case in Guernsey as the proposed a and b grounds are not only application to parents.</p>
<p>(e) the child –</p> <p>(i) has displayed violent or destructive behaviour and is likely to become a danger, to himself, or others, or</p> <p>(ii) is otherwise beyond parental control,</p>	<p>(e) -</p> <p>i) <u>the child's conduct has had, or is likely to have, a serious adverse effect on the health, safety or development of the child or another person, or</u></p> <p>ii) <u>the child is otherwise beyond parental control</u></p>	<p>The proposed wording has been amended to be less emotive and to provide protection for use in cases involving self-harm, eating disorders etc. The current wording is challenging to use as the child themselves may find it difficult to read and accept that they are considered a danger.</p>
<p>(f) the child, being of 12 years of age or more, has committed –</p> <p>(i) a criminal offence, or</p> <p>(ii) what would be a criminal offence if the child had the necessary capacity, or</p>	<p>(f) the child, being of 12 years of age or more, has committed –</p> <p>(i) a criminal offence, or</p> <p>(ii) what would be a criminal offence if the child had the necessary capacity, or</p>	<p>Retain as currently.</p>
<p>(g) the child (being under the upper limit of the compulsory school age) is failing to attend school without good reason.</p>	<p>(g) the child (being under the upper limit of the compulsory school age) is failing to attend school without good reason.</p>	<p>Retain as currently.</p>

Current 'Conditions'	Proposed new 'Grounds'	Supporting rational
	<u>(h) a 'specified offence' has been committed in respect of the child,</u>	New grounds. See comments in (b) above.
	<u>(i) the child has, or is likely to have, a close connection with a person who has committed a 'specified offence'</u>	<p>The Schedule 1 offences in the UK are generally all serious offences against children and the term 'Person posing a risk to Children' is now used when referring to offenders which clearly indicates the risk, or potential risk, to children where these offences have occurred or are alleged to have occurred. The offences listed include murder, child abuse, or causing bodily injury to a child and are used by UK statutory services to trigger an assessment for risk.</p> <p>The commission of one of these offences would in itself give rise to concern about any children who had a close connection to the person who has committed the offence or is alleged to have committed one of these offences.</p> <p>It is considered that the addition of (h) and (i) are necessary because it removes the need to prove harm or risk of harm to the child referred where this child is not the victim of the offence.</p> <p>The offence does not need to have resulted in a conviction for this ground to apply.</p> <p>E.g. a parent of a 4 year old child is accused of sexually assaulting a young person aged 15. There is insufficient evidence to satisfy the criminal standard of proof and therefore no prosecution takes places. Children's services consider that the parent presents a risk to their own child. The parent denies all concerns and refuses to engage. Current ground open to the Convenor is (b). In order to satisfy this ground the Convenor would</p>



Current 'Conditions'	Proposed new 'Grounds'	Supporting rational
		have to prove the fact the parent committed a sexual assault on the 15 year old (on the balance of probabilities) and also prove that there was a likelihood that as a result their own child was likely to suffer sexual abuse. Were the (i) ground to be added it would be satisfied when the Convenor proves the sexual offence against the 15 year old. That fact alone would give rise to the question of risk to any child who has a close connection with the adult and would enable intervention when this was considered necessary.
	<u>(j) the child has, or is likely to have, a close connection with a person who has carried out domestic abuse</u>	New ground to address the risk of domestic abuse specifically. The offence does not need to have resulted in a conviction for this ground to apply.
	<u>(k) the child is, or is likely to become, a member of the same household as a child in respect of whom a specified offence has been committed</u>	New ground which provides protection for other children of, or likely to become part of a household, where one child in a household has been the victim of an offence and the parents were unable to protect the child from this harm. This ground raises the question of whether other children in the same household are also at risk of harm so questioning if the parents can provide adequate care and protection.
	<u>(l) the child is being provided with accommodation by the Committee under section 25 or a community parenting order is in force in respect of the child.</u>	New ground which removes the need for another ground to be established when the child was already under the Committee for Health & Social Care's care and a care requirement was considered necessary. It is expected that the introduction of this ground would reduce delays in these instances.

**Table 4. Proposed changes to the grounds of referral to the Convenor.**

## SPECIFIED OFFENCES

The below table sets out the 'specified offences' in Scotland and England and Wales which trigger a referral to the Children's Reporter (Scotland) or for child protection purposes (England & Wales). Many of the offences are set out in The Sexual Offences (Bailiwick of Guernsey) Law, 2020 which is included and are recommended as a suggested list requiring further consideration by St. James Chambers to formulate an appropriate list of 'specified offences' relating to children and adults, from Guernsey's and Alderney's perspectives.

The 'specified offences' noted below relate to offences against children or sexual offences. Other offences specific to adults such as murder, manslaughter, assault and battery require further consideration.

	<b>Scotland</b> (applicable to children under 17 years unless specified) specified offences	<b>England and Wales<sup>1</sup></b> specified offences	<b>The Sexual Offences (Bailiwick of Guernsey) Law, 2020</b> (under 16 years unless specified)
<b>SEXUAL OFFENCES</b>			
Incest	X	X	X
Intercourse with step-child	X	X	X
Sexual touching of a child family member		X	X
Inciting a child family member to engage in sexual touching		X	X
Rape of a young child	X under 13	X	X under 13
Having intercourse with an older child	X 13 to 16	X 13 to 16	X
Sexual assault on a young child by penetration	X under 13	X under 13	X under 13
Engaging in penetrative sexual activity with or towards an older child	X	X	X
Sexual abuse of trust towards a child	X under the age of 17 / dependent on conditions	X	X
Sexual touching of a child		X	X
Causing a child to participate in a sexual activity	X	X	X under 13
Causing a child to be present during a sexual activity	X	X	X
Causing a child to look at a sexual image	X	X	X

<sup>1</sup> [Person Posing a Risk to Children - Guidance and Procedure \(proceduresonline.com\)](https://proceduresonline.com)

Communicating indecently with a child etc.	X	X	X
Grooming for sexual conduct with a child.		X	X under 16
Meeting a child following communication etc.		X	X
Sexual exposure	X	X	X
Voyeurism	X	X	X
Buggery		X under 16	
<b>OFFENCES INVOLVING AN ABUSE OF A POSITION OF TRUST</b>			
Position of trust: sexual touching of a child.	X	X	X
Position of trust: causing or inciting a child to engage in sexual activity.	X under 16	X	X
Position of trust: engaging in sexual activity in the presence of a child.	X	X	X
Position of trust: causing a child to watch a sexual act.	X	X	X
<b>PROCURING, PROSTITUTION ETC.</b>			
Procuring – paying for sexual services	X under 21	X under 21	X
Abduction and unlawful detention.	X	X	X
Permitting girl to use premises for intercourse.	X	X under 16	
Seduction, prostitution, etc., of girl.	X under 16	X under 16	X
Trading in prostitution and brothel-keeping.	X	X under 16	X
Allowing child to be in brothel.	X	X under 16	X
Living on earnings of another from male prostitution	X	X	
Indecent photograph or pseudo-photograph of a child.	X	X	X
Causing or inciting provision by child of sexual services or child pornography	X	X	X
Controlling a child providing sexual services or involved in pornography	X	X	X
Arranging or facilitating provision by child of sexual services or child pornography	X	X	X
Possession of prohibited item		X	X
Possession of child sex doll.			X
Burglary (by entering a building or part of a building with intent to rape a child)		X	
<b>OTHER SEXUAL OFFENCES NOT SPECIFIC TO CHILDREN*</b>			
Rape	TBC	X	X

Administering drugs to obtain or facilitate intercourse		X	X
Abduction (of adults under sexual offences)		X	X
Causing prostitution of women		X	X
Offences where abuse of trust occurs to vulnerable individuals		X	X
Assault by penetration		X	X
Sexual assault		X	X
Causing a person to engage in sexual activity without consent		X	X
Sexual activity with a person with a mental disorder impeding choice		X	X
Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity		X	X
Engaging in sexual activity in the presence of a person with a mental disorder impeding choice;		X	X
Causing a person, with a mental disorder impeding choice, to watch a sexual act		X	X
Inducement, threat or deception to procure sexual activity with a person with a mental disorder		X	X
Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception		X	X
Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder		X	X

OTHER OFFENCES SPECIFIC TO CHILDREN*			
Female Genital Mutilation	X	X	TBC
Any other offence involving bodily injury to a child	X	X	
Cruelty to persons	X under 16	X	
Causing or allowing persons to be used for begging.	X under 16	X under 16	
Exposing children to risk of burning.	X under 7	X under 7	
Failing to provide for safety of children at entertainments.	X	X under 16	

Any offence involving the use of lewd, indecent or libidinous practice or behaviour towards a child.	X		
Abandonment of children under two		X	
Child stealing / abduction including by parent		X	
Abduction of Child in Care/ Police Protection - take away/induce away/assist to run away/ keep away		X	
Recovery of missing or unlawfully held children		X	
Drunk in charge of a child		X under 7	
Give / cause to be given intoxicating liquor to a child		X under 5	
Supplying or offering to supply a Class A drug to a child, being concerned in the supplying of such a drug to a child, or being concerned in the making to a child of an offer to supply such a drug		X	
Aiding, abetting, counselling or procuring the suicide of a child or young person		X	

## **APPENDIX H: SUMMARY OF THE OPERATIONAL CHANGES TO BE MADE TO THE FAMILY CARE AND JUSTICE SYSTEM**

The below table sets out operational changes either made or to be made to the family care and justice system (system) by area. Where resource implications are known these are captured.

Area	Proposals – as refined by the review	Description	Within existing resources
System wide	Advocacy	Extend the current advocacy scheme to support all children in Tribunal hearings and introduce a new scheme to support adults who are required to attend Tribunal hearings, should they wish to access independent advocacy.  The exact scope of the schemes are to be determined as there could be wider requirements across other service areas such as under the new Capacity Law.	TBC
	Establish key performance metrics including average time limits for specific stages in the process by which performance will be measured.	An operational alternative to setting time limits in Law which gives due consideration to being achieved within existing resources. Agencies in the system will determine and agree a system wide set of measures and targets to track performance. This will inform any future statutory targets. To be used to support the Board in monitoring the impact of the changes and inform any future changes that may be required to reduce delays.  Links to Marshall recommendation 17 – in part.	Y
	External and independent review	A regular and independent review of the system should be put in place. A review every three to five years would be sufficient to provide external assurance and challenge to the system, if the other proposals around governance and particularly scrutiny of the system including the impact of the proposed changes are implemented.	N (est. £10-15k every three to five years)

	Establish information sharing protocols	The development of information sharing protocols between the agencies within the system will provide greater clarity on what information can be shared, when, between which agencies. This should help remove a known cause of delays and bring other causes of delay to light so they can be addressed.	Y
	Develop an operational process framework to operationalise the commitment to Safeguarding	The operational framework will provide greater clarity around processes and inter-agency working, which should reduce delays in some instances.  Links to Marshall recommendation 16.	Y
<b>Office of the Children Convenor</b>	Refer all cases to the Convenor, when not proceeding directly to Court, so the Convenor can investigate and triage cases	Those cases referred to the Convenor will be investigated, and triaged appropriately, including signposting cases to mediation or other dispute resolution support, and/or discussion on other issues, for example, issues of abuse or co-parenting, at the earliest practicable stage and before positions have become entrenched.  While this is the general practice there is a recognised need for cases to be referred earlier to the Convenor than currently. The intention being that this could better support children and their families to resolve any disputes or difficulties without needing to proceed to the Tribunal.	Y
	Develop a pilot for the use of dispute resolution and restorative practices within Tribunal related proceedings	Opportunities for dispute resolution already happen at the stage prior to the Convenor's meeting. This is often on a voluntary basis. There is an identified need to explore where dispute resolution (including mediation) and restorative practices could be used in more cases to better support some families to resolve their differences before proceeding to the Tribunal. This proposal aligns to the children welfare principle "that it is expected that parents and any others responsible for a child's welfare will consult and cooperate with one another, and where possible resolve matters by	Y

		<p>agreement, in an atmosphere of openness and non-confrontation, with recourse to formal proceedings (whether court or tribunal) only as a last resort.”</p> <p>Develop a pilot for the use of dispute resolution and restorative practices within Tribunal related proceedings, working with FPAS.</p>	
	Develop a pre-referral protocol with the Committee	<p>To support the reduction of delay and duplication in decision making, the Convenor and the Committee will develop a pre-referral protocol for all cases where compulsory intervention is a possibility.</p> <p>Links to Marshall recommendation 16.</p>	Y
	Introduce timescales and legislative amendments when the Convenor’s Statement is not agreed	An operational level performance and reporting system to be established to track progress of cases. Timescales will not be set out in legislation and will be feasible to address within existing resources.	Y
<b>Child Youth and Community Tribunal</b>	Tribunal procedure changes	<p>a. Parents should not be legally represented in hearings as a general rule, so retaining the balance of representation and the informal nature of the Tribunal. Some parties may require legal representation, in some instances, where it enables parents to fully participate in proceedings and ensure that there is a fair hearing. Access to an independent advocacy service (not necessarily an Advocate/legal advice) should be made available to all parents, should they wish to make use of it;</p> <p>b. The child will be provided with the same level of advocacy i.e. a Family Proceedings Advisor) or an independent advocate such as that provided by the Youth Commission currently to some children.</p> <p>c. To continue with the existing approaches set out for the Tribunal decisions in terms of how decisions are arrived at and communicated;</p>	TBC - advocacy could incur additional costs



		<p>d. Expert medical or other evidence to be called upon, including the existing advice of FPAS; and</p> <p>e. Regardless of whether the case involves removal, those with parental responsibility attending a hearing should be able to make a request for a hearing to be audio recorded.</p>	
	Support the development of Rules of Procedure for the Tribunal	To respond to the proposals for changes to the Law and also to provide greater clarity on procedures of the Tribunal.	Y
	Case management – court and Tribunal	<ol style="list-style-type: none"> <li>1. For the court to have greater visibility of the proposed direction of travel of a case, at the earliest opportunity i.e. case management hearing;</li> <li>2. To inform 1, develop an agreed protocol for managing cases pre-court hearings including the existing arrangement of meetings held with the main professionals/agencies: the Committee, Children’s Convenor, Law Officers, FPAS and legal representation (where relevant), to consider the proposed intentions and to put these forward;</li> <li>3. Introduce for all relevant cases (criteria to be determined) a pre-Convenor meeting and/or pre-Tribunal hearing meeting with key professionals to agree the proposed direction of travel based on case evidence. If at this point it is deemed to be a permanency case an application is made to the court at the earliest opportunity.</li> </ol>	Y
<b>Court</b>	Support the implementation of the amendments to the Law and explore further where delays can be reduced further	Develop the necessary Practice Directions and Rules of Court to support the implementation of the changes to the Law and continue to consider where delays in court proceedings could be further reduced.	Y

**Table 1. Operational changes to the system.**

## APPENDIX I - INDICATIVE IMPLEMENTATION PLAN FOR PHASE 1

Lead Area*	2022		2023			
	Quarter 3	Quarter 4	Quarter 1	Quarter 2	Quarter 3	Quarter 4
St James' Chambers	Draft amendments to regulations under s.25 and s.26 of the Children Law					
		Draft amendments to primary legislation				Royal Assent
				Draft amendments to secondary legislation		
The Committee	Develop information sharing protocols				States' approval of amendments to Law**	
	Establish data collection / KPIs		Implement and monitor performance			
	Establish a non-statutory form of a Public Law Outline – target timescales			Align operational guidance with Public Law Outline		
	Develop 'Commitment to Safeguarding' operational guidance					
Multi-agency			Prepare and deliver training on the new Law and processes			
	Scope extending the current Advocacy scheme		Implement the Advocacy scheme (subject to funding requirements)			
	Draft Practice Directions/ Tribunal Rules of Procedure and Rules of Court					
Children's Convenor	Children's Convenor to pilot dispute resolution service					
	Develop a pre-referral protocol with the Committee				Implement court and Tribunal pre-protocol	
	Tribunal to implement procedural changes					

\*The service area that has responsibility for leading and delivering the action, in consultation with other areas as relevant.

\*\*Drafts to the legislation will also need approval from the States of Alderney.

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

**COMMITTEE *FOR THE* ENVIRONMENT & INFRASTRUCTURE**

ENVIRONMENTAL POLLUTION (GUERNSEY) LAW, 2004

PART VI – WATER POLLUTION

SUPPLEMENTARY POLICY LETTER

The States are asked to decide whether, after consideration of the Policy Letter entitled "Environmental Pollution (Guernsey) Law, 2004, Part VI – Water Pollution – Supplementary Policy Letter", dated 18<sup>th</sup> August 2022, they are of the opinion:

1. To approve the amended maximum limits for the concentration of pollutants in surface water and groundwater as set out in Part I of Table 1 in Appendix 1, Part A to the policy letter.
2. To approve:
  - a. the changes to the categories of polluting works or other activities having to comply with listed requirements, breach of which will be an offence, from the broad works and other activities currently requiring a permit under the States Water Supply (Prevention of Pollution) Ordinance, 1966 to more specific works or other activities considered to give rise to a particular risk of water pollution as further detailed in paragraph 5 of, and Appendix 1, Part B to, the policy letter; and
  - b. that the Director of Environmental Health and Pollution Regulation has a power by Regulations to amend the list of polluting works and other activities and the related technical requirements.
3. To approve giving the Director of Environmental Health and Pollution Regulation a power in the new water pollution legislation, to take action to deal with water pollution, or a risk of the same, where works need to be carried out without delay or no person can be found on whom to serve an enforcement notice, so as to replace the current equivalent power held by the States' Trading Supervisory Board which will be repealed when the new water pollution legislation comes into force, as further detailed in paragraph 6 of the policy letter.

4. To rescind resolution 1(e) of the 1<sup>st</sup> November, 2012 following Article VI of Billet d'État No XX1 of 2012, relating to providing an exemption from the licensing requirement under the Food and Environmental Protection Act 1985.
5. Only if propositions 1 to 4 have been approved, to approve the draft Ordinance entitled "The Environmental Pollution (Guernsey) Law, 2004 (Commencement) Ordinance, 2022", as set out in Appendix 2 to the policy letter and to direct that the same shall have effect as an Ordinance of the States.
6. Only if propositions 1 to 5 have been approved, to approve the draft Ordinance entitled "The Environmental Pollution (Water Pollution) Ordinance, 2022", as set out in Appendix 3 to the policy letter and to direct that the same shall have effect as an Ordinance of the States.

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)(c) of the Rules of Procedure of the States of Deliberation and their Committees.

#### EXPLANATORY MEMORANDUM

##### **The Environmental Pollution (Guernsey) Law, 2004 (Commencement) Ordinance, 2022**

This Ordinance commences Part VI (Water Pollution) of the Environmental Pollution (Guernsey) Law, 2004 on 3<sup>rd</sup> October, 2022. Some of the provisions of the Environmental Pollution (Water Pollution) Ordinance, 2022 are made under Ordinance powers under Part VI.

Part VI also contains substantive provisions relating to water pollution including certain definitions relevant to water pollution and enforcement powers for the Director of Environmental Health and Pollution Regulation in relation to water pollution; these include powers to take samples and serve anti-pollution notices and a definition of the water catchment area which replace comparable provisions in the Prevention of Pollution (Guernsey) Law, 1989 which is to be repealed when Part VI comes into force.

##### **The Water Pollution (Guernsey) Ordinance, 2022**

This Ordinance is the third main Ordinance under the Environmental Pollution (Guernsey) Law, 2004 ("2004 Law") and modernises water pollution legislation in Guernsey. Earlier Ordinances under the 2004 Law were made in 2010 in relation to regulation of waste operations and in 2019 in relation to activities likely to result in air pollution. The Ordinance provides for the first time for the licensing of discharges of trade effluent or sewage effluent

into inland waters or the sea and the establishment of water quality standards for surface water and groundwater. It also repeals and replaces the current legislation controlling water pollution under the Prevention of Pollution (Guernsey) Law, 1989 ("the 1989 Law") and makes consequential amendments to other legislation under the 2004 Law. A contravention of a provision of the Ordinance or the carrying on of an activity prescribed as requiring a licence, other than in accordance with a licence, is an offence under section 66, and may result in an offence under section 65, of the 2004 Law.

Section 1(1) prescribes the discharge of sewage effluent or trade effluent into the sea or other waters as operations requiring a licence from the Director of Environmental Health and Pollution Regulation ("the Director") under the 2004 Law subject to certain exclusions. The exclusions include a discharge made in the course of carrying on an activity regulated under section 4 and operations given an exemption from licensing by the Director; those given an exemption will include discharges falling within section 1(1) of the Ordinance which require a licence under the Food and Environment Protection Act 1985 as extended to the Bailiwick; that Act requires a licence, subject to exceptions, for deposits of substances in particular from ships and marine structures into the sea although in practice it is unlikely there would be deposits of sewage effluent or trade effluent from the same in Guernsey. There is a transitional provision in section 12 and Schedule 5 which provides for persons making discharges prescribed under section 1 when the Ordinance comes into force to be treated as licensees provided that they make an application for a licence to the Director within two months of the commencement of section 1.

Section 2 applies certain licensing provisions set out in the Environmental Pollution (Waste Control and Disposal) Ordinance, 2010 to the operations prescribed under section 1(1).

Section 3 and Schedule 1 establish standards for water quality for surface water and groundwater comprising maximum limits for the concentration of listed pollutants in those waters and characteristics which those waters are required to have.

Section 4 regulates activities which are considered likely to present a threat of water pollution but not to require a licence under the 2004 Law. A person must not carry on the activity unless he or she complies with all the requirements for that activity set out in Schedule 2. Section 4 replaces current requirements for permits from the States Trading Supervisory Board (Guernsey Water division) under the States Water Supply (Prevention of Pollution) Ordinance, 1966 for activities within the water catchment area including erection of buildings, construction of works, installation of oil-fired boilers and related equipment and use of premises for carrying on of a trade or business where trade effluent may be discharged. The scope of activities has been changed to cover those in all locations and to give more exact descriptions of activities giving rise to a threat of water pollution.

Section 5 prohibits a person from causing or permitting the contravention of a standard specified under section 3 and from causing or permitting the occurrence of water pollution or the risk of the same. The second prohibition replaces the current, very similar prohibition in section 1 of the 1989 Law. Section 9 sets out defences to offences concerning contraventions of the prohibitions in sections 4 and 5.

Part V and Schedules 3 and 4 provide for consequential amendments and a modification to the enforcement provisions made under the 2004 Law, consequential on the new Ordinance being made and Part VI of the Law relating to water pollution being commenced. Schedule 3 in particular adds provisions to the Environmental Pollution (Enforcement and Appeals) Ordinance, 2019 concerning the content of enforcement notices relating to breaches under the Law in relation to water pollution. It also adds a new section 9A to that Ordinance to give the Director power to take action himself in certain circumstances where action needs to be taken without delay or no person can be found on whom to serve a notice. This will replace the broadly similar power currently held by the States' Trading Supervisory Board under section 7(1) of the 1989 Law except that it will also apply outside the water catchment area.

Part VI makes standard general provisions including the interpretation and repeal provisions.

The Ordinance comes into force on 3<sup>rd</sup> October, 2022 except for section 4 and certain related provisions which come into force six months later on 3<sup>rd</sup> April, 2023.

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

**COMMITTEE *FOR THE ENVIRONMENT & INFRASTRUCTURE***

ENVIRONMENTAL POLLUTION (GUERNSEY) LAW, 2004  
PART VI – WATER POLLUTION  
LEGISLATION AND SUPPLEMENTARY POLICY LETTER

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

18<sup>th</sup> August 2022

Dear Sir

**1      Executive Summary**

- 1.1      This supplementary Policy Letter seeks approval for amendments to the proposals agreed in November 2012, when the States of Deliberation directed the drafting of legislation proposed to modernise Water Pollution legislation<sup>1</sup>. The current legislation in force dates from 1989 or earlier and provides for no standards for the Island's water resources.
- 1.2      The drafting directed included amendments to Part VI of the Environmental Pollution (Guernsey) Law, 2004 ("2004 Law"), in particular to confer functions in relation to regulation of water pollution on the Director of Environmental Health and Pollution Regulation and to extend enforcement powers in relation to water pollution from the water catchment area to the whole island. These amendments were drafted as part of the Environmental Pollution (Guernsey) (Amendment) Law, 2015 and took effect at the end of that year. Although the amendments were made, Part VI was not brought into force as the other legislation directed needs to be in force at the same time before the water pollution legislation currently in force is repealed.

---

<sup>1</sup> See Article VI of Billet d'État No. XXI of 2012.

### 1.3 The other drafting directed included:

- the establishment of standards for the Island's water resources. Those standards were listed in the Director's report attached to the Policy Letter (the Director's report)<sup>2</sup>;
- replacing the permitting and other provisions under the current Prevention of Pollution (Guernsey) Law, 1989 ("1989 Law") with provisions requiring the same to comply with listed requirements breach of which would be an offence<sup>3</sup>; and
- providing for an exemption for licensing requirements under the Food and Environment Protection Act 1985, as extended to Guernsey, to avoid a need for two licences when operations giving rise to a risk of water pollution are prescribed as requiring a licence under the directed legislation<sup>4</sup>.

## 2 The Proposed Changes

### 2.1 The principle of the above proposals remains the same but this policy letter seeks approval for the following changes on points of detail identified in the drafting process:

- amendments to the maximum limits for the concentration of pollutants in surface water and ground water to meet concerns raised by Guernsey Water to adapt the proposed limits to local circumstances and, given the passage of time, following a review by the Director of Environmental Health and Pollution Regulation (the Director) of limits in other jurisdictions;
- changes to the potentially polluting works or activities having to meet listed requirements, the breach of which would be an offence, from those currently requiring a permit under the 1989 Law (Schedule 2 activities);
- giving the Director a power to enter premises to take action to deal with water pollution or a risk of the same where works need to be carried out without delay or no person can be found on whom to serve an enforcement notice; there is a similar power held by the STSB (Guernsey Water) under the current 1989 Law<sup>5</sup> but only in the water catchment area. It is proposed this power could be

---

<sup>2</sup> See resolution 1(c) following the debate.

<sup>3</sup> See resolution 1(g) following the debate.

<sup>4</sup> See resolutions 1(d) and (e) following the debate.

<sup>5</sup> See section 7(1).



exercised island wide consistent with the other amendments already made to the 2004 Law in 2015; and

- rescinding resolution 1(e), following the 2012 debate, in relation to an exemption from licensing requirements under the Food and Environment Protection Act 1985 (as extended to Guernsey with modifications) whilst still achieving the policy aim of avoiding double licensing remains under existing legislative provisions.

2.2 This policy letter also provides details on the proposed:

- statutory guidance to be issued to those carrying on potentially polluting works or activities which do not require a licence under the 2004 Law but have to meet the requirements listed in the legislation; and
- the later commencement of this Part of the legislation to give people more time to make practical arrangements to meet the listed requirements.

### **3 The Ordinances**

3.1 As the principle of the water pollution legislation was approved and the drafting directed in 2012, approval of the policy for the amendments and approval of the Ordinances are being sought at the same time as set out in paragraph 5.1 of the Directive relating to submission of propositions to the States<sup>6</sup>. The proposed draft Ordinances are attached to the Policy Letter at Appendices 2 and 3.

3.2 The Ordinances provide for:

- Commencement of the Water Pollution Part of the 2004 Law as directed under the 2012 policy<sup>7</sup>; and
- The main water pollution provisions directed in 2012 and as proposed to be amended.

3.3 This Policy Letter is being brought to the Assembly by the Committee *for the Environment & Infrastructure* (CfE&I). Although the Director of Environmental Health and Pollution Regulation is the independent statutory official appointed to carry out the functions, exercise the powers and perform the regulatory functions

---

<sup>6</sup> See Directive No. I of 2021 issued by the States' Greffier.

<sup>7</sup> Resolution 1(b) following the 2012 debate.

under the 2004 Law, CfE&I has the policy mandate for the protection of the natural environment.

#### **4 Proposed Amendments to the Standards for the Island's Water Resources**

- 4.1 A technical overview of the amendments is provided in Appendix 1, Part A; the parameters that have been included have been done based on a locally-focused risk assessment, taking into account local activities, water source characteristics and drinking water treatments. Parameters have largely been kept the same but some have been removed (where their inclusion was out-dated, unnecessary or based on drinking water standards rather than environmental standards).
- 4.2 The draft legislation provides powers to the Director (as per the 2012 policy) to amend by Regulations the Water Quality Standards for Surface Water and Groundwater. This will allow any new pollutants to be added to the table of maximum limits or amendments to be made to the limits, as necessary, including to reflect scientific progress or technical developments.

#### **5 Additional categories of potentially polluting works or activities which must comply with listed requirements**

- 5.1 The Director's report and 2012 resolutions stated that the States Water Supply (Prevention of Pollution) Ordinance, 1966 and the 1989 Law would be repealed with the permitting provisions they contained being replaced under the new legislation.
- 5.2 It is proposed that the categories of potentially polluting works in the new legislation are more specifically worded than those in the 1966 Ordinance, in order to identify works or other activities considered to raise a particular risk of water pollution, whilst still covering most of the activities currently requiring a permit. This approach aligns with the 2012 policy and similar provisions within UK water pollution legislation (whilst being Guernsey-specific). Details of the proposed changes are provided in Appendix 1, Part B.
- 5.3 It is proposed that activities are covered anywhere on the island and not just in the water catchment area (consistent with the 2012 policy) and that potentially polluting activities carried on by any party are included (not being limited to trade or business activities) in order to be able to address more diverse risks of pollution to any of the island's water bodies.
- 5.4 Discharges of trade effluent or sewage effluent giving rise to the greatest risk of water pollution are prescribed in the main draft Ordinance as requiring a licence

from the Director under the 2004 Law<sup>8</sup>. This reflects resolution 1(d) following the 2012 debate. Certain other works or activities, which give rise to significant risk of water pollution, but are considered not to require control by licence, must instead meet listed requirements set out in Schedule 2 of the draft Ordinance<sup>9</sup> ("Schedule 2 activities").

5.5 It is also proposed that the Director has a power to amend Schedule 2 setting out the works or other activities and relevant requirements by Regulations, in view of its technical nature.

5.6 The Committee recommends that the States approves the above proposals in relation to controls on potentially polluting works or other activities which will not require a licence under the 2004 Law.

## **6 Power for Director to take action to deal with water pollution or the risk of the same**

6.1 During the drafting stage, it was identified that the Water Pollution Part of the 2004 Law does not include an equivalent to the current power of STSB (Guernsey Water) to enter premises to take action to protect the island's water resources against water pollution or the risk of the same. This power currently only applies in the water catchment area and will be repealed when the new Ordinance comes into force<sup>10</sup>.

6.2 Therefore, it was considered that a similar power needed to be given to the Director to enter premises to take action to deal with water pollution or a risk of the same where works need to be carried out without delay or no person can be found on whom to serve an enforcement notice. As in the current provision in the 1989 Law, it is proposed that the States have a power to recover expenses incurred by the States in the Director taking such action from the person who caused or permitted the relevant water pollution or risk of the same.

6.3 Consistent with the 2012 policy, it is proposed that such provisions apply to the whole island and not just in the water catchment area<sup>11</sup>. The Committee therefore proposes that the States approve adding these provisions to the enforcement provisions in the legislation.

---

<sup>8</sup> See section 1 of the draft Environmental Pollution (Water Pollution) Ordinance, 2022.

<sup>9</sup> See section 4 and Schedule 2 to the draft Environmental Pollution (Water Pollution) Ordinance, 2022.

<sup>10</sup> See section 7(1) of the 1989 Law.

<sup>11</sup> See Schedule 3 to the draft Environmental Pollution (Water Pollution) Ordinance, 2022, paragraph 4.

## **7      Avoiding a need for two licences under the 2004 Law and the Food and Environment Protection Act 1985 as extended to the Bailiwick**

- 7.1      The 2012 policy identified that a licence might be required for a deposit of a substance into the sea under the Food and Environment Protection Act 1985 ("FEPA") as extended with modifications to the Bailiwick and for a discharge prescribed as requiring a licence under the new water pollution Ordinance.
- 7.2      Resolution 1(e), following the 2012 debate therefore, approved the proposal to provide an exemption from the licensing requirements under FEPA for operations depositing substances into the sea, within the territorial waters, which are prescribed under the new Water Pollution Ordinance.
- 7.3      The policy aim of avoiding a need for two licences remains the same but during the drafting process it was decided that it would be preferable to do this by means of providing for an exemption from the licensing requirements under the 2004 Law for a deposit also requiring a licence under FEPA.
- 7.4      The main reasons for this are:
- that FEPA applies throughout the Bailiwick and implements international conventions relating to dumping at sea so that it is preferable to maintain a uniform approach throughout the Bailiwick; and
  - the Provisions in the Water Pollution part of the 2004 Law assume that FEPA will operate alongside the licence requirements under the 2004 Law so that this approach is more consistent with the 2004 Law<sup>12</sup>. In particular, the Committee *for* Health and Social Care, will have to comply with the duties in section 47 of the 2004 Law when carrying out its FEPA licensing functions including a requirement to act generally with a view to promoting the purposes and objectives of the 2004 Law and to consult with the Director.
- 7.5      Therefore, the Committee proposes that Resolution 1(e), following the 2012 debate is rescinded as double licensing will be avoided by an exemption from the licensing requirement under the 2004 Law using current Regulation making powers of the Director.

---

<sup>12</sup> See in particular section 47 of the 2004 Law.

## **8 Transitional arrangements and guidance**

- 8.1 To provide businesses and members of the public with an opportunity to be fully informed and make practical arrangements it is proposed that the parts of the Water Pollution Ordinance relating to Schedule 2 activities are not commenced until 6-months after the rest of the Ordinance. During this six-month period the States Water Supply (Prevention of Pollution) Ordinance, 1966 will remain in force to provide for some regulation of the activities requiring a permit under it.
- 8.2 To assist those affected, the Director proposes to issue guidance on the listed requirements. There was a consultation with the DPA, Guernsey Water and oil providers on the requirements in relation to oil installations and with the States Vet on activities affecting farming and horticulture.
- 8.3 This guidance is intended to assist both businesses and members of the public to ensure that there is a clear understanding of the nature and extent of the requirements that have to be met to prevent water pollution in relation to the activities listed in the schedule. There will also be non-statutory guidance on the proposed approach to enforcement which will be in line with best practice including a proportionate approach.

## **9 Compliance with Rule 4**

- 9.1 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.
- 9.2 In accordance with Rule 4(1):
- a) The Propositions contribute to the States' objectives and policy plans by discharging the Government Work Plan priority of 'meeting international standards' and CfE&I's policy mandate for the protection of the natural environment.
  - b) In preparing the Propositions, consultation has been undertaken with Guernsey Water, the Development and Planning Authority, the States Analytical Laboratory, the States Vets, local oil providers and the Law Officers of the Crown.
  - c) The Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.

- d) The financial implications to the States of carrying the proposals into effect are detailed within sections 9.4 – 9.8 below.

9.3 In accordance with Rule 4(2):

- a) The propositions relate to the purpose and policy responsibilities of CfE&I, as the Committee with the policy mandate for the protection of the natural environment.
- b) The propositions have the unanimous support of the Committee.

9.4 In accordance with Rule 4(1)(d), it is confirmed that the position remains as stated at paragraph 10 of the 2012 Policy Letter i.e. that licence fees will cover the costs of the new prescribed operations relating to discharges of trade effluence or sewage effluent and the costs of administering other new provisions would be met from normal departmental budgetary allocations.

9.5 However, it is recognised that the implementation of the proposed Ordinances will result in new legal requirements for the Director of Environmental Health and Pollution Regulation ("the DEHPR") to administer and it will generate considerable extra workload requiring additional staff time. The DEHPR must be able to administer and enforce the Water Pollution Ordinance once it has come into effect, but the DEHPR currently does not have the staff resources to be able to do so alongside his other functions and other functions carried out by the same officers at the Office of Environmental Health and Pollution Regulation.

9.6 Failing to have qualified and competent staff in place ready to discharge the duties required by the 2004 Law could lead to detrimental impacts on the environment and failure to discharge statutory duties with associated reputational damage both to the DEHPR and the States of Guernsey and also to increased risk of challenge by way of judicial review. One officer was recruited to discharge the Waste functions when they were enacted in 2010 but no other staff were appointed in relation to the Air Pollution functions. The DEHPR is in the process of submitting a request for a new full time equivalent (FTE) post to discharge Environmental Pollution (EP) functions, with a focus or specialism relating to the water environment.

9.7 Licence fees are charged for applications in relation to prescribed operations under the 2004 Law (prescribed under Waste and Air Pollution Ordinances) and additional fees will be collected for applications in relation to operations prescribed under the Water Pollution Ordinance. Annual licences fees are also charged for existing prescribed operations other than waste transport operations to cover the cost of

monitoring and enforcement of licences.

- 9.8 Having considered various options the DEHPR proposes to use the licensing income received (in a transparent form) to offset the wages of the staff that discharge all of the EP functions; fee income would only be used to the extent it reflects work carried out by staff on the relevant types of licence. EP licence fee money is proposed to be used to offset the cost of a new FTE (although the money will be used to counterbalance the resources expended by multiple officers to carry out EP work).
- 9.9 In the event that additional resources are required at a later stage to discharge the functions under the legislation then consideration will be made as to whether changes can be made to the fees that are levied for work in relation to licence applications or whether new fees should be charged for other work. It is also noted that the Policy & Resources Committee has a duty under section 4(2) of the 2004 Law to "ensure that adequate resources are provided for the DEHPR so that he may carry out the functions, exercise the powers and perform the duties created or arising under the Law" and the DEHPR has legal provision to request this funding through the standard States' financial and budgeting arrangements.

Yours faithfully

H L de Sausmarez  
President, CfE&I

Sam Haskins  
Vice-President, CfE&I

A Cameron  
S Fairclough  
A Gabriel  
Members, CfE&I

## **Appendix 1 – Technical Annex Detailing Certain of the Proposed Amendments**

### **Part A**

#### **Proposed Amendments to the Standards for the Island's Water Resources**

Resolution 1(c) following the debate on the 2012 Policy Letter approved proposals to “set standards for the Island’s water resources as set out in Appendix 2” of the Director's report.

During the drafting process new staff at Guernsey Water raised concerns regarding the approved standards and considered that the maximum limits specified for certain pollutants required adjustment for the particular circumstances in Guernsey. The Director then decided to review the approved standards including consideration of standards for surface water and groundwater in other jurisdictions.

Guernsey Water and the States Analytical Laboratory were consulted on the amendments to the standards and comments and their views were considered when making the amendments.

Table 1 sets out the proposed revised maximum limits for the concentration of pollutants in surface water and groundwater (Part I). Part II shows the required characteristics for surface water and groundwater which are unchanged from those approved in 2012. The notes at the end of the Table explain the changes made to the maximum limits from those approved in 2012 following the comprehensive review by the Director<sup>13</sup>.

In summary amendments are proposed –

- i. to remove certain proposed limits in particular where those pollutants are unlikely to give rise to significant water pollution locally; and
- ii. to change certain limits specified having had regard to changes in limits in other jurisdictions.

The 2012 policy proposed that the Director would be given a power to amend by Regulations the Water Quality Standards for Surface Water and Groundwater. This will allow any new pollutants to be added to the table of maximum limits or amendments to be made to the limits, as necessary, including to reflect scientific progress or technical developments<sup>14</sup>. It should also be highlighted that any pollutant that is present in ground or surface water that presents a significant risk of water pollution can be addressed using the

---

<sup>13</sup> See Part I of Schedule 1 to the draft Environmental Pollution (Water Pollution) Ordinance, 2022.

<sup>14</sup> See Part I of Schedule 1 to the draft Environmental Pollution (Water Pollution) Ordinance, 2022 and paragraph 22 and Appendix 2 to the 2012 Director's report.



enforcement provisions under the Law irrespective of whether it is a pollutant for which a maximum limit is specified.

The Committee recommends that the States approve the amended maximum limits for the concentration of pollutants in surface water and groundwater as set out in Part I of Table 1.

**Table 1 – Water Quality Standards for Surface Water and Groundwater**

Part I – Maximum Limits for the Concentration of Pollutants in Surface Water and Groundwater

Pollutant	Unit of measurement	Standard relating to concentration of pollutant in surface water or groundwater
Aluminium	µg/l	150
Ammonium (as Nitrogen)	mg/l	0.29
Benzene	µg/l	0.75
Cadmium	µg/l	3.75
Chloride	mg/l	188
Chlorine	mg/l	0.5
Chromium	µg/l	37.5
Copper	µg/l	1500
Ethylbenzene	µg/l	300
Fluoride	mg/l	1.13
Glyphosate	ug/l	0.075
Lead	µg/l	7.5
Manganese	mg/l	0.1
Mercury	µg/l	0.75
Nickel	µg/l	15
Nitrate (as NO <sub>3</sub> )	mg/l	42
Perfluorooctanoic acid (PFOA)	µg/l	1
Perfluorooctane sulphonate (PFOS)	µg/l	1

Pesticides individual	µg/l	0.075
Pesticides total (including glyphosate)	µg/l	0.4
Radiation: gross alpha	Bq/l	0.1
Radiation: gross beta	Bq/l	1
Sodium	mg/l	150
Sulphate	mg/l	188
Surfactants (reacting with methyl blue)	mg/l	0.2
Total organic carbon	mg/l	5
Toluene	µg/l	40
Total iron	mg/l	1

## Part II – Required Characteristics for Surface Water and Groundwater

Required characteristic	Unit of Measurement	Standard for required characteristic
Biochemical oxygen demand (5 day test)	mg O <sub>2</sub> /l	3
Colour	mg/1 Pt/Co	50
Chemical oxygen demand, permanganate method	mg O <sub>2</sub> /l	7
Conductivity	µS/cm	1250
Dissolved oxygen	mg O <sub>2</sub> /l	7 (minimum)
Odour	Natural odour	Natural odour
Oil products (total)	mg/1	No visible film
pH	pH	6.5-8.5
Turbidity	NTU	20
Water temperature	°C	Natural temperature variations

## Notes to Table 1, Part I – Amendments to original Policy Letter

Parameter / substance	Unit	Level	Retained / removed / amended	Reason
Aluminium	µg/l	150	Retained	In line with WFD <sup>15</sup> & UK groundwater standards
Ammonium (as N)	mg/l	0.29	Retained	In line with WFD & UK groundwater standards
Anthracene	µg/l	N/A	Removed	Unlikely to be an issue locally
Arsenic	µg/l	N/A	Removed	Only naturally occurring and not a local issue
Benzene	µg/l	0.75	Retained	In line with WFD & UK groundwater standards
Boron	µg/l	750	Removed	Only naturally occurring and not a local issue
Bromate	µg/l	N/A	Removed	Unlikely to be an issue locally
Bromine	mg/l	N/A	Removed	Will be included in pesticide analysis
Cadmium	µg/l	3.75	Retained	In line with WFD & UK groundwater standards
Chloride	mg/l	188	Retained	In line with WFD & UK groundwater standards
Chlorine	mg/l	0.5	Retained	Drinking water leaves the main at a level of 1 mg/l. Included as not naturally occurring
Chromium	µg/l	37.5	Retained	In line with WFD & UK groundwater standards
Coliforms faecal	No./100 ml	N/A	Removed	Naturally occurring and may relate to the natural environment. The presence related to sewage contamination (or similar) can be addressed through enforcement provisions
Coliforms total	No./100 ml	N/A	Removed	Naturally occurring and may relate to the natural environment. The presence related to sewage contamination (or similar) can be

<sup>15</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23<sup>rd</sup> October, 2000 establishing a framework for Community action in the field of water policy as amended – the ‘Water Framework Directive’ (WFD)

				addressed through enforcement provisions
Copper	µg/l	1500	Retained	In line with WFD & UK groundwater standards
Dichloromethane	µg/l	N/A	Removed	Unlikely to be an issue locally
Ethylbenzene	µg/l	300	Retained	Found in petrol, insecticides, paint, ink etc. and included as precautionary measure
Fluoranthene	µg/l	N/A	Removed	Unlikely to be an issue locally
Fluoride	mg/l	1.13	Retained	In line with WFD & UK groundwater standards
Glyphosate*	µg/l	0.075	Retained	Included in original policy letter as an individual pesticide; due to local circumstances individually listed for absolute clarity
Lead	µg/l	7.5	Retained	In line with WFD & UK groundwater standards
Manganese	mg/l	0.1	Retained	Naturally occurring and retained from original Policy Letter
Mercury	µg/l	0.75	Retained	In line with WFD & UK groundwater standards
Naphthalene	µg/l	N/A	Removed	Unlikely to be an issue locally
Nickel	µg/l	15	Retained	In line with WFD & UK groundwater standards
Nitrate (as NO <sub>3</sub> )	mg/l	42	Retained and amended	To account for varying levels across the island
Perfluorooctanoic acid (PFOA)**	µg/l	1	Retained and amended	Reflects DWI levels (see additional note)
Perfluorooctane sulphonate (PFOS)**	µg/l	1	Retained and amended	Reflects DWI levels (see additional note)
Pesticides individual (i)(ii)	µg/l	0.075	Retained	Potential local risk due to collection in drinking water catchment area
Pesticides total (iii)	µg/l	0.4	Retained	Potential local risk due to collection in drinking water catchment area
Phenol	µg/l	N/A	Removed	Unlikely to be an issue locally
Phosphate	µg/l	N/A	Removed	Unlikely to be an issue locally

Radiation: gross alpha	Bq/l	0.1	Retained and amended	In line with Private Water Supply (England) Regulations 2016
Radiation: gross beta	Bq/l	1	Retained and amended	In line with Private Water Supply (England) Regulations 2016
Sodium	mg/l	150	Retained and amended	In line with WFD & UK groundwater standards
Sulphate	mg/l	188	Retained	In line with WFD & UK groundwater standards
Surfactants (reacting with methyl blue)	mg/l	0.2	Retained	In line with original Policy Letter
Suspended solids	mg/l	N/A	Removed	Unlikely to be a local issue
Total organic carbon	mg/l	5	Retained	In line with original Policy Letter
Toluene	µg/l	40	Retained and amended	In line with UK Technical Advisory Group (UKTAG) lowest proposed PNEC (predicted no-effect concentration) level
Total iron	mg/l	1	Retained	Naturally occurring and in line with original Policy Letter
Tritium	Bq/l	N/A	Removed	Unlikely to be a local issue
Xylene	µg/l	N/A	Removed	Unlikely to be a local issue
Zinc	µg/l	N/A	Removed	Unlikely to be a local issue

\*Whilst individual and total pesticide levels have been set (0.075µg/l and 0.4µg/l respectively), glyphosate has been included separately (in line with 2012 proposals) to recognise the impact that this specific pesticide has locally and to allow this parameter to be amended in isolation (as necessary) via the Director's powers should this be locally proportionate. It is noted that this level has been set in accordance with the individual pesticide limit, rather than a lower level or a zero tolerance, in line with the Director of Environmental Health and Pollution Regulation's risk assessment, with support by Guernsey Water and in line with the 2019 States policy direction (<https://www.gov.gg/article/169722/States-Meeting-on-16-October-2019-Billet-dtat-XIX--XX>). From 31 October 2022 retailers will no longer be able to sell products containing glyphosate for use in the garden or as an amateur product therefore the local risk should be reduced but inclusion of this parameter facilitates future amendments as necessary and proportionate. Pesticides individual and pesticides total levels have been set in accordance with the original Policy Letter and incorporate a local reduction (based on the UK drinking water standard) due to the sensitivity of water collection in the drinking water catchment area.

\*\*Perfluorooctanoic acid (PFOA), Perfluorooctane sulphonate (PFOS) notes: it should be noted that the levels for PFOA and PFOS have been determined taking into account advice from the UK Technical Advisory Group which states that "the concentration in groundwater below which the danger of deterioration in the quality of the receiving groundwater is avoided is an annual mean of 1 µg/l". This level also aligns with that provided by

the Drinking Water Inspectorate within the Guidance on the Water Supply (Water Quality) Regulations 2016 specific to PFOS (perfluorooctane sulphonate) and PFOA (perfluorooctanoic acid) concentrations in drinking water. The environmental quality standards (EQS) for priority substances and other pollutants used to clarify chemical status stipulates a level for inland surface waters of 0.00065 µg/l. The annual average EQS for PFOS is based on secondary poisoning (humans eating fish) rather than ecotoxicity, due to the potential for PFOS to bio accumulate in the food chain. This level has not been adopted as a groundwater standard as the impact on drinking water is more relevant. Regulatory levels for PFOS and PFOA are continuing to evolve globally and therefore the Director will continue to closely monitor other jurisdictions in relation to PFOA and PFOS levels and ensure that the Water Quality Standards for Surface Water and Groundwater of the Environmental Pollution (Water Pollution) Ordinance, 2022 are amended by Regulations made by the Director where necessary and appropriate.

## **Part B**

### **Proposed Amendments to Schedule 2 Activities**

The current States Water Supply (Prevention of Pollution) Ordinance, 1966, which has effect as if it had been made under the 1989 Law, prohibits a wide range of works and other activities not to be carried out in the water catchment area except in accordance with a permit issued by the STSB (Guernsey Water).

Resolution 1(g) following the 2012 States debate approved proposals to replace the current permitting provisions under the 1989 Law with provisions requiring such works or activities to comply with listed requirements the breach of which would be an offence.

The Director's report stated that the 1989 Law and 1966 Ordinance would be repealed as the new legislation would include the necessary provisions to prevent risk from harm and to protect water resources and that the requirement for a permit would be removed.

The current works and other activities requiring a permit from Guernsey Water are broadly worded in the 1966 Ordinance to include –

- erection of buildings;
- construction of works;
- permanent installation of oil fired boilers and other equipment intended to be used in connection with the supply or storage of oil or heating by oil; and
- use of any premises within the water catchment area for the carrying on of any trade or business where trade effluent may be discharged; the provisions clarify that trade or business premises include those used for agriculture or horticulture.

Certain activities in relation to construction works, oil installations and certain use of premises where trade effluent may be discharged, such as keeping of livestock or cultivation of land, are covered by the new Schedule 2 activities but it is proposed that the categories are more specifically worded than those in the 1966 Ordinance to identify works or other activities considered to raise a particular risk of water pollution.

The list of Schedule 2 activities was identified having regard to provisions in other British jurisdictions and focussed on risk and so it is proposed to add certain activities not clearly included in the 1966 Ordinance. Inclusion in the list also means that the works or activity will not be subject to the more onerous licensing requirement applying to discharges of trade effluent or sewage effluent into water. It is proposed the list now clearly includes the following –

- specified abstraction or dredging works and works to maintain or remove specified structures near certain waters;
- the laying of pipelines or cables by boring beneath water courses and works to control erosion of banks or ditches;
- operation of vehicles or other equipment for specified purposes near water courses;
- discharge of water run off in certain locations;
- discharges of substances into surface water drainage systems;
- discharges of pollutants into groundwaters;
- storage or application of fertiliser or pesticides or operation of sheep-dipping facilities, and
- private burials carried out on private land and not at the crematorium, a parish church or burial ground.

It is proposed that activities are covered anywhere in the island and not just in the water catchment area consistent with the 2012 policy. Also, potentially polluting activities not carried on as a trade or business are also proposed to be included but in practice the requirements will mainly affect activities carried on during construction activities, works relating to or affecting ditches, streams or ditches, carried on in the course of farming or horticulture or in relation to the installation of domestic oil installations. Commercial oil installations are not proposed to be included as it was considered, in consultation with officers at the Development & Planning Authority, that these activities are sufficiently regulated under land planning and building control requirements which provide for more detailed regulation than in relation to domestic oil installations.

The abstraction and subsequent return of groundwater for the purpose of extracting geothermal energy from the extracted water is included as (11) of Part I of Schedule 2. This commonly applies to ground source heat pumps. There is a requirement that '(d) the temperature of the returned water must be reflective of the seasonal ambient ground water temperature'. There are two types of ground source heat pumps that can utilize boreholes; closed loop and open loop systems. Closed loop systems rely on a closed circuit containing a heat transfer fluid. These systems do not abstract groundwater and would therefore fall outside the stated requirements. Open loop systems abstract water which is filtered through a heat pump via a borehole or straight pipe. This water is then discharged back to a distant section of the water source or another acceptable discharge area via a second borehole or open loop straight pipe. This type of system would need to comply with the stated requirements. Open loop systems typically use a larger land area due to the requirement to discharge the abstracted water and land of this size could utilize closed loop horizontal ground source heat pumps as an alternative.



## **The Environmental Pollution (Guernsey) Law, 2004 (Commencement) Ordinance, 2022**

**THE STATES**, in exercise of the powers conferred on them by section 76 of the Environmental Pollution (Guernsey) Law, 2004<sup>a</sup> and of all other powers enabling them in that behalf, hereby order:-

### **Commencement of Part VI of the Environmental Pollution Law.**

1. Part VI (Water Pollution) of the Environmental Pollution (Guernsey) Law, 2004 shall come into force on the 3<sup>rd</sup> October, 2022.

### **Citation.**

2. This Ordinance may be cited as the Environmental Pollution (Guernsey) Law, 2004 (Commencement) Ordinance, 2022.

---

<sup>a</sup> Order in Council No. XIII of 2004. This enactment has been amended.

## **The Environmental Pollution (Water Pollution) Ordinance, 2022**

### ARRANGEMENT OF SECTIONS

#### PART I PRESCRIBED OPERATIONS AND LICENSING

1. Discharges into Guernsey's water resources to be prescribed operations.
2. Application of licensing provisions in 2010 Ordinance.

#### PART II SURFACE WATER AND GROUNDWATER QUALITY STANDARDS

3. Establishment of water quality standards for surface water and groundwater.

#### PART III OTHER ACTIVITIES LIKELY TO PRESENT A THREAT OF WATER POLLUTION

4. General requirements for other activities likely to present a threat of water pollution.

#### PART IV PROHIBITIONS IN RELATION TO WATER POLLUTION

5. Prohibitions in relation to water pollution.

#### PART V CONSEQUENTIAL AMENDMENTS AND MODIFICATION

6. Modification of the Enforcement and Appeals Ordinance.
7. Amendment of the Enforcement and Appeals Ordinance.
8. Other consequential amendments.

PART VI  
INTERPRETATION AND GENERAL PROVISIONS

9. Defence to offences concerning contraventions of sections 4 or 5.
10. Interpretation.
11. Relationship with public health legislation.
12. Transitional provisions.
13. Repeals.
14. Extent.
15. Citation.
16. Commencement.

SCHEDULE 1: Water quality standards for surface water and groundwater.

SCHEDULE 2: General requirements for activities likely to present a threat of water pollution.

SCHEDULE 3: Amendment of the Enforcement and Appeals Ordinance.

SCHEDULE 4: Other consequential amendments.

SCHEDULE 5: Transitional provisions.

SCHEDULE 6: Repeals.

# **The Environmental Pollution (Water Pollution)**

## **Ordinance, 2022**

**THE STATES**, in pursuance of their Resolutions of the 1<sup>st</sup> November, 2012<sup>a</sup> and the \*\* September, 2022<sup>b</sup>, and in exercise of the powers conferred on them by sections 3, 13, 14, 22, 34, 39, 41, 58 to 62, 64, 69(2) and 72 of the Environmental Pollution (Guernsey) Law, 2004<sup>c</sup> and all other powers enabling them in that behalf, hereby order:-

### **PART I**

#### **PRESCRIBED OPERATIONS AND LICENSING**

##### **Discharges into Guernsey's water resources to be prescribed operations.**

1. (1) The following, being operations which, in the opinion of the States, may involve a risk of environmental pollution, are prescribed as operations for the carrying on of which a licence is required under Part III of the Law –

- (a) the discharge into the sea of trade effluent or sewage effluent, and
- (b) the discharge into any water (other than the sea) on or below the surface of the ground including, without limitation, into –

---

<sup>a</sup> Article VI of Billet d'État No. XXI of 2012.

<sup>b</sup> Billet d'État No. \*\* of 2022.

<sup>c</sup> Order in Council No. XIII of 2004; this enactment has been amended.

(i) a lake, pond, reservoir, stream, douit or other watercourse (whether natural or artificial), and

(ii) a well or borehole,

of trade effluent or sewage effluent.

(2) Subsection (1) –

(a) is subject to any exemption provided for under section 3 of the 2010 Ordinance, as applied by section 2(1)(a),

(b) does not include a discharge of trade effluent or sewage effluent to the extent that it is made into water within –

(i) a sewer or drain, or

(ii) a water fitting,

but, for the avoidance of doubt, includes the onward discharge of effluent from a sewer, drain or water fitting into other water,

(c) does not include, subject to subsection (3), a discharge made in the course of the carrying out of an activity described in column 1 of the table in Part I of Schedule 2.

(3) For the avoidance of doubt, for the purposes of subsection (2)(c), a discharge into the sea or any other water from a combined sewer overflow is to be treated as falling within subsection (1).

(4) If any operation falls within a description in subsection (1) and in Schedule 2 to the Air Pollution Ordinance it shall, subject to subsection (5), be treated as only being prescribed under the Air Pollution Ordinance.

(5) If any discharge of effluent falls within a description in subsection (1) and in section 1 of the 2010 Ordinance, including an operation treated as being prescribed only under the 2010 Ordinance under section 2(2) of the Air Pollution Ordinance, it shall be treated as –

- (a) falling only within section 1 of the 2010 Ordinance where the principal operations on the site in question relate to disposal of waste in or on land, and
- (b) in any other case, as only being prescribed under this Ordinance.

**Application of licensing provisions in 2010 Ordinance.**

2. (1) Despite any provisions of the 2010 Ordinance to the contrary, the following licensing provisions of the 2010 Ordinance apply in relation to a description of operation prescribed under section 1 –

- (a) section 3 (exemptions),
- (b) section 4 (licence and related applications and fees),

and

- (c) section 5 (requirements for applications, accompanying plans, maps and other documents),

except that the reference to "environmental pollution" in section 3(1) is to be read as also including water pollution.

(2) For the avoidance of doubt, the Director may specify different requirements under sections 4 and 5 of the 2010 Ordinance in relation to different descriptions of operation set out in section 1.

## PART II

### SURFACE WATER AND GROUNDWATER QUALITY STANDARDS

#### **Establishment of water quality standards for surface water and groundwater.**

3. (1) The standards for water quality for surface water and groundwater in Schedule 1 are established for the purposes of sections 3(3) to (5) and 41 of the Law.

(2) The standards comprise –

- (a) maximum limits for the concentration of pollutants in surface water and groundwater in Part I of Schedule 1, and
- (b) required characteristics for surface water and groundwater in Part II of Schedule 1.

(3) The maximum limit for the concentration in surface water or groundwater of a pollutant described in column 1 of the table in Part I of Schedule 1 is set out in the corresponding entry in column 3 of the table in Part I of Schedule 1 per unit of measurement of water specified in the corresponding entry in column 2 of the table in Part I of that Schedule.

(4) The standard for the required characteristics for surface water or groundwater described in column 1 of the table in Part II of Schedule 1 is set out in the corresponding entry in column 3 of the table in Part II of Schedule 1 per unit of measurement for that required characteristic specified in the corresponding entry in column 2 of the table in Part II of that Schedule.

(5) The Director –

(a) is required to take into account any relevant requirements or maximum limits established under this section in considering an application for a licence in accordance with section 14(3)(b) of the Law, and

(b) may attach to a licence, conditions intended to ensure the attainment of maximum limits prescribed under subsection (3) in accordance with section 16(2)(b) of the Law.

(6) The Director may by regulations amend Schedule 1.



### PART III

#### OTHER ACTIVITIES LIKELY TO PRESENT A THREAT OF WATER POLLUTION

##### **General requirements for other activities likely to present a threat of water pollution.**

4. (1) A person must not carry out any works or other activities specified in column 1 of the table in Part I of Schedule 2 unless they are carried on in accordance with all the requirements specified for those works or that activity in the corresponding entry in column 2 of the table in Part I of that Schedule.

(2) Part II of Schedule 2 has effect for the purposes of the interpretation of that Schedule.

(3) A person carrying on any works or other activity specified under subsection (1), must have regard to any guidance the Director may issue under this subsection in relation to any requirement specified in relation to that work or activity.

(4) The Director may by regulations amend Schedule 2.

### PART IV

#### PROHIBITIONS IN RELATION TO WATER POLLUTION

##### **Prohibitions in relation to water pollution.**

5. (1) A person must not cause or permit the contravention of a standard specified under section 3.

(2) A person must not cause or permit –

- (a) the occurrence of water pollution, or
- (b) a risk of water pollution to arise.

## PART V

### CONSEQUENTIAL AMENDMENTS AND MODIFICATION

#### **Modification of the Enforcement and Appeals Ordinance.**

6. Where any provision of the Enforcement and Appeals Ordinance is exercised in relation to –

- (a) a prescribed operation prescribed under section 1, or
- (b) a prohibition, restriction, requirement or condition imposed under this Ordinance,

any reference to "environmental pollution" in the Enforcement and Appeals Ordinance is to be construed as if it also includes "water pollution" and any reference to "pollutant" is to be construed as if it means a pollutant falling within section 2(3) or section 40(1)(c) of the Law.

#### **Amendment of the Enforcement and Appeals Ordinance.**

7. The Enforcement and Appeals Ordinance is amended as set out in Schedule 3.

#### **Other consequential amendments.**

8. Schedule 4, which provides for consequential amendments, has effect.

PART VI  
INTERPRETATION AND GENERAL PROVISIONS

**Defence to offences concerning contraventions of sections 4 or 5.**

9. (1) The following defences are available in addition to that under section 69(1) of the Law.

(2) In any proceedings for an offence relating to a contravention of section 4(1) or 5(1) or (2), it shall be a defence for the accused to prove –

- (a) that the accused acted under instructions from the accused's employer and neither knew, nor had reason to suppose, that the acts done by the accused contravened sections 4(1), 5(1) or (2), as the case may be, or
- (b) that the acts alleged to constitute the offence were done in an emergency in order to avoid danger to the public and that as soon as reasonably practicable after they were done, particulars of the acts were furnished to the Director in writing.

(3) In any proceedings for an offence relating to the contravention of section 4(1), it shall be a defence for the accused to prove, in relation to a requirement (however worded) in the table in Part I of Schedule 2 ("**the table**"), not to locate or do anything, or to prevent something occurring, within a specified distance of –

- (a) a spring that supplies water for human consumption,  
or
- (b) a well or borehole that is not capped in such a way so  
as to prevent the ingress of water,

that the accused has taken reasonable measures to ascertain whether or not there is such a spring, well or borehole within the specified distance and has found no evidence of the same.

(4) In any proceedings for an offence relating to a contravention of section 5(1) or (2), it shall be a defence for the accused to prove that the contravention of a standard or the introduction of a pollutant or the risk of the same, as the case may be, occurred under and in accordance with, or as a result of any act or omission under and in accordance with –

- (a) a licence to carry on a prescribed operation granted  
under section 15 of the Law, or
- (b) a licence granted under Part II of the Food and  
Environment Protection Act 1985<sup>d</sup>.

(5) In any proceedings for an offence relating to a contravention of section 5(1) or (2), it shall be a defence for the accused to prove that –

- (a) the contravention of a standard or the introduction of a  
pollutant or the risk of the same, as the case may be,

---

<sup>d</sup> An Act of Parliament, c. 48.

occurred in the course of the carrying on of works or another activity specified in column 1 of the table, and

- (b) that the works or other activity was carried on in accordance with all the requirements for those works or other activity specified in the corresponding entry in column 2 of the table.

**Interpretation.**

10. (1) In this Ordinance, unless the context requires otherwise -

**"the Air Pollution Ordinance"** means the Environmental Pollution (Air Pollution) Ordinance, 2019<sup>e</sup>,

**"combined sewer overflow"** means an overflow from a combined sewer system, into the sea or other water, usually during times of heavy precipitation, of a mix of stormwater and untreated waste water to prevent upstream flooding,

**"combined sewer system"** means a sewer system that it used to convey both waste water and stormwater in a single pipe to a treatment plant,

**"domestic sewage"** includes –

- (a) the contents of lavatories,
- (b) water used for washing or cooking (except for water

---

<sup>e</sup> Ordinance No. XXXVIII of 2019.

used for the business of a laundry or for a business of preparing food or drink), and

- (c) surface water except where it is mixed with any effluent falling within paragraph (a) of the definition of trade effluent,

"**drain**" has the meaning given by section 29(1) of the Sewerage (Guernsey) Law, 1974<sup>f</sup>,

"**effluent**" means any liquid, including particles of matter and other substances in suspension in the liquid,

"**the Enforcement and Appeals Ordinance**" means the Environmental Pollution (Enforcement and Appeals) Ordinance, 2019<sup>g</sup>,

"**groundwater**" means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or the subsoil,

"**Guernsey**" includes the Islands of Guernsey, Herm and Jethou, all other islands, islets and rocks around the coast of those Islands, whether or not attached at low water, and all of the territorial waters adjacent thereto,

"**the Law**" means the Environmental Pollution (Guernsey) Law, 2004,

---

<sup>f</sup> Ordres en Conseil Vol. XXIV, p. 372; this enactment has been amended.

<sup>g</sup> Ordinance No. XXXIX of 2019.

**"the 2010 Ordinance"** means the Environmental Pollution (Waste Control and Disposal) Ordinance, 2010<sup>h</sup>,

**"pollutant"** means a pollutant falling within section 2(3) or section 40(1)(c) of the Law,

**"sewage effluent"** includes any effluent from the sewage disposal or sewerage works of the Guernsey Water division of the States' Trading Supervisory Board but does not include surface water,

**"surface water"** means any water on the surface of the ground including water which has drained from roofs and other structures,

**"trade effluent" -**

- (a) means any effluent, which is wholly or partly produced in the course of any trade or industry carried on at trade premises, and
- (b) in relation to any trade premises, means any such effluent which is so produced in the course of any trade or industry carried on at those premises,

but does not include domestic sewage,

**"trade premises"** means, subject to subsection (2), any premises used or

---

<sup>h</sup> Ordinance No. XVIII of 2010; this enactment has been amended.

intended to be used for carrying on any trade or industry,

"**waste**" has the meaning in the Law except that it does not include -

- (a) radioactive waste, or
- (b) any substance which is explosive within the meaning of the Explosives (Guernsey) Law, 1905<sup>i</sup>,

"**water**": see section 2(4) of the Law,

"**water fitting**" means a water fitting (including, without limitation, a pipe, tap, cistern, bath, sink, water closet or soil pan) installed or used to convey or receive water but, for the avoidance of doubt, does not include a well or a borehole, and

"**water pollution**" means introduction into Guernsey's water resources of any pollutant.

(2) For the purposes of this Ordinance any land or premises used or intended for use (in whole or in part and whether or not for profit) –

- (a) for agricultural or horticultural purposes or for the purposes of fish farming,
- (b) for scientific research or experiment, or

---

<sup>i</sup> Ordres en Conseil Vol. III, p. 414; this enactment has been amended.



(c) for the carrying on of a hospital,

are deemed to be premises used for carrying on a trade or industry; and the references to a trade or industry in the definition of "**trade effluent**" in subsection (1) include references to agriculture, horticulture, fish farming, scientific research or experiment and the carrying on of a hospital.

**Relationship with public health legislation.**

11. For the avoidance of doubt, nothing in this Ordinance affects the operation of the Loi relative à la Santé Publique, 1934<sup>j</sup> or any enactment made under it.

**Transitional provisions.**

12. Schedule 5, which makes transitional provision, has effect.

**Repeals.**

13. Schedule 6, which makes repeals, has effect.

**Extent.**

14. This Ordinance has effect in Guernsey.

**Citation.**

15. This Ordinance may be cited as the Environmental Pollution (Water Pollution) Ordinance, 2022.

**Commencement.**

16. (1) This Ordinance shall, subject to subsection (2), come into force

---

<sup>j</sup> Ordres en Conseil Vol. IX, p.386; this enactment has been amended.

on the 3<sup>rd</sup> October, 2022.

(2) The following provisions of this Ordinance shall come into force on the 3<sup>rd</sup> April, 2023 –

- (a) section 4(1) to (3) and Schedule 2, and
- (b) section 13 and paragraph 1 of Schedule 6, insofar as they repeal the States Water Supply (Prevention of Pollution) Ordinance, 1966<sup>k</sup> and the States Water Supply (Prevention of Pollution) (Amendment) Ordinance, 1977<sup>l</sup>.

---

<sup>k</sup> Recueil d'Ordonnances Tome XIV, p.311; this enactment has been amended.

<sup>l</sup> Recueil d'Ordonnances Tome XXI, p.6.

## SCHEDULE 1

### Section 3

### WATER QUALITY STANDARDS FOR SURFACE WATER AND GROUNDWATER

#### PART I

#### MAXIMUM LIMITS FOR THE CONCENTRATION OF POLLUTANTS IN SURFACE WATER AND GROUNDWATER

<b>Pollutant</b>	<b>Unit of measurement</b>	<b>Standard relating to concentration of pollutant in surface water or groundwater</b>
Aluminium	µg/l	150
Ammonium (as Nitrogen)	mg/l	0.29
Benzene	µg/l	0.75
Cadmium	µg/l	3.75
Chloride	mg/l	188
Chlorine	mg/l	0.5
Chromium	µg/l	37.5
Copper	µg/l	1500
Ethylbenzene	µg/l	300
Fluoride	mg/l	1.13
Glyphosate	µg/l	0.075
Lead	µg/l	7.5
Manganese	mg/l	0.1
Mercury	µg/l	0.75
Nickel	µg/l	15
Nitrate (as N0 <sub>3</sub> )	mg/l	42

Perfluorooctanoic acid (PFOA)	µg/l	1
Perfluorooctane sulphonate (PFOS)	µg/l	1
Pesticides individual	µg/l	0.075
Pesticides total (including glyphosate)	µg/l	0.4
Radiation: gross alpha	Bq/l	0.1
Radiation: gross beta	Bq/l	1
Sodium	mg/l	150
Sulphate	mg/l	188
Surfactants (reacting with methyl blue)	mg/l	0.2
Total organic carbon	mg/l	5
Toluene	µg/l	40
Total iron	mg/l	1

## PART II

### REQUIRED CHARACTERISTICS FOR SURFACE WATER AND GROUNDWATER

Required characteristic	Unit of Measurement	Standard for required characteristic
Biochemical oxygen demand (5 day test)	mg O <sub>2</sub> /l	3
Colour	mg/1 Pt/Co	50
Chemical oxygen demand, permanganate method	mg O <sub>2</sub> /l	7
Conductivity	µS/cm	1250
Dissolved oxygen	mg O <sub>2</sub> /l	7 (minimum)
Odour	Natural odour	Natural odour

Oil products (total)	mg/l	No visible film
pH	pH	6.5-8.5
Turbidity	NTU	20
Water temperature	°C	Natural temperature variations

**Notes to the Schedule.**

1. In this schedule, unless the context requires otherwise -

"**MCPA**" means 2-methyl-chlorophenoxyacetic acid,

"**Pesticides**" means –

- (a) any organic insecticide,
- (b) any organic herbicide,
- (c) any organic fungicide,
- (d) any organic nematocide,
- (e) any organic acaricide,
- (f) any organic algicide,
- (g) any organic rodenticide,

- (h) any organic slimicide, and
- (i) any substance related to any of those set out in items (a) to (h) including a growth regulator and any substance which is a relevant metabolite, degradation product or reaction product of a substance falling within items (a) to (h), and

**"Pesticides total"** means the sum of the concentrations of the individual pesticides detected and quantified.

(2) In this Schedule, unless the context requires otherwise –

- (a) **"Bq/l"** means becquerels per litre,
- (b) **"Mg/l"** means milligrams per litre,
- (c) **"Mg O<sub>2</sub>/l"** means the mass of dissolved oxygen consumed per litre of water,
- (d) **"Mg/1 Pt/Co"** means 1 miligram per litre of platinum as chloroplatinate ion,
- (e) **"NTU"** means Nephelometric Turbidity Units,
- (f) **"pH"** means a figure expressing acidity or alkalinity on a logarithmic scale on which 7 is neutral, lower values are more acid and higher values more alkaline,

- (g) " $\mu\text{g/l}$ " means micrograms per litre, and
- (h) " $\mu\text{S/cm}$ " means micro-siemens per centimetre.

## SCHEDULE 2

Sections 1(2)(c), 4(1) and (2) and 9

### GENERAL REQUIREMENTS FOR ACTIVITIES LIKELY TO PRESENT A THREAT OF WATER POLLUTION

#### PART I

#### WORKS OR OTHER ACTIVITIES AND RELATED REQUIREMENTS

<b>Category of works or other activity</b>	<b>Requirements</b>
(1) The abstraction from a borehole, or well and any subsequent discharge of the abstracted water.	(a) the abstraction must not cause the entry of - <ul style="list-style-type: none"> <li>(i) pollutants, or</li> <li>(ii) water of a different chemical composition from the body of groundwater it enters, into any body of groundwater, and</li> </ul> (b) in the case of abstraction from a borehole, when a borehole is not being used for abstraction, it must be back filled or sealed to the extent necessary to avoid loss of groundwater from any aquifer.
(2) The dredging of a douit, stream or ditch.	(a) vegetation on any bank of the douit, stream or ditch may be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification, (b) any vegetation removed must not be disposed of into the channel, (c) all reasonable steps must be taken to prevent the transport of sediments or other matter disturbed by the works into waters beyond the worked stretch, and (d) all reasonable steps must be taken to avoid increased erosion of the bed or banks of the douit, stream or ditch as a result of the works.
(3) The construction, maintenance or removal of – <ul style="list-style-type: none"> <li>(a) a bridge over a douit, stream or ditch, or</li> <li>(b) a surface water</li> </ul>	(a) vegetation on any bank of the douit, stream or ditch must be removed or modified only to the extent necessary to carry out the works, (b) any vegetation removed must not be disposed of into the channel, (c) all reasonable steps must be taken to ensure that the



<p>drainage system outfall which discharges into a douit, stream or ditch.</p>	<p>works do not result in increased erosion of the bed or banks of the douit, stream or ditch,</p> <p>(d) the activity must not result in any water pollution, and</p> <p>(e) in the case of the construction of any outfall, any outfall and associated works must be designed and constructed to be no larger than is necessary for the proper operation of the outfall.</p>
<p>(4) The laying of a pipeline or cable by boring beneath the bed and banks of a douit, stream or ditch.</p>	<p>(a) the bed and banks of the douit, stream or ditch must not be altered as a result of the works other than in accordance with requirements (b) and (d),</p> <p>(b) vegetation on any bank of the douit, stream or ditch may be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification,</p> <p>(c) any vegetation removed must not be disposed of into the channel, and</p> <p>(d) as far as reasonably practicable, within 12 months of the commencement of the works, the bed and banks of the douit, stream or ditch must be reinstated to their condition prior to the commencement of the works.</p>
<p>(5) Works to control the erosion of a bank of a douit, stream or ditch by revetment.</p>	<p>(a) all reasonable steps must be taken to ensure that the works do not result in increased erosion of either bank of the douit, stream or ditch,</p> <p>(b) the works must not result in the destabilisation of the bed of the douit, stream or ditch upstream or downstream of the works,</p> <p>(c) vegetation on any bank of the douit, stream or ditch may be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification,</p> <p>(d) any vegetation removed must not be disposed of into the channel,</p> <p>(e) revetments must be constructed from one or more of the following: vegetation; geotextiles; wood other than wood treated with preservatives or non-grouted stone rip-rap,</p> <p>(f) the length of any revetment must be no more than 10 metres or one channel width, whichever is the greater,</p> <p>(g) if wood or stone rip-rap is used for a revetment, the wood or rip-rap must be placed at the toe of the bank,</p> <p>(h) the works must not result in the heightening of either bank, and</p> <p>(i) the revetments must be maintained in the state of repair</p>

	required to avoid increased erosion of the banks or destabilisation of the bed.
(6) Operating any vehicle, plant or other equipment for the purpose of undertaking any activity falling within category (2) to (5) of this table.	<p>(a) any vehicle, plant or other equipment must only operate in water where it is impracticable for it to operate on dry land,</p> <p>(b) the refuelling of vehicles, plant or other equipment must be undertaken at least 10 metres from any -</p> <p>(i) douit, stream, ditch or pond as measured from the top of the bank, or</p> <p>(ii) wetland,</p> <p>(c) any static plant or equipment used within 10 metres of any -</p> <p>(i) douit, stream, ditch or pond as measured from the top of the bank, or</p> <p>(ii) wetland,</p> <p>must be positioned on a suitably sized and maintained impervious drip tray with a capacity equal to 110% of the capacity of the fuel tank which is supplying the tank or equipment,</p> <p>(d) any vehicle, plant or other equipment used in or near any douit, stream, ditch, pond or wetland must not leak any oil, and</p> <p>(e) the washing of vehicles, plant or other equipment must be undertaken at least 10 metres away from any -</p> <p>(i) douit, stream, ditch or pond as measured from the top of the bank, or</p> <p>(ii) wetland.</p>
<p>(7) Discharge of water run-off from -</p> <p>(a) a surface water drainage system into Guernsey's water resources from buildings, roads, yards or any other built structures,</p> <p>(b) construction sites for buildings and other structures falling within category (7)(a), or</p> <p>(c) the construction or maintenance of any</p>	<p>(a) all reasonable steps must be taken to ensure that the discharge does not result in water pollution,</p> <p>(b) the discharge must not contain any trade effluent or sewage effluent and must not result in visible discolouration, iridescence, foaming or growth of sewage fungus in Guernsey's water resources,</p> <p>(c) the discharge must not result in the destabilisation of the banks or bed of the receiving waters,</p> <p>(d) the discharge must not contain any water run-off from—</p> <p>(i) fuel delivery areas or areas where vehicles, plant or equipment are refueled,</p> <p>(ii) vehicle loading or unloading bays where pollutants are handled, or</p> <p>(iii) oil and chemical storage, handling or delivery areas,</p> <p>(e) in the case of discharge of water run-off from the construction or maintenance of a surface water outfall, all</p>

<p>water outfall in or near to inland surface water which forms, or will form, part of a surface water drainage system.</p>	<p>reasonable steps must be taken to ensure that any matter liable to block, obstruct, or otherwise impair the ability of the surface water drainage system to avoid water pollution is prevented from entering the drainage system.</p>
<p>(8) Discharge of any substance into a surface water drainage system.</p>	<p>(a) oil, paint, paint thinners, pesticides, detergents, disinfectants or other pollutants must not be disposed of into a surface water drainage system or onto any surface that drains into a surface water drainage system,</p> <p>(b) any matter liable to block, obstruct, or otherwise impair the ability of the surface water drainage system to avoid water pollution must not be disposed of into a surface water drainage system or onto a surface that drains into a surface water drainage system,</p> <p>(c) trade effluent or sewage effluent must not be discharged into any surface water drainage system, and</p> <p>(d) on construction sites –</p> <p>(i) any area of exposed soil from which water drains into a surface water drainage system as described category (7)(b), and</p> <p>(ii) the period of time during which such water drains, must be such as is the minimum reasonably required to facilitate the construction works being undertaken at that site.</p>
<p>(9) The direct discharge of pollutants into groundwater as a result of construction or maintenance works in or on the ground which come into contact with groundwater.</p>	<p>(a) no solid or liquid materials coming into contact with groundwater may contain any pollutant which may cause significant water pollution, and</p> <p>(b) despite requirement (a), drilling fluids used during the works may come into contact with groundwater if necessary to facilitate any drilling provided this does not result in water pollution.</p>
<p>(10) The abstraction and subsequent return of groundwater for the purpose of extracting geothermal energy from the extracted water.</p>	<p>(a) the abstracted water must be returned to the same part of the geological formation from which it was abstracted,</p> <p>(b) any volume of water may be abstracted but the volume of water abstracted and not returned must not exceed 10m<sup>3</sup> per day,</p> <p>(c) the chemical composition of the abstracted water must not be altered prior to its return to the geological formation,</p> <p>(d) the temperature of the returned water must be reflective</p>

	<p>of the seasonal ambient ground water temperature,</p> <p>(e) there must be a means of demonstrating that the net abstraction is not more than 10m<sup>3</sup> in any one day, and</p> <p>(f) water leakage must be kept to a minimum by ensuring that all pipe work, storage tanks and other equipment associated with the abstraction and use of the water are maintained in a good state of repair.</p>
<p>(11) The storage or application of fertiliser other than –</p> <p>(a) that carried out in accordance with a licence granted under section 15 of the Law,</p> <p>(b) that which is exempt from the requirement for a licence granted under section 15 of the Law by virtue of an exemption made by regulations or written notice under section 3 of the 2010 Ordinance, or</p> <p>(c) that which is stored or used in accordance with the Control of Poisonous Substances (Guernsey) Regulations, 2014<sup>m</sup>.</p>	<p>(a) no fertiliser may be stored, including temporarily in a mobile tank or bowser, on land that –</p> <p>(i) is within 10 metres of any douit, stream, ditch or pond, as measured from the top of the bank, or of any wetland,</p> <p>(ii) is within 50 metres of any spring that supplies water for human consumption or any well or borehole that is not capped in such a way so as to prevent the ingress of water,</p> <p>(iii) is waterlogged, or</p> <p>(iv) has an average soil depth of less than 40 centimetres and overlies gravel or fissured rock, unless the fertiliser is stored in an impermeable container, except where the fertiliser is stored in a building which is constructed and maintained to such a standard as is necessary to prevent run-off or seepage of fertiliser from the building,</p> <p>(b) no organic fertiliser may be applied to land that –</p> <p>(i) is within 10 metres of any douit, stream, ditch or pond, as measured from the top of the bank, or of any wetland or opening into a surface water drainage system,</p> <p>(ii) is within 50 metres of –</p> <p>(A) any spring that supplies water for human consumption, or</p> <p>(B) any well or borehole that is not capped in such a way so as to prevent the ingress of water,</p> <p>(iii) has an average soil depth of less than 40 centimetres and overlies gravel or fissured rock, except where the application is for forestry operations,</p> <p>(iv) is frozen (except where the fertiliser is farm yard manure), waterlogged, or covered with snow, or</p>

---

<sup>m</sup> G.S.I. No. 18 of 2014; this enactment has been amended.

	<ul style="list-style-type: none"> <li>(v) is sloping, unless it is ensured that any run-off of fertiliser is intercepted (by means of a sufficient buffer zone or otherwise) to prevent it from entering any douit, stream, ditch, pond or wetland, towards which the land slopes,</li> <li>(c) no inorganic fertiliser may be applied to land that– <ul style="list-style-type: none"> <li>(i) is within 2 metres of any douit, stream, ditch or pond as measured from the top of the bank or of any wetland or opening into a surface water drainage system,</li> <li>(ii) is within 5 metres of any spring that supplies water for human consumption or any well or borehole that is not capped in such a way so as to prevent the ingress of water,</li> <li>(iii) has an average soil depth of less than 40 centimetres and overlies gravel or fissured rock, except where the application is for forestry operations,</li> <li>(iv) is frozen, waterlogged, or covered with snow, or</li> <li>(v) is sloping, unless it is ensured that any run-off of fertiliser is intercepted (by means of a sufficient buffer zone or otherwise) to prevent it from entering any douit, stream, ditch, pond or wetland, towards which the land slopes,</li> </ul> </li> <li>(d) fertilisers must not be applied to land in excess of the nutrient needs of the crop,</li> <li>(e) any equipment used to apply fertiliser must be maintained in a good state of repair, and</li> <li>(f) fertiliser must be applied on land in such a way and at such times that the risk of water pollution is minimised.</li> </ul>
(12) Keeping of livestock.	<ul style="list-style-type: none"> <li>(a) significant erosion or poaching of any land which is within 5 metres of any of the following must be prevented– <ul style="list-style-type: none"> <li>(i) a stream, douit, pond or ditch as measured from the top of the bank,</li> <li>(ii) a wetland,</li> <li>(iii) a spring that supplies water for human consumption, or</li> <li>(iv) a well or borehole that is not capped in such a way so as to prevent the ingress of water, and</li> </ul> </li> <li>(b) livestock must be prevented from entering any land that is within 5 metres of any spring which supplies water for human consumption or within 5 metres of any well or</li> </ul>

	borehole that is not capped in such a way as to prevent ingress of water.
(13) Cultivation of land.	<ul style="list-style-type: none"> <li>(a) no land may be cultivated for crops that is - <ul style="list-style-type: none"> <li>(i) within 2 metres of any stream, ditch or pond, as measured from the top of the bank, or of any wetland,</li> <li>(ii) within 5 metres of any – <ul style="list-style-type: none"> <li>(A) spring that supplies water for human consumption, or</li> <li>(B) well or borehole that is not capped in such a way so as to prevent the ingress of water,</li> </ul> </li> <li>(iii) waterlogged,</li> </ul> </li> <li>(b) moling of land must not be carried out on slopes that – <ul style="list-style-type: none"> <li>(i) have an overall gradient in excess of 4.5°, and</li> <li>(ii) slope towards any douit, stream, ditch, pond or wetland, and</li> </ul> </li> <li>(c) land must be cultivated in a way that minimises the risk of water pollution.</li> </ul>
(14) The application or storage of pesticides.	<ul style="list-style-type: none"> <li>(a) the preparation of pesticide for application and the cleaning or maintenance of pesticide application equipment must be undertaken in a manner which prevents any spillages, run-off or washings from entering Guernsey's water resources,</li> <li>(b) pesticide application equipment must be maintained in a good state of repair,</li> <li>(c) pesticide application equipment must not be filled with water taken from any douit, stream, ditch, pond or wetland unless – <ul style="list-style-type: none"> <li>(i) a device preventing back siphoning is fitted to the system, or</li> <li>(ii) the water is first placed in an intermediate container from which the equipment is filled,</li> </ul> </li> <li>(d) pesticide-treated plants must not be stored or soaked in any douit, stream, ditch, pond or wetland, and</li> <li>(e) pesticide, including any used packaging that has been stored in contact with pesticide, must not be stored on an impermeable surface draining to a surface water drainage system.</li> </ul>
(15) Operating sheep dipping facilities or operating sheep handling facilities where – (a) sheep are held immediately after	<ul style="list-style-type: none"> <li>(a) a sheep must be prevented from having access to any douit, stream, ditch, pond or wetland while there is a risk of transfer of sheep dip fluid from its fleece to such places,</li> <li>(b) sheep dipping facilities must not discharge underground and must not leak or overspill,</li> </ul>

<p>dipping,</p> <p>(b) pour-on parasite treatments are applied, or</p> <p>(c) sheep are held immediately after the application of pour-on treatments.</p>	<p>(c) sheep dipping facilities must not be filled with water taken from any douit, stream, ditch, pond or wetland unless –</p> <p>(i) a device preventing back siphoning is fitted to the system, or</p> <p>(ii) the water is first placed in an intermediate container, and</p> <p>(d) sheep dip facilities must be emptied as soon as is reasonably practicable following completion of dipping.</p>
<p>(16) The burial of human remains (excluding ashes) except where carried out at a crematorium, cemetery, churchyard or parish burial ground.</p>	<p>(a) no part of the burial site may be located –</p> <p>(i) within 50 metres of any well, borehole or spring supplying water for human consumption,</p> <p>(ii) within 30 metres of any spring, douit, stream or other watercourse that is not used for human consumption or the production of food or drink, or</p> <p>(iii) within 10 metres of any field drain,</p> <p>(b) a grave must be dug so that –</p> <p>(i) there is at least 1 metre between the base of the grave and the highest level of the water table which is reasonably predictable taking into account seasonal variations in the level of precipitation and the likelihood of extreme weather events,</p> <p>(ii) there is no standing water in the grave when it is dug, and</p> <p>(iii) at least 1 metre of soil will cover the top of the coffin or body,</p> <p>(c) a grave must not be dug –</p> <p>(i) in unaltered or unweathered bedrock, or</p> <p>(ii) in areas susceptible to groundwater flooding,</p> <p>(d) the body must –</p> <p>(i) not be treated with chemicals such as embalming fluids, and</p> <p>(ii) be placed in a biodegradable coffin or shroud.</p>
<p>(17) The installation of an oil tank, for the storage of fuel oil, which –</p> <p>(a) is made of plastic, fibreglass, steel or stainless steel, and</p> <p>(b) has a maximum</p>	<p>(a) in the case of the installation of a tank with a top outlet, the tank must be installed so that –</p> <p>(i) it has a secondary containment of not less than 110% of the capacity of the tank, and</p> <p>(ii) an isolation valve and anti-siphon device is fitted inside the secondary containment,</p> <p>(b) in the case of the installation of a tank with a bottom outlet or which is single skinned, the tank must be</p>

<p>capacity of no more than 3,500 litres, including testing before first use and installation and testing before first use of any associated equipment including fill pipelines and catchpits, to serve one dwelling for a single household.</p>	<p>installed so that it is sited over a catchpit,</p> <p>(c) in the case of the installation of a tank made primarily from plastic or fibreglass, the tank must not be wholly or partly buried below the ground,</p> <p>(d) in the case of the installation of an open-bunded tank, the tank must be installed so that –</p> <ul style="list-style-type: none"> <li>(i) a vent pipe is fitted that it is directed downwards into the bund,</li> <li>(ii) any fixed draw-off line or feed line does not pass through the bund wall,</li> <li>(iii) any flexible draw-off pipe is fitted with an automatic closure device,</li> <li>(iv) a permanent outlet is fitted with an isolation valve and the outlet valve is shut when not in use, and</li> <li>(v) an automatic closing cut-off valve is fitted,</li> </ul> <p>(e) in the case of the installation of a totally enclosed bunded tank, the tank must be installed so that –</p> <ul style="list-style-type: none"> <li>(i) there is a fill point cap and an overfill cut-off,</li> <li>(ii) there is a top draw-off with an isolation valve and anti-siphon device, and</li> <li>(iii) it is vented to the outside air,</li> </ul> <p>(f) in the case of the installation of a tank over a catchpit, the tank must be installed so that it has adequate support to ensure that –</p> <ul style="list-style-type: none"> <li>(i) the loading on the base of the tank is equally distributed, and</li> <li>(ii) the supports are capable of supporting the weight of the tank at full capacity,</li> </ul> <p>(g) where a catchpit is installed with the tank, the catchpit must be installed so that –</p> <ul style="list-style-type: none"> <li>(i) it is watertight,</li> <li>(ii) the joint work between any block work and the base of the catchpit is visible above ground level,</li> <li>(iii) any block work is rendered inside and out,</li> <li>(iv) there is no damp course,</li> <li>(v) in the case of a fibreglass catchpit, it is sited on – <ul style="list-style-type: none"> <li>(A) a concrete pad which is at least 100mm thick, or</li> <li>(B) paving slabs which are at least 40mm thick, and</li> </ul> </li> <li>(vi) in the case of an installation of a catchpit below a single skinned oil tank, it has a capacity of 110% of</li> </ul>
--	---



	<p>the capacity of the oil tank,</p> <p>(h) oil feed lines running from the oil tank to a boiler must be installed in such a way as to prevent water pollution,</p> <p>(i) where remote offset fill pipelines are installed with the tank, the remote off set fill pipelines must be –</p> <p>(i) fitted with an isolating valve, a non-return valve at the fill point and a screw-on cap,</p> <p>(ii) before first use, pressure-tested to 1 Bar and left to stand for 15 minutes,</p> <p>(iii) in the case of remote offset fill pipelines installed above ground –</p> <p>(A) made of a material that is considered safe for use delivery of fuel oils having regard to industry good practice from time to time, and</p> <p>(B) resistant to corrosion.</p>
--	---

## PART II

### INTERPRETATION

1. In this Schedule, unless the context requires otherwise –

"**abstraction**" means the doing of anything whereby any water is removed or diverted by mechanical means, pipe or any engineering structure or works from any part of Guernsey's water resources, whether temporarily or permanently, including anything by which the water is so removed or diverted for the purposes of being transferred to another part of Guernsey's water resources, and includes –

- (a) the construction or extension of any well, borehole, water intake or other work by which water may be abstracted, and
- (b) the installation or modification of any machinery or apparatus by which additional quantities of water may

be abstracted by means of a well, borehole, water intake or other work,

**"channel"** means the course of a douit, stream or ditch,

**"channel width"** means the straight line distance that is between opposite bank tops of a douit, stream or ditch and which spans the bed of a douit, stream or ditch, including any exposed bars or vegetated islands,

**"crop"** includes any plant grown for a commercial purpose,

**"cultivation"** includes the preparation of any land prior to planting and the harvesting of any crop,

**"cut-off valve"** means a valve used for shutting off the flow of oil from a tank,

**"ditch"** means an open channel which collects and conveys drainage water from surface or subsurface drainage to other surface water,

**"draw-off pipe"** means a pipe used to withdraw oil from a tank,

**"farm yard manure"** means a mixture of bedding material and animal excreta in solid form arising from the housing of livestock (except such arising from the keeping of birds for the production of food),

**"fertiliser"** means any substance containing nutrients, excluding forestry brash, which is used on land to enhance plant growth,

"**field drain**" includes a buried pipe or a dry ditch which drains a field,

"**forest**" means land of an area of more than 0.5 hectares –

- (a) with a tree canopy of more than 20 per cent,
- (b) which is planted with trees which collectively have the capacity to provide a tree canopy cover of more than 20 per cent, or
- (c) which meets all the following criteria –
  - (i) it was used in the last five years as land described in item (a),
  - (ii) it is to remain fallow of trees for a maximum of four consecutive years, and
  - (iii) when replanted with trees, it will be replanted as land described in item (b),

"**forestry operations**" means operations carried out on land with a tree canopy cover of more than 10 per cent over an area of land of more than 0.5 hectares,

"**fuel oil**" includes liquified petroleum gas and kerosene,

"**livestock**" means –

(a) cattle, sheep, pigs, equines, goats, llamas or alpacas, or poultry, and

(b) any animal kept for the production of food, wool, skin or fur or for use in the farming of land,

**"moling"** means a cultivation method where an implement is used to open a conduit within the soil along which water may flow,

**"oil"** means any kind of liquid oil including fuel oil, waste oil, biofuel mixtures, vegetable oil, plant oil, lubricant oil and hydraulic oil,

**"pesticide"** means any pesticide or other substance declared to be a poisonous substance under regulation 2 of the Control of Poisonous Substances (Guernsey) Regulations, 2014,

**"pesticide application equipment"** means pesticide sprayers and other devices used to apply pesticide,

**"poultry"** means birds of the following species –

(a) domestic fowls, turkeys, geese, ducks, guinea-fowls and pigeons, and

(b) quails, pheasants and partridges,

**"revetment"** means the modification of the bank of a douit, stream or ditch that increases the resistance of the bank to lateral erosion,

**"rip-rap"** means irregular shaped stones placed along the bank of a douit, stream or ditch for the purposes of increasing the resistance of the bank to erosion,

**"secondary containment"** means a drip tray, an area surrounded by a bund or catchpit or any other system for preventing fuel oil, which has escaped from an oil storage tank, from escaping further from the place where it is stored,

**"surface water drainage system"** means a system that is used to collect and drain water run off from premises and transport it to, and discharge it into, Guernsey's water resources, and may include, any surface water sewers and associated inlets, outlets, guillies, manholes, oil interceptors, silt traps, and attenuation, settlement and treatment facilities,

**"toe of a bank"** means the point where the slope of a bank of a douit, stream or ditch meets the bed of that douit, stream or ditch,

**"vent pipe"** means a pipe open to the atmosphere which exposes the tank to atmospheric pressure,

**"water for human consumption"** means water that may be ingested by humans, used in the preparation of food or drink, or used in the cleaning of materials involved in the storage or consumption of food or drink,

**"waterlogged"** means soil which is at water retaining capacity, except in a forest where it means water which is visible on the soil surface,

"**water run-off**" means any water from rainfall or any meltwater from ice or snow flowing over or horizontally through the surface of the ground and any matter picked up by that water as it does so,

"**well**" includes a permeable underground collection tank, and

"**wetland**" means an area of ground the ecological, chemical and hydrological characteristics of which are attributable to frequent inundation or saturation by water and which is directly dependent, with regard to its water needs, on a body of groundwater or a body of surface water.

### SCHEDULE 3

#### Section 7

#### AMENDMENT OF THE ENFORCEMENT AND APPEALS ORDINANCE

1. After section 8 (compliance notices in relation to provisions of the Air Pollution Ordinance) insert –

**"Content of anti-pollution notice.**

8A. A compliance notice which is an anti-pollution notice issued under section 44 of the Law must –

(a) state that the Director considers that the person on whom the notice is served is causing or permitting –

(i) the occurrence of water pollution, or

(ii) a risk of water pollution to arise,

in contravention of section 5(2) of the Water Pollution Ordinance,

(b) specify the –

(i) acts or omissions or proposed acts or omissions, or

(ii) use or proposed use of any thing,

by reason of which the Director considers that the person on whom the notice is served is causing or permitting the occurrence of water pollution or the risk of water pollution to arise,

(c) specify any steps that must be taken to eliminate or reduce the occurrence of water pollution or eliminate or remove the risk of water pollution arising,

(d) identify by name or description the person required to take the steps specified under paragraph (c),

(e) specify the period within which the steps specified under paragraph (c) must be taken, and

(f) specify that a person who causes or permits the occurrence of water pollution or a risk of water pollution to arise in contravention of section 5(2) of the Water Pollution Ordinance, is guilty of an offence under section 65(1) of the Law.

**Compliance notice in relation to provisions of the Water Pollution Ordinance.**

8B. (1) If the Director is of the opinion that –



- (a) a person is contravening or is likely to contravene any prohibition, restriction, requirement or condition imposed on that person under the Water Pollution Ordinance, other than one in relation to which a compliance notice may be served under section 7, or
- (b) a person is contravening or is likely to contravene any term, condition or proviso of any exemption or disapplication (however worded) from any prohibition, restriction or requirement under the Water Pollution Ordinance,

the Director may serve a compliance notice on that person.

(2) A compliance notice issued under subsection (1) must –

- (a) state that the Director is of the opinion that a contravention of –
  - (i) any prohibition, restriction, requirement or condition referred to in subsection (1)(a), or
  - (ii) any term, condition or proviso of any exemption or disapplication referred to in subsection (1)(b),

as the case may be, is taking place or is likely to take place,

- (b) specify the matters –
  - (i) constituting the contravention, or
  - (ii) making it likely that a contravention will take place,
- (c) specify the steps that must be taken -
  - (i) to remedy the contravention, or
  - (ii) to remedy the matters making it likely that the contravention will arise,
- (d) identify by name or description the person required to take the steps specified under paragraph (c), and
- (e) specify the period within which the steps specified under paragraph (c) must be taken."

2. For the heading to section 9 substitute –

**"General requirements for compliance notices."**

3. In section 9 -

- (a) omit "issued under section 7 or 8",
- (b) in paragraph (a) for "this Ordinance" substitute "the Law or this Ordinance",
- (c) in paragraph (b), after the first reference to "the Law" insert "or of that section as applied by section 44 of the Law", and
- (d) in paragraph (b)(i) after "the Law" insert "or under that section as applied by section 44 of the Law".

4. After Part II insert –

"PART IIA

POWERS TO TAKE ACTION IN RELATION TO WATER POLLUTION

**Powers of Director to take action in relation to water pollution.**

9A. (1) This section applies where it appears to the Director that–

- (a) water pollution has occurred or is occurring, or
- (b) a risk of water pollution has arisen.

(2) In a case where it appears to the Director that water pollution has occurred or is occurring, the Director is entitled to enter land and take such action as appears necessary for any of the following purposes –

- (a) removing or disposing of a pollutant,
- (b) remedying or mitigating any water pollution caused by the introduction of a pollutant into the water, or
- (c) restoring (so far as is reasonably practicable to do so), the water, including any flora and fauna dependent on the aquatic environment of the water, to its state immediately before the pollutant became introduced into the water.

(3) In a case where it appears to the Director that a risk of water pollution has arisen, the Director is entitled to enter land and take such action as appears necessary for the purpose of preventing water pollution from occurring.

(4) The powers conferred by this section are only exercisable in a case where –

- (a) the Director certifies that it is necessary to carry out the works or other actions without delay, or
- (b) it appears to the Director, after reasonable enquiry, that no person can be found on whom–

- (i) an anti-pollution notice under section 44 of the Law, or
- (ii) a compliance notice under section 7 or 8B,

may be served in relation to the water pollution, or risk of water pollution, in question.

(5) The expenses reasonably incurred by the States as a consequence of any action taken by the Director under this section are recoverable as a civil debt due to the States from any person who caused or permitted the occurrence of water pollution, or the risk of water pollution, in question.

(6) In this section, "**pollutant**" means a pollutant falling within section 2(3) or section 40(1)(c) of the Law."

5. In section 21 (interpretation) –

- (a) in the definition of "**prescribed operation**" omit "and" and after "Air Pollution Ordinance" insert "and section 1 of the Water Pollution Ordinance",
- (b) after the definition of "**specified**" insert –

""**steps**" includes, for the avoidance of doubt, requirements to discontinue or refrain from an action or activity," and

- (c) after the definition of "**vice-President**" omit "and" and  
after the definition of "**water**" insert –

""**water pollution**": see section 10(1) of the Water Pollution  
Ordinance , and

"**the Water Pollution Ordinance**" means the Environmental  
Pollution (Water Pollution) Ordinance, 2022.".

## SCHEDULE 4

### Section 8

#### OTHER CONSEQUENTIAL AMENDMENTS

##### **Amendment of the 2010 Ordinance.**

1. After section 1(2) (waste disposal etc. to be prescribed operations) of the 2010 Ordinance insert –

"(3) This section is also to be construed in accordance with section 2(2) of the Environmental Pollution (Air Pollution) Ordinance, 2019 and section 1(5) of the Environmental Pollution (Water Pollution) Ordinance, 2022."

##### **Amendment of the Air Pollution Ordinance.**

2. After section 2(2) (operations in schedule 2 to be prescribed operations) of the Air Pollution Ordinance, insert –

"(2A) This section is also to be construed in accordance with section 1(4) and (5) of the Environmental Pollution (Water Pollution) Ordinance, 2022."

##### **Amendment of the Environmental Pollution (Public Register) Regulations, 2010.**

3. (1) The Environmental Pollution (Public Register) Regulations, 2010<sup>n</sup> are amended as follows.

(2) In regulation 1 (particulars to be kept on the register) –

---

<sup>n</sup> G.S.I. No. 52 of 2010; this enactment has been amended.

- (a) in subparagraph (g)(i), after "issued under" insert "section 44 of the Law or",
- (b) in subparagraph (g)(ii), after "the Law" insert "or under that section as applied by section 44 of the Law",
- (c) at the end of subparagraph (h) omit "and" and after that subparagraph insert –

"(ha) in relation to enforcement, inspection and monitoring activities concerning water pollution, brief particulars of any water pollution enforcement activities carried out by the Director; and such particulars shall -

(i) include the number of occasions in each calendar year in which such activities have been carried out on a particular premises, and

(ii) be added to the register as soon as reasonably practicable after the end of the calendar year in question, and".

(3) In regulation 3 (interpretation) –

- (a) for the definition of "**compliance notice**" substitute –



""**compliance notice**": see sections 44 and 62(1) of the Law and sections 7 to 8B of the Environmental Pollution (Enforcement and Appeals) Ordinance, 2019,"

(b) in the definition of "**a prescribed operation**", for all the words from "and" to the end substitute ", section 2 of the Environmental Pollution (Air Pollution) Ordinance, 2019 and section 1 of the Environmental Pollution (Water Pollution) Ordinance, 2022," and

(c) after the definition of "**waste**" insert –

""**water pollution enforcement activities**" means any action taken by the Director–

(a) under section 45 of the Law,

(b) pursuant to a warrant issued by the Bailiff under section 45B of the Law, or

(c) under section 9A of the Environmental Pollution (Enforcement and Appeals) Ordinance, 2019,".

## SCHEDULE 5

Section 12

### TRANSITIONAL PROVISIONS

#### **Transitional provision in relation to operations prescribed under section 1.**

1. (1) Subject to subparagraph (2), where an operation prescribed under section 1 is being carried on immediately before the commencement of section 1 of this Ordinance, such operation shall, on or after the commencement of section 1 of this Ordinance, be deemed to be one in respect of which a licence has been issued under Part III of the Law to the person carrying on the operation provided that an application for a licence to carry on such operation is made to the Director -

- (a) in accordance with section 4 and 5 of the 2010 Ordinance as applied by section 2 of this Ordinance, and
- (b) within two months starting from the date of the commencement of section 1 of this Ordinance.

(2) The person carrying on the operation in question shall be treated as a licensee for the operation in question under subparagraph (1) until -

- (a) the application to carry on the prescribed operation in question is granted by the Director (whether or not subject to conditions), or
- (b) if such an application is refused -
  - (i) the expiry of the period for appealing against

the refusal under section 25(5) of the Law, or

- (ii) where an appeal is duly instituted against the refusal, the date the appeal is finally determined or withdrawn; and an appeal is finally determined when the appeal and any further appeal is finally determined.

**Permits issued under the States Water Supply (Prevention of Pollution) Ordinance, 1966.**

2. For the avoidance of doubt, any permit granted under section 2 of the States Water Supply (Prevention of Pollution) Ordinance, 1966, shall lapse on 3<sup>rd</sup> April, 2023, when the repeal of that 1966 Ordinance is commenced under section 16(2).

## SCHEDULE 6

Section 13

### REPEALS

**Repeal of the Prevention of Pollution (Guernsey) Law, 1989 and subordinate legislation made under it.**

1. The Prevention of Pollution (Guernsey) Law, 1989<sup>o</sup>, the States Water Supply (Prevention of Pollution) Ordinance, 1966, the States Water Supply (Prevention of Pollution) (Amendment) Ordinance, 1977 and the Animal Carcasses (Control of Burial) Ordinance, 1998<sup>P</sup> are repealed.

**Repeal of 1932 Ordinance.**

2. The Ordonnance relative au dépôt de décombres de carrière, d'immondices et d'autres debris sur les Côtes de cette Ile, 1932 is repealed<sup>q</sup>.

---

<sup>o</sup> Ordres en Conseil Vol. XXXI, p. 500; this enactment has been amended.

<sup>P</sup> Recueil d'Ordonnances Tome XXVIII, p. 153; this enactment has been amended.

<sup>q</sup> Recueil d'Ordonnances Tome VI, p. 128.

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

**COMMITTEE FOR ECONOMIC DEVELOPMENT**

**LOW VALUE DEBT RELIEF**

The States are asked to decide:-

Whether, after consideration of the policy letter titled 'Low Value Debt Relief' dated 15<sup>th</sup> August, 2022, they are of the opinion:-

1. To agree to the implementation of Low Value Debt Relief Orders, as described in the Policy Letter titled "Low Value Debt Relief" dated 15<sup>th</sup> August 2022, of the Committee *for* Economic Development.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decision.

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

**COMMITTEE FOR ECONOMIC DEVELOPMENT**

**LOW VALUE DEBT RELIEF**

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

15<sup>th</sup> August, 2022

Dear Sir

**1 Executive Summary**

- 1.1 This policy letter seeks the approval of the States to the introduction of legislation to allow for the remission of low levels of unsecured personal debt where an individual has no reasonable prospect of being in a position to repay such debts.
- 1.2 Low value debt relief orders (“**LVDROs**”) are intended to help some of the most financially insecure individuals in society make a new start, and improve their well-being, by providing for a resolution when faced with debts which they cannot pay. They provide a fresh start for those trapped in debt, who meet the eligibility criteria, as set out in this policy letter.
- 1.3 The introduction of LVDROs would complement the changing legislative landscape toward increased consumer protection, such as the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 which was approved by the States on 13<sup>th</sup> July, 2022<sup>1</sup>.

**2 Background**

**2.1 Rationale for introduction of LVDROs in Guernsey**

- 2.1.1 Citizens Advice Guernsey (“**CAG**”) works with a significant number of people in its debt advisory work who have no prospect of being able to pay their debts. CAG reports that this is often a result of a change of circumstances and/or through no fault of the

---

<sup>1</sup> [Billet d'État No. XII of 2022, Article 14](#)

individual involved.

- 2.1.2 One of the services offered by CAG is a financial restitution negotiation service (the “RNS”). CAG acts as an intermediary between the client and the client’s creditors to negotiate a repayment plan, manageable by the debtor and acceptable to the creditor. No debts are relieved, so there may be no end to the re-payment period. There is no legal requirement for parties to submit to the process and as such, it is dependent on the good faith of both the debtor and creditor, to be successful. As part of the process CAG assists clients in assessing all income and debts and with creating a reasonable expenses budget.
- 2.1.3 CAG advised the Committee for Economic Development (the “Committee”) in 2019 that there were 104 clients of the RNS. Those 104 service users collectively had £4.34 million of unaffordable debt, comprising of £2.7 million of secured debt and £1.64 million of unsecured debt and equated to an average total debt of £42,000 per client, with £16,000 of that debt being unsecured<sup>2</sup>.
- 2.1.4 CAG further reported that it assessed causes of debt amongst those clients as follows:
- (a) Poor budgeting – 24%;
  - (b) Reduced income – 22%;
  - (c) Relationship breakdown – 21%;
  - (d) Job loss – 14%;
  - (e) Health issues – 12%; and
  - (f) Family problems – 7%.
- 2.1.5 The Committee acknowledges the potential impact of unmanageable debt on the mental well-being, and health, of individuals. The Committee has also noted that research into the relationship between debt and health has identified that unsecured debt, such as credit card debt, was linked to a more than 3-fold increased risk of mental health problems. There is also a strong negative relationship with suicide and drug and alcohol abuse.<sup>3</sup>
- 2.1.6 CAG stated, in response to a consultation undertaken by the Committee<sup>4</sup>, that low value debt relief such as that proposed in this policy letter “*addresses the heart of the problem area and where the need is greatest*”. In addition, a low value debt relief procedure should be ‘stand-alone’ both in terms of legislation and the operation of the process.

---

<sup>2</sup> Based on 2018 figures.

<sup>3</sup> Richardson, T., Elliott, Peter and Roberts, R. (2013) “The relationship between personal unsecured debt and mental and physical health: a systematic review and meta-analysis.” *Clinical Psychology Review*, 33 (8), 1148-1162.

<sup>4</sup> In 2014 the Commerce and Employment Department of the States of Guernsey carried out a public consultation on potential changes to Guernsey’s insolvency regime, including both corporate and individual insolvency.

- 2.1.7 The Committee notes that during informal consultation, some local lenders did not consider that the introduction of legislation to provide low value debt relief was necessary. This was on the basis that lenders would be unlikely to pursue debt where it was apparent that an individual was unable to pay and, as such, they would be likely to write the debt off. Nevertheless, the Committee believes that the introduction of legislation is necessary to provide certainty and to protect individuals from less compassionate lenders.
- 2.1.8 The Committee further believes that the disadvantage to lenders of introducing LVDROs would be mitigated by LVDROs only being available, by way of restrictive eligibility criteria, to those who would not realistically be in a position to pay the debts in the present, or the foreseeable future, and where in reality it would not be commercially advantageous for the lender to pursue the debts in any event.
- 2.1.9 The Committee acknowledges that there is a possibility that the introduction of LVDROs in Guernsey may reduce the willingness of some lenders to offer credit in some cases. However, the Committee is of the view that lenders already assess risk on the basis that there will always be a small number of debtors from whom recovery is unlikely as part of the decision to lend process and does not believe that equivalent procedures in other jurisdictions, including England, Scotland, and Jersey<sup>5</sup>, have materially reduced the availability of credit.

## 2.2 Personal insolvency processes currently available in Guernsey

Current processes available in Guernsey where an individual is unable to pay his, or her, debts include:-

- 2.2.1 **Désastre** and **Saisie** – These are customary law provisions which provide processes for judgment creditors to take a judgment debtor's property<sup>6</sup> in satisfaction of a judgment debt. They are a means of enforcing a judgment and, as such, whilst they provide creditors with a means of realising assets, they do not include other functions of modern personal insolvency proceedings. Désastre does not ordinarily result in any discharge of the debtor from indebtedness, unless creditors are paid in full and creditors retain the right to institute further proceedings at a later date. Saisie is an enforcement process against real property in the Bailiwick which involves an irrevocable election to proceed against the debtor's realty and thus does not itself touch upon the debtor's personal property.
- 2.2.2 The **Loi ayant rapport aux Débiteurs et à la Renonciation (the "1929 Law")** and **Ordonnance relative à la Renonciation**. The 1929 Law provides creditors with a process to recover monies owed by individual debtors, as well as a process for a debtor to apply

---

<sup>5</sup> The Committee notes that no debt remission orders have been issued in Jersey as at the date of this policy letter but has been unable to ascertain why.

<sup>6</sup> Désastre relates to a debtor's personalty and saisie relates to real property.



to Court to be declared insolvent. An insolvent debtor also has an ability to apply to Court for the benefit of renunciation - a discharge from outstanding debt acquired prior to the declaration of insolvency.

The 1929 Law is the Guernsey equivalent to bankruptcy in the UK but the Committee is advised that it is unpopular and has only been used a handful of times since implementation. The reasons why are not entirely clear, but feedback includes that the procedure under the 1929 Law is expensive, out-dated and time consuming.

### **3 Proposals for reform**

3.1 The Committee has considered legislation implementing the English and Jersey low value debt relief regimes<sup>7</sup> as a starting point when considering what LVDRO characteristics would be appropriate for Guernsey. The Committee proposes, and asks the States to support, the introduction of LVDROs with the following key features.

#### **3.2 Key features of a LVDRO**

##### **3.2.1 *Moratorium***

It is proposed that a Guernsey LVDRO would, in common with Jersey and England, create a moratorium period of a year<sup>8</sup> where creditors would be prevented from pursuing qualifying debts<sup>9</sup> that have been included in the LVDRO. If the debtor's situation has failed to improve at the end of the moratorium, the debts would be written off.

##### **3.2.2 *Eligibility criteria***

3.2.2.1 The Committee proposes the following eligibility criteria. Applicants must be unable to pay their debts and:

- (a) have no more than £30,000 qualifying debt<sup>10</sup>;
- (b) be at least 18 years old;
- (c) ordinarily have been a Guernsey resident for at least 2 years;
- (d) not had a LVDRO issued, or been the subject of any personal insolvency proceedings, in Guernsey or elsewhere, in the last 5 years;
- (e) have no more than £5,000 in value of assets (excluding a motor vehicle with a value of up to £2,000); and
- (f) have a disposable income of no more than £100 a month after the payment of tax, social insurance, and reasonable household expenses; and
- (g) have acted in good faith.

---

<sup>7</sup> For England, see Part 7A of the Insolvency Act 1989 and for Jersey, the Debt Remission (Individuals) (Jersey) Law 2016.

<sup>8</sup> The Committee envisages the Court would have a power to extend the moratorium period in appropriate circumstances.

<sup>9</sup> See paragraph 3.2.3 of this policy letter.

<sup>10</sup> See paragraph 3.2.3 of this policy letter.

3.2.2.2 The Committee proposes that there should be a power for the eligibility criteria to be amended, by regulation, to ensure that the criteria remain appropriate to the needs of the community.

### 3.2.3 *Qualifying debts and excluded debt*

3.2.3.1 Certain debts should be excluded from the scope of an LVDRO<sup>11</sup>. The Committee proposes that excluded debts should be:

- (a) secured debts;
- (b) criminal fines;
- (c) child maintenance;
- (d) damages for negligence, nuisance, or a breach of duty payable by way of Court order; and
- (e) any other category prescribed, by the Committee, by regulation as being excluded.

3.2.3.2 Only debts listed in the LVDRO will be protected from creditors and subsequently written off at the end of the moratorium period. Any debts not listed, or those acquired after the LVDRO is in place, will not be included in the LVDRO.

3.2.3.3 The Committee notes that although Jersey's legislation specifies, as part of its eligibility criteria, that an applicant may not have more than £20,000 of qualifying debts<sup>12</sup>, England increased this figure from £20,000 to £30,000 on 29<sup>th</sup> June 2021<sup>13</sup>.

3.2.3.4 The Committee was further assisted by updated figures provided by CAG which suggested that setting the qualifying debt figure at £20,000 would mean that approximately one third of CAG clients as at April 2021 might be eligible to apply, whereas setting the amount at £30,000 might mean that nearly half of CAB clients would be eligible to apply<sup>14</sup>.

### 3.3 Proposed process and administration of LVDROs

3.3.1 An advantage of a LVDRO as a personal insolvency process is that it is intended to be a relatively quick and affordable administrative process.

3.3.2 The Committee envisages that an application will be made, in a standard format, and that an intermediary may be appointed to advise and/or assist applicants. CAG have expressed to the Committee a willingness to undertake this role. The Committee further intends that a modest fee should be payable on application and proposes that an ability to prescribe such a fee is included in the implementing legislation.

---

<sup>11</sup> All other debts would be qualifying debts which could be covered by a LVDRO.

<sup>12</sup> Article 4(1)(e) of the Debt Remission (Individuals) (Jersey) Law, 2016.

<sup>13</sup> The Insolvency Proceedings (Monetary Limits) (Amendment) Order 2021.

<sup>14</sup> Based on clients being assisted by the CAG in April 2020. A total of 12 people may be eligible for a LVDRO if the qualifying debt figure was set at £20,000 and 18 people may be eligible if it was set at £30,000.

3.3.3 In the UK, the application is made to the Official Receiver, and in Jersey the application is made to the Viscount. As neither of these roles, or offices, exist in Guernsey, the Committee considers that issuance of LVDROs would most appropriately be undertaken by a Jurat.

3.3.4 The Committee anticipates that many applications for an LVDRO could be considered by a Jurat on the basis of the documents received and without oral representations by the parties.

3.3.5 If the Jurat was satisfied that the applicant met the eligibility criteria, and that no creditor had submitted a successful objection to the making of the LVDRO having received notice of the application, a Jurat would make a LVDRO.

### 3.4 Challenging a LVDRO

3.4.1 The Committee considers that it would be appropriate for creditors to have an opportunity to object to the making of the LVDRO, or the inclusion of that creditor's debt in the LVDRO, on receiving notice of the debtor's application for a LVDRO. Objections could only be validly made on the grounds that the applicant did not meet the eligibility criteria, or that the creditor's debt was not a qualifying debt.

3.4.2 A creditor should also have an ability to apply for a LVDRO to be revoked, or amended, if the debtor's circumstances have changed within the moratorium period, such that he or she is no longer unable to pay his or her debts.

3.4.3 The Committee proposes that the legislation makes specific provision for any interested party to make an application to the Court if he or she is dissatisfied by any act or decision of a Jurat in connection with a LVDRO, in addition to an ability for a Jurat to refer any matter to the Court for directions.

### 3.5 Register of LVDROs

The Committee proposes that a private register of LVDROs should be maintained by the Greffier, with disclosure of information on the Register permitted to parties who have a legitimate interest. Further consideration would be given to the parameters for disclosure and it is proposed that the Committee should have the power to make provision in this regard by regulation.

### 3.6 Restrictions on applicant while LVDRO in place

3.6.1 Certain restrictions should be placed on an individual who has been issued with a LVDRO whilst it is in place, such as acting as a director of a Guernsey registered company, without leave of the Court to do so.

3.6.2 The Committee also considers that individuals should be required to notify a potential creditor of the existence of the LVDRO and be prevented from obtaining credit in excess of £500 during the time that a LVDRO is in place, again without leave of the Court to do so.

### 3.7 Miscellaneous provisions

#### 3.7.1 *Regulations of the Committee*

3.7.1.1 The legislation should include a power for the Committee to make regulations, as set out in this policy letter and also as necessary, or expedient, for carrying into effect the proposals contained in this policy letter.

#### 3.7.2 *Offences*

3.7.2.1 Legislation would need to make appropriate provision for offences.

#### 3.7.3 *Impact of a Guernsey issued LVDRO on foreign debt*

3.7.3.1 The Committee acknowledges that some unsecured personal debt will likely be governed by the law of another jurisdiction ("**foreign debts**"). In particular, the Committee anticipates that issuers of credit and store cards are most likely to be based in England and as such, agreements with those creditors will sometimes be governed by English Law.

3.7.3.2 The Committee understands that the question of the recognition, and effectiveness, of a Guernsey LVDRO in other jurisdictions involves potentially complicated issues of private international law.

3.7.3.3 The effectiveness of a Guernsey LVDRO in respect of foreign debt is not straightforward but the Committee is of the view that it is nonetheless appropriate to proceed given the certainty that could be provided as a matter of Guernsey Law. The Committee proposes that foreign debts should be eligible to be listed in a Guernsey LVDRO, as some creditors may choose to recognise the effect of the order and their inclusion may be recognised by the Courts of another jurisdiction in some circumstances. It will also be important for the debtor to declare all debt, including foreign debts, for the purposes of establishing whether the eligibility criteria threshold is met.

3.7.3.4 The Committee also recommends that the legislation should provide that no legal proceedings may be commenced in the Guernsey Courts against a debtor in respect of a debt listed in a Guernsey LVDRO (including a foreign debt), except with the permission of the Court.

## **4 Consultation**

- 4.1 The Committee was approached by industry in the summer of 2020, with a suggestion that the options and processes available to individuals in Guernsey on becoming insolvent should be reviewed.
- 4.2 The Committee confirmed that it would consider proposals for reform and an industry led working group was established consisting of (i) insolvency practitioners, (ii) advocates specialising in personal insolvency matters (iii) HM Sheriff and (iv) a representative of CAG (the “**Working Group**”).
- 4.3 In recognition of the scope of work involved to implement an entirely new personal insolvency regime in Guernsey, the Working Group fed back that they would report proposals for reform to the Committee in stages.
- 4.4 The Working Group presented its first report to the Committee in June 2021, concerning low value debt relief and is continuing to review options for further reform of personal insolvency in Guernsey, including bankruptcy and individual voluntary arrangements.
- 4.5 The Committee is very grateful for the detailed work undertaken by the Working Group and has carefully considered the proposals submitted in the preparation of the policy proposals contained in this policy letter.

## **5 Compliance with Rule 4**

- 5.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be appended to propositions laid before the States.
- 5.2 In accordance with Rule 4(1):-
  - 5.2.1 the propositions contribute to the States’ objectives and policy plans set out within the Government Work Plan by attempting to alleviate some of the economic after-effects of the Covid pandemic on some of Guernsey’s most financially vulnerable citizens;
  - 5.2.2 the Committee consulted (i) the Working Group, (ii) CAG, (iii) Her Majesty’s Greffier and (iv) the Royal Court in the development of the proposals;
  - 5.2.3 the propositions have been submitted to Her Majesty’s Procureur for advice on any legal, or constitutional, implications.
- 5.3 In accordance with Rule 4(2):-
  - 5.3.1 the propositions relate to the Committee’s purpose and policy responsibilities as they relate to (i) regulation in the economy and (ii) the reputation of the island as a centre

for commerce and industry; and

5.3.2 the propositions are supported unanimously by the members of the Committee.

Yours faithfully

N R Inder  
President

S J Falla  
Vice-President

A Kazantseva-Miller  
N G Moakes  
S P J Vermeulen

A Niles  
A Mancini  
Non-States Members

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

**COMMITTEE FOR HOME AFFAIRS**

**AMENDMENTS TO THE CRIMINAL JUSTICE FRAMEWORK**

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled “Amendments to the Criminal Justice Framework”, dated 25<sup>th</sup> July 2022, they are of the opinion:-

1. To agree to the introduction of legislation creating preventive offences, as set out in section 3 of the Policy Letter;
2. To agree to the introduction of legislation creating disclosure obligations in criminal cases as set out in section 4 of the Policy Letter;
3. To agree to the introduction of legislation to enable deferred prosecution agreements as set out in section 5 of this Policy Letter;
4. To agree to amend the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 to introduce a reverse burden of proof, a summary forfeiture procedure and protection against liability for the authorities, as set out in sections 6 and 7 of this Policy Letter;
5. To agree that the amendments referred to in paragraph 4 should be included in the new legislation for civil forfeiture that is currently being drafted, as set out in sections 6 and 7 of this Policy Letter;
6. To agree to amend the legislation governing confiscation in criminal cases to change the way that property subject to *saisie* is treated as set out in section 8 of this Policy Letter;
7. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

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

**COMMITTEE *FOR* HOME AFFAIRS**

AMENDMENTS TO THE CRIMINAL JUSTICE FRAMEWORK

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

25<sup>th</sup> July, 2022

Dear Sir

**1      Executive Summary**

- 1.1      The purpose of this Policy Letter is to recommend some amendments to the Bailiwick's criminal justice framework. The amendments are primarily intended to improve the Bailiwick's effectiveness in dealing with financial crime, but will have an impact on the prosecution of other offences.
- 1.2      This Policy Letter follows a Policy Letter dated 27<sup>th</sup> September 2021 from the Committee *for* Home Affairs ("the Committee") recommending a number of technical amendments around matters relating to money laundering, terrorist financing, cybercrime, the reporting of suspicion, the disclosure of information, the provision of international assistance and obtaining information about previous convictions. The recommendations in that letter were approved by the States in November 2021.
- 1.3      As was explained to the States at the time, it was envisaged that the Committee would make further recommendations in respect of some other possible changes which went beyond technical issues, on the basis of advice from the Law Officers and following consultation with the private sector. The consultation has now been carried out and Her Majesty's Comptroller (HMC) has provided advice in respect of the changes that were the subject of the consultation. The Committee fully supports HMC's conclusions as set out below.

**2      Advice from Her Majesty's Comptroller**

- 2.1      HMC has advised in respect of the amendments in the following terms:



- 2.2 *“The recommendations in this letter relate to matters which go beyond technical issues, and which were dealt with in a consultation paper issued by the Committee in October 2021. In making these recommendations I have taken into account the feedback received to the consultation.*
- 2.3 *The recommendations concern criminal offences of failure by corporate entities to prevent certain types of economic crime, defence disclosure obligations, the burden of proof in civil forfeiture cases, deferred prosecution agreements, summary forfeiture in certain cases, and the effect of the saisie regime in criminal cases.*
- 2.4 *The primary purpose of the recommendations is to improve the effectiveness of the framework for dealing with money laundering and terrorist financing (AML/CFT), as well as other forms of economic crime. However, if implemented they will have an impact on other offences in some respects.*

### **3 Preventive offences**

- 3.1 *Work that has been undertaken to assess the money laundering risks to the Bailiwick, commonly referred to as the National Risk Assessment (NRA), identified the greatest risks as coming from the proceeds of foreign fraud (including tax evasion) and foreign bribery and corruption. These activities are also the subject of widespread global concern and most jurisdictions, including the Bailiwick, already have legislation in place to criminalise them.*
- 3.2 *However, it can be difficult to obtain the evidence necessary to prosecute these offences if they are linked to conduct that takes place outside the prosecuting jurisdiction (as is commonly the case for financial centres with an international client base).*
- 3.3 *Another difficulty is in holding corporate entities to account when they commit these offences. This is primarily because of the identification doctrine applicable in the Bailiwick and other jurisdictions with a similar legal system such as the UK and Jersey. The identification doctrine means that a corporate entity will only be liable for a criminal act if an individual that commits the offence can be identified as the directing mind and will of the entity. The identification doctrine has come under criticism from the Law Commission in the UK, which considers that it ignores the reality of modern corporate decision making (which often relies on the application of policies and procedures rather than specific decisions) and that it discriminates against small businesses in favour of large organisations that have much more diffused and devolved decision making processes.*
- 3.4 *In recognition of these difficulties, the UK has introduced criminal offences for corporate entities in relation to failure to prevent bribery under the Bribery Act 2010 (the Bribery Act) and failure to prevent facilitation of tax evasion under the*

*Criminal Finances Act 2017 (the CF Act). While these offences still require an act of bribery or tax evasion as the case may be to have been committed, they are not dependent on the application of the identification doctrine to that act. There are some differences in the wording of the offences under the Bribery Act and the CF Act, but broadly speaking their effect is the same, as both apply in respect of conduct carried out by third parties acting on behalf of the corporate entity, including where this takes place outside the UK, and the complicity of the corporate entity is not required. However, the corporate entity will have a defence if it can show that it had in place adequate procedures designed to prevent this from happening, and there is a requirement for statutory guidance about adequate procedures.*

- 3.5 In addition, the States of Jersey have recently approved legislation to introduce an offence of failure to prevent money laundering and terrorist financing. This offence, which applies to businesses that are subject to AML/CFT obligations, is along the same lines as the UK preventive offences outlined above and is subject to a similar prevention procedures defence.*
- 3.6 It is clearly important that the Bailiwick keeps pace with these important developments in other jurisdictions, not only to improve the ability to take effective action in these areas, but also to send a strong signal internationally that the jurisdiction is serious about meeting its international obligations and in addressing issues covered in the NRA.*
- 3.7 The introduction of offences corresponding to the UK preventive offences outlined above would be unlikely to cause any significant extra work for the private sector. This is because the majority of affected businesses, i.e. those in the regulated sector that carry out cross border business, are covered by the extra territoriality provisions applicable to those offences so already have procedures in place to address them. In addition, there would be a considerable overlap with the measures that regulated businesses are already required to have in place in order to mitigate the risks of money laundering and terrorist financing. I therefore recommend that offences of failure to prevent bribery and facilitation of tax evasion corresponding to those in the UK are introduced.*
- 3.8 I further recommend the introduction of a preventive offence that corresponds to the proposed preventive offence in Jersey outlined above. Again, this is unlikely to lead to any additional work as businesses should already have the necessary procedures in place because of their obligations under the AML/CFT framework.*
- 3.9 I also recommend that there should be a power to amend these new offences by Ordinance, so that any changes that may be necessary to keep abreast of international developments can be swiftly made.*

## **4 Defence disclosure obligations**

- 4.1 *The right to silence and the need for the prosecution to prove its case are fundamental principles under the criminal justice system in the Bailiwick and elsewhere. However, in modern times there has been recognition in some jurisdictions that these principles, and the interests of justice more widely, are not undermined by requiring the defence to clarify the issues that are in dispute in a criminal trial in order to remove the need to adduce evidence on matters that are not challenged.*
- 4.2 *On the contrary, it is widely recognised that this clarification promotes the interests of justice. This is because it leads to a more focused approach to case preparation and trial planning. This assists all parties, not just the prosecution, as it enables the evidence in lengthy or complex trials to be presented more efficiently and precisely, which in turn reduces the risk of unnecessary delays that are often very stressful for defendants as well as having the potential to undermine public confidence in the legal system. Advance clarification of the defence case also reduces the risk of what has been described as an ambush defence (i.e. where a point is made for the first time during a trial so the prosecution has had no opportunity to test it). In addition, it makes it less likely that cases which are strong on the merits have to be dismissed on purely technical grounds because of an inadvertent gap in the evidence about a point that is not in dispute.*
- 4.3 *The UK addressed this issue some 25 years ago with the introduction of the Criminal Procedure and Investigations Act 1996. This requires the prosecution to provide the defence with details of the charges against a defendant, the underlying evidence to support those charges and copies of, or access to, any unused material that might undermine the prosecution or assist the defence. After this material has been served, there is a duty on the defendant in the Crown Court to serve a defence statement (this is optional in the Magistrate's Court).*
- 4.4 *In general terms, a defence statement must set out the nature of the defence, including any particular defences on which the defendant intends to rely, explain which facts are in dispute and why, identify any points of fact or law on which the defendant intends to rely, and, where this includes an alibi, details of that alibi. A defendant must also give the prosecution notice of intention to call witnesses (including experts) and details of those witnesses.*
- 4.5 *If a defendant fails to comply with the requirements in respect of a defence statement, calls witnesses without prior notification, advances an inconsistent case or relies on something at trial that has not been mentioned in a defence statement, that fact may be commented on by the court or another party and may result in the court drawing inferences as to the defendant's guilt. However, this inference alone is not sufficient to establish a person's guilt, and the court*

*must have regard to whether there is any justification for the activity concerned. Therefore, these measures do not mean that a defence cannot succeed if a defence statement or advance notice of witnesses has not been served. Nor do they mean that a defendant is compelled to answer any questions in a police interview.*

- 4.6 *While these measures were seen as controversial by some in the UK when first introduced, they are now largely accepted as promoting the effective running of the criminal justice system. Successive court judgements have also confirmed that the measures do not undermine legal professional privilege or the privilege against self-incrimination. The other Crown Dependencies have now followed suit. The Isle of Man essentially replicated the UK position with the introduction of the Criminal Procedure and Investigations Act 2016 and Jersey did the same with the introduction of the Criminal Procedure (Jersey) Law, 2018 (except that the relevant measures are requirements in the Magistrate's Court as well as in the Royal Court).*
- 4.7 *The current position in the Bailiwick is that the prosecution is obliged (by case law rather than statute) to comply with the same disclosure requirements as the prosecution in the UK, Jersey and the Isle of Man. However, there are no corresponding obligations for defendants. Therefore, the Bailiwick is now out of step with comparable jurisdictions.*
- 4.8 *The imbalance between the prosecution and the defence that now exists here is not just a theoretical or academic issue, but one which has had practical consequences in many cases brought before the Bailiwick courts. It has meant that considerable time has been required to deal with matters that often had no bearing on the actual or eventual issues in the case. As a result, significant court time has been wasted, and the defendant has been subject to increased costs and stress resulting from the proceedings being more protracted than they needed to be. Another consequence of the present system is that in cases where a number of different defences were possible, the prosecutors and the police have had to prepare for every eventuality as they did not know what defence would be run at trial. This means that resources from the public purse have had to be used to deal with matters that were not in fact relevant.*
- 4.9 *In most cases, limited disclosure obligations on the defence in the manner outlined above would have prevented these problems. This would in turn have benefited both prosecutors and defendants, as well as enabling the trial judge to take a far more informed and pragmatic approach at an early stage so that the focus at trial would be on the genuine areas of dispute.*
- 4.10 *I therefore recommend the introduction of legislation to impose prosecution and defence disclosure obligations along the same lines as in Jersey.*

## **5 Deferred prosecution agreements**

- 5.1 *A number of jurisdictions have introduced deferred prosecution agreements (DPAs), in recognition of the fact that they can provide an alternative tool for resolving economic wrongdoing provided that stringent conditions are met, including cooperation by the party concerned. This is particularly useful in cases involving multi-jurisdictional transactions that can result in lengthy and resource-intensive criminal proceedings where the outcome is uncertain. In some situations, it may be better for prosecutors and defendants to agree to resolve matters by the defendant agreeing to take certain steps (e.g. payment of a financial penalty or introducing a compliance programme) in exchange for the prosecutor agreeing not to proceed with a trial.*
- 5.2 *The UK has made provision for DPAs in Schedule 17 of the Crime and Courts Act 2013. They can only be entered into by potential defendants who are organisations, not individuals, and only apply to specified offences such as money laundering, fraud, bribery, and breaches of sanctions or other asset freezing measures. Schedule 17 requires DPAs to set out the facts relating to the alleged offence and the requirements imposed on the defendant, which may include time limits for compliance and a term setting out the consequences for the defendant of failing to comply with any requirements of the DPA.*
- 5.3 *A DPA must be approved by the court and once approved, its effect is that a prosecution is initiated but then automatically suspended. In the event of breach of a DPA, the court may invite the parties to resolve the matter or alternatively may terminate the DPA, in which case the prosecutor may apply to the court for the suspension of the prosecution to be lifted. Schedule 17 also makes provision for ancillary matters such as the variation of DPAs, use of material in DPAs in criminal proceedings, publication of information about DPAs and discontinuance of proceedings on the expiry of a DPA. There is also a requirement for the Director of Public Prosecutions and the Director of the Serious Fraud Office jointly to issue a Code for prosecutors giving guidance on the general principles to be applied in determining whether a DPA is appropriate, the disclosure of information by prosecutors to defendants in the course of negotiations for a DPA and any other relevant matters.*
- 5.4 *There have been some high profile cases in the UK where disgorgement and financial restitution were fundamental considerations in DPA negotiations that provided a process for the recovery of ill-gotten gains. However, there have been some difficulties with the operation of DPAs, in particular the time taken to complete DPAs in some cases and the fact that they will only usually be considered after considerable investigatory resources have been deployed.*
- 5.5 *Despite these difficulties in the UK, DPAs could potentially be a useful addition to the measures available to the Guernsey authorities for tackling economic crime,*

*especially given that the difficulties in prosecuting complex cases outlined above are often more acute in a small jurisdiction. The DPA regime would be subject to guidance from HM Procureur and prosecution would continue to be the priority where a DPA would not be in the public interest or a party's alleged wrongdoing was very serious. It would also be possible to withdraw a DPA to reflect a change in circumstances, for example if new evidence came to light. While this might mean that the number of Bailiwick cases that are dealt with by a DPA is small, DPAs would still be a useful additional tool that could make a significant difference to the effective implementation of the criminal justice framework in an appropriate case.*

- 5.6 *It would also be beneficial for individuals to be included within the DPA regime. Although this is not currently possible in the UK, there is no obvious reason why individuals engaged in activity with the same exposure to financial crime as organisations that are carrying out that activity (for example individuals providing trust and corporate services to foreign clients under a personal fiduciary licence) should not have the same opportunity to enter into a DPA as those organisations. Similarly, the same factors (cross-border activity etc.) that might make a DPA attractive to the authorities could well exist in that situation and again, there is no obvious reason why the opportunity for a DPA should not exist.*
- 5.7 *Therefore, I advise that legislation is enacted to introduce DPAs into Bailiwick law, along the lines outlined above.*

## **6 Burden of proof in civil cases**

- 6.1 *Guernsey, like a number of other jurisdictions, has legislation in place to permit the forfeiture of the proceeds of crime in civil proceedings, namely the Forfeiture of Money in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 (the Civil Forfeiture Law). Civil forfeiture is an essential weapon in the fight against crime, as it enables criminal proceeds to be removed from circulation in circumstances where it is not possible to bring a criminal prosecution, for example where the perpetrator of the criminality from which the unlawful assets are derived is outside the jurisdiction.*
- 6.2 *However, the effective implementation of civil forfeiture is often hampered by the difficulty in obtaining evidence about the source of assets that are suspected to be criminal in origin. While this can apply to any jurisdiction, it is particularly an issue for international financial centres, given that they typically hold or manage assets that have been generated elsewhere. This difficulty is often exacerbated in cases of suspected kleptocracy (i.e. the theft of state assets) and other forms of corruption by persons in positions of power because of the influence such persons can exert over their domestic authorities. This influence may prevent those authorities from obtaining evidence about the person's criminality, from sharing*

*information with the authorities in the jurisdiction where the person's assets are located, or both. For these reasons, there is an increasing trend for jurisdictions to place an obligation on persons in certain circumstances to demonstrate the source of their assets.*

- 6.3 In Jersey, under the Forfeiture of Assets (Civil Proceedings) (Jersey) Law 2018 (the Jersey Forfeiture Law), assets in the form of cash or property in bank accounts may be frozen by the court on the grounds that there is reason to believe that the assets are tainted. Tainted for these purposes means that they are the proceeds of crime or have been used or are intended to be used for criminal purposes). Once frozen, under Article 15 the Attorney General (AG) may make an application for forfeiture of the assets and the court must make a forfeiture order unless satisfied by the owner of the assets that they are not tainted.*
- 6.4 The UK has taken a different approach by introducing unexplained wealth orders (UWOs), which are essentially an investigative tool but they can result in the burden of proof being shifted in some cases. Under section 362A of the Proceeds of Crime Act 2002 (POCA), the court may make an UWO requiring a person to provide a statement setting out the nature of their interest in particular property specified in the order (which is subject to a £50,000 threshold), and how they obtained that property. Failure to comply with the order without reasonable excuse means that the property is presumed to meet the test for civil forfeiture under Part V of POCA, but this is a rebuttable presumption so it will still be open to a person to resist a forfeiture order if they can demonstrate the lawfulness of the property. In order to make an UWO the court must be satisfied that there is reason to believe that the person's known lawful income is insufficient to enable them to obtain the property, and that the person concerned is either a politically exposed person (PEP), i.e. an individual who holds or has held a prominent public function outside the UK or the European Economic Area, a family member or associate of a PEP, or a person suspected on reasonable grounds of being involved in serious crime or of being linked to a person with involvement in serious crime.*
- 6.5 Consequently, in both the UK and Jersey the burden of proving the origin of assets rests in some cases with the owner of the assets (albeit that this applies in a more restrictive category of cases in the UK than in Jersey). This is reasonable as the owner is obviously the person best placed to do this, and the need for there to be an objective basis for doubting the legitimacy of specific assets prevents so-called "fishing expeditions" against a person. There are other safeguards in place, such as the right to apply to vary or discharge an order and the right of appeal against forfeiture, which means that human rights are protected.*
- 6.6 The measures outlined above are beginning to be used with effect. Similar measures would clearly be beneficial in the Bailiwick, given that it faces the same difficulties as other jurisdictions in obtaining evidence to demonstrate the origin*

*of assets and there is a specific finding in the NRA about the risks to the Bailiwick from proceeds of foreign kleptocracy and other forms of corruption. The advantage of the Jersey process is that it is less cumbersome than the UWO process, and its overall scope is wider.*

- 6.7 *Therefore, I advise that an amendment is made to the Civil Forfeiture Law whereby the burden of proof is shifted to the owner of the assets where the assets are already subject to a freezing order (which means the court has already been satisfied that there are reasonable grounds to suspect the criminal nature of the assets), in the same way as in Jersey. The amendment should also include a regulation making power that would enable the Committee to put in place a process whereby a forfeiture decision could be revisited in the event that new evidence came to light, in the event that this is considered necessary once use has begun to be made of the reversed burden of proof.*
- 6.8 *I further recommend that the approach taken in the amendments is also taken in the Projet that is currently being drafted to implement the new civil forfeiture regime, following the decision of the States in November 2021 to repeal and replace the Civil Forfeiture Law with a revised regime.*

## **7 Summary procedure in "no consent " cases**

- 7.1 *The legal frameworks of the UK and the Crown Dependencies make provision for what are commonly described as "no consent" cases. These are cases where the law enforcement authorities have refused to consent to a transaction involving particular property. The effect of consent is simply that a person has a defence to money laundering or terrorist financing in relation to that transaction, and the refusal of consent does not operate as a legal bar to the transaction taking place. However, in practice banks and other businesses will not generally proceed with a transaction where consent has been refused because of the risk of committing a money laundering or terrorist financing offence. This can lead to a situation where assets remain effectively stuck "in limbo", sometimes for many years, because the owner of property linked to the transaction does not take any steps to claim them (usually because he or she knows that their legitimacy cannot be demonstrated) and the institution does not wish to deal with them for the reason given above.*
- 7.2 *The UK has addressed this by a moratorium approach, whereby in the absence of a response consent is deemed to have been given after a period of time. I do not consider that this would be a suitable approach for a jurisdiction such as the Bailiwick. Its position as an international financial centre with a low domestic crime rate means that virtually all consent requests made in the Bailiwick involve cross-border business. As a result, a far higher proportion of consent requests than in the UK involve suspected criminality committed elsewhere. This means in turn that it would be much more difficult, and would take far more time and*



resources, for the Bailiwick authorities to be satisfied about the legitimacy or otherwise of a proposed transaction. Furthermore, the extra degree of scrutiny that the Bailiwick faces as an international financial centre could make it difficult to justify a regime under which potentially criminal assets were being automatically transferred with impunity after a specific period of time.

- 7.3 *Jersey has taken a different approach. In addition to the reverse burden of proof process outlined above, it has created a summary forfeiture under Article 11 of the Jersey Forfeiture Law in relation to consent. It applies to property in a bank account if at least 12 months has passed since the notification of the refusal of consent was served on the person making the consent request. The AG triggers the process by serving a notice on the holder of the account requiring them to attend a court hearing to show cause why the property is not tainted (i.e. is neither the proceeds of crime nor intended to be used for crime) and should not be forfeited. If the person fails to attend the hearing (either in person or by a legal representative) the AG may apply for the forfeiture of the property and the court may make the order without further notice to the person concerned.*
- 7.4 *The rights of the owners of the property are protected because they have the opportunity to provide evidence about the property (either in person or by an affidavit). If they do this, the position is effectively the same as under Article 15 of the Jersey Forfeiture Law (see above), because if they fail to satisfy the court that the property is not tainted, the court must make a forfeiture order on the application of the AG. The summary procedure is also subject to the safeguard that the AG must be satisfied that there are reasonable grounds to believe that the property is tainted.*
- 7.5 *In this regard, it is important to stress that the evidential threshold for making an application is not satisfied by the mere fact that a suspicious activity report has been made. In cases where such reports are relied on, this is on the basis of their substantive content. The requirement for the property to have been the subject of "no consent" for at least a year is an additional safeguard, as it means that interested parties are aware (unless they have not been informed due to fear of committing a tipping off offence) that the property is considered suspicious and have already had 12 months to alleviate that suspicion.*
- 7.6 *Jersey has started to use this summary procedure and it is proving an effective way of dealing with longstanding "no consents". I recommend that a similar process should be introduced in the Bailiwick. This can be easily achieved by amending the Civil Forfeiture Law. As with the amendment to reverse the burden of proof, this approach should also be taken in the Projet that is currently being drafted to implement the new civil forfeiture regime referred to above.*
- 7.7 *Finally, I recommend that if the Civil Forfeiture Law is amended as I have advised on this point and also in respect of the burden of proof, there should be a further*

*amendment specifying that the authorities are not liable for damages or costs arising from forfeiture proceedings (subject to a right to damages for acts which constitute a breach of human rights and a right to compensation for acts done in bad faith). This would mirror provisions in Jersey's civil forfeiture legislation and would also make it clear that the Bailiwick position with regard to civil forfeiture is the same as the long established position in criminal cases. The States has already agreed that such a provision should be included in the new civil forfeiture regime. Clearly it is equally important for this to apply to the current regime, particularly if the number of cases taken forward under the current regime increases as a result of the amendments that I have recommended.*

## **8 Saisie in criminal cases**

- 8.1 Experience to date is that in addition to financial assets, the most significant asset held by a person who is subject to a confiscation order is usually real property. This is particularly the case with confiscation orders made in domestic cases. The Bailiwick's legal framework makes provision for the recovery of assets in third party hands if the person who holds the assets acquired them in the last 6 years as a gift, i.e. for no consideration or for inadequate consideration. This is important to ensure that people cannot transfer assets to a third party in order to put them beyond the reach of the authorities. However, this does not apply to real property that is transferred to a third party as the result of saisie.*
- 8.2 Saisie is a customary law process unique to the Bailiwick whereby creditors enforce debts against a person's real property. It is available to any person who has registered a charge against the property. Where there is more than one creditor in this position, creditors are ranked in order of priority, according to criteria such as whether creditors have a bond over the property or have registered a judgement against the property owner in the Livre des Hypothèques, Actes de Cour et Obligations at the Greffe. They are then given the opportunity in ascending order of priority to take ownership of the property, provided that they repay the debts charged against the property by creditors with a higher priority. This may result in a creditor taking ownership of a property with a greater value than the combined value of the debts owed to them and all other creditors. In that situation, there is no obligation to account to the debtor for the excess equity, although in practice financial institutions will often do so.*
- 8.3 If a third party keeps the excess equity in a property, it will not be available to satisfy a confiscation order. This creates the possibility for the saisie process to be manipulated by a third party with a connection to the defendant, by registering a charge against the property with the aim of taking ownership of it and then allowing the defendant to continue to live there. There have been cases where this appears to have happened. Clearly that is an unacceptable situation that cannot be justified from an international standards perspective.*

- 8.4 *Even where the third party who retains the excess equity is not connected to the defendant, the result is still that it cannot be used to satisfy the confiscation order. Again, there have been instances where this has happened. Although this is not as egregious as cases where the property remains available to a defendant, it nevertheless undermines the effectiveness of the confiscation regime. It also means that the property is not available to compensate any victims of the defendant's crime.*
- 8.5 *I therefore recommend that the legal framework is amended so that, for the purposes of enforcing a confiscation order, excess equity acquired by a third party via saisie would be treated in the same way as a gift to a third party, and subject to the same provisions to protect innocent third parties who might be prejudiced as a result."*

## **9 Compliance with Rule 4**

- 9.1 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.
- 9.2 In accordance with Rule 4(1):
- a) The propositions contribute to Priority 2 of the Government Work Plan by ensuring compliance with international agreements and standards.
  - b) In preparing the propositions, consultation has been undertaken with the private sector, Her Majesty's Procureur, the Policy & Resources Committee, the Director of the Economic and Financial Crime Bureau, the States of Alderney Policy & Finance Committee and Sark Chief Pleas Policy & Finance Committee.
  - c) The propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
  - d) There are no financial implications to the States of carrying the proposals into effect.
- 9.3 In accordance with Rule 4(2):
- a) The propositions relate to the Committee's purpose and policy responsibilities Committee to advise the States and to develop and implement policies on matters relating to its purpose including law enforcement, including policing and customs.
  - b) The propositions have the unanimous support of the Committee.

Yours faithfully

R G Prow  
President

S P J Vermeulen  
Vice-President

S E Aldwell  
L McKenna  
A W Taylor

P A Harwood MBE  
Non-States Member