



BILLET D'ÉTAT

TUESDAY, 6th MARCH 2012

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B I L L E T D ' É T A T

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **TUESDAY**, the **6th MARCH 2012** at 9.30am, to consider the items contained in this Billet d'État which have been submitted for debate.

G. R. ROWLAND
Bailiff and Presiding Officer

The Royal Court House
Guernsey
27 January 2012

COMMERCE AND EMPLOYMENT DEPARTMENT

IMPLEMENTING FISHING VESSEL LICENSING CONTROLS WITHIN BRITISH FISHERIES LIMITS ADJACENT TO THE BAILIWICK

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

13th December 2011

Dear Sir

1. Executive Summary

- 1.1 The States approved a proposal from the Sea Fisheries Committee in March 2003 (Billet IV 2003) to introduce licensing by ordinance in the 3 to 12 mile area around the Islands. The legislation was challenged, leading to a ruling of the Judicial Committee of the Privy Council in May 2007 that the 2003 Ordinance was ultra vires in the 3 to 12 mile area.
- 1.2 Established in 2010 by Alderney, Sark and Guernsey, the Bailiwick Fisheries Management Commission (BFMC) adopted a tri-partite approach to all discussions with the UK and the UK's devolved administrations to develop a new and acceptable Fisheries Management Agreement (FMA) which would be the basis for licensing legislation.
- 1.3 The FMA was agreed in the summer of 2011 and ensures that the Islands will be able to take control over the responsible management of the marine fisheries resources in Bailiwick waters. The Agreement was supported by the Bailiwick fishing industry and signed by the relevant authorities of Guernsey, Alderney, Sark, England, Wales, Scotland and Northern Ireland.
- 1.4 Advice from the Law Officers' Chambers was that the introduction of licensing could most appropriately be achieved at the present time by means of a Project de Loi.
- 1.5 The Department proposes that the States approves:
 - a) the proposals to introduce sea fisheries licensing in Bailiwick waters set out in this report; and

- b) the Projet de Loi entitled "The Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012".

2. Background

- 2.1 The Bailiwick of Guernsey has been without a formal fishing vessel licensing scheme within the area of sea extending from 3-12 nautical miles adjacent to the islands of the Bailiwick since 2007. Without licensing controls, the Commerce and Employment Department's Sea Fisheries Section in conjunction with the States of Alderney General Services Committee and the Chief Pleas of Sark Sea Fisheries Committee are unable to control or manage fishing effort fully and effectively in the 3-12 mile zone.
- 2.2 The Bailiwick 3-12 mile zone is the only area of sea within British Fishery Limits adjacent to the UK, the Bailiwicks of Guernsey and Jersey and the Isle of Man (BFL's) (See Appendix 2 - Bailiwick Fisheries Limits) which remain unprotected by licensing which has led to;
- A significant increase on fish being caught within Bailiwick waters.
 - Nomadic visiting vessels being able to develop a track record and thus attempt to claim "Historical Rights" to Bailiwick waters.
 - No control on the methods ("metiers") or locations where fishermen can fish.
 - Regular and unsustainable damage to Bailiwick fishermen's fishing gear and grounds.
 - And an overall lack of protection for the Bailiwick's fishing industries.
- 2.3 Without these important licensing controls, which are the foundation of any effective system of conservation and management, considerable damage will continue to occur not only to the sustainability of the fish stocks in Bailiwick waters, but also to those individuals and companies within the Bailiwick who rely on fishing for their livelihood.
- 2.4 The Bailiwick has no legislation enabling the licensing of fishing vessels within the 3 to 12 mile zone to protect those waters from over exploitation by commercial fishing activities. By contrast fishing vessel licensing first became possible throughout the UK over 40 years ago upon the enactment of the Sea Fish (Conservation) Act 1967.
- 2.5 Following many years of negotiation with the UK authorities in respect of the licensing of vessels within Bailiwick waters, which culminated in the refusal by HM Government to agree to the enactment of a Ministerial Order allowing the Bailiwick to license commercial fishing vessels in the 3-12 mile zone until a

formal agreement with the States of Jersey regarding fishing access rights was in place, the three parliaments of the Bailiwick decided in 2003 to enact local legislation by Ordinance.

- 2.6 The States of Deliberation, States of Alderney, and Chief Pleas of Sark accordingly each approved a Sea Fish Licensing Ordinance which briefly enabled the Bailiwick to license commercial fishing between 2003 and 2007 in the whole of the 0-12 mile waters adjacent to the Bailiwick. The Guernsey Ordinance (which was the one having effect in the 3 - 12 mile zone) was challenged by UK and Jersey fishermen and on the 2nd May 2007 was found by the Judicial Committee of the Privy Council to be ultra vires insofar as it had effect outside 3 mile territorial waters. The Guernsey Ordinance thus has effect now only within territorial waters (ie, in the waters out to 3 miles from low water mark).
- 2.7 The Bailiwick was therefore again without licensing legislation in the 3 - 12 mile zone.
- 2.8 Later that year the Ministry of Justice (MOJ) signalled a changed position seeking an even handed approach to Jersey and Guernsey and the hope that Guernsey's route to licensing legislation would be via the extension of the Bailiwick's territorial waters from 3 to 12 miles under the Territorial Seas Act 1987. This would enable the three Bailiwick parliaments to legislate by Ordinance out to 12 miles.
- 2.9 However, licensing controls would not be supported by the MOJ until a Fisheries Management Agreement (FMA) was in place between the States of Guernsey, the States of Alderney, the Chief Pleas of Sark and the fishing authorities of England, Scotland, Northern Ireland and Wales.
- 2.10 Discussions began in 2007 with the Department of Environment, Food and Rural Affairs (DEFRA) regarding an FMA, but it was not until November 2010 that substantial progress was made when the States of Guernsey, the States of Alderney and the Sark Chief Pleas agreed to form a Bailiwick Fisheries Management Commission (BFMC) which would enable Officers from each of the Islands to work cohesively and to negotiate the terms and conditions of the agreement with the fisheries authorities throughout the United Kingdom.
- 2.11 Negotiations continued throughout 2010 and eventually in November 2011 the FMA was finally signed by or on behalf of the Sark Chief Pleas Sea Fisheries Committee, the States of Alderney General Services Committee, the States of Guernsey Commerce and Employment Department, the Department of Agriculture and Rural Development (Northern Ireland), DEFRA (England, with MOJ support), the Welsh Government (Wales) and Marine Scotland (Scotland).
- 2.12 The FMA is specific to the above named parties and sets out the framework for how the Bailiwick will license and control commercial fishing in Bailiwick

waters. With this agreement signed the Bailiwick is now in a position to enact legislation to license fishing effort in the 3-12 nm zone of Bailiwick waters.

- 2.13 The Department therefore seeks the approval of the States for the Projet de Loi entitled the Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012, which is submitted to the States, with the permission of the Presiding Officer, with this report.

3. The Importance of Licensing to the Bailiwick Fleet

- 3.1 The overall aim of fishing vessel licensing is to protect the fish stocks around the Bailiwick and ensure that fishing effort continues in a sustainable and controlled manner.
- 3.2 Licensing fishermen in this way, will not only ensure that fish stocks are exploited in a sustainable way, but also ensures that Bailiwick fishermen can continue to fish in Bailiwick waters and are protected from the intense effort from nomadic vessels which has been present in local waters in recent years.
- 3.3 These nomadic vessels can transit from other fishing grounds and, with only basic technical controls in place they have caused significant damage to local fishing gear and to the fishing grounds where local potting vessels fish.
- 3.4 Developing domestic policy on fisheries compliance is also crucial to the future of the Bailiwick's territorial and 3-12 nm waters and for the protection of the Bailiwick's fish stocks and the fishing fleets of Sark, Alderney and Guernsey which operate within them. The BFMC proposes to take forward a wide range of policy initiatives to ensure that the Bailiwick fishing industry can continue to fish in a profitable and sustainable manner. For example -

- **Implementing of a structured regional fisheries management plan**

All fishermen can continue to fish in the same sustainable way (without fishing against EU Quota Controls) that they have done for many years whilst avoiding the problem of “discards” that arise if implementing the EU technical controls on fishing methods and quota.

- **Delivering continuous improvements in the control and monitoring of the landings of pelagic fish, demersal fish and shellfish (Crab, Lobster, etc).**

This will be done by electronic logbook recording for both the over 10 metre sector and the under 10 metre sector. This will ensure that both the Commerce and Employment Department and the Bailiwick's fishing industry meet the data reporting obligations agreed with HM Government.

- **Developing a cohesive inter-Island approach to fisheries regulation which will include integrated licensing and unified management of some of the 3 nm technical controls.**

Through the BFMC some of the local domestic 3 nm technical controls will be unified to ensure that the technical controls throughout the Bailiwick inshore waters are non-discriminatory and are effective in controlling fishing effort (and are considerate to other aspects of the environment such as bird life). The same principles of non-discrimination will apply for the 3-12 nm area.

- **Ensuring that licensing controls are implemented in a non-discriminatory way.**

All new licence conditions will be matched to the current industry working methods. Licence conditions can then be easily amended to reflect the dynamic changes happening within the industries which will ensure that existing effort controls which are imposed protect the inshore fishing fleet without damaging any existing businesses.

- **Establishing safeguards ensuring that the Bailiwick licensing scheme operates in a reciprocal way to the scheme operating throughout England and the devolved administrations.**

This will ensure that Bailiwick fishermen can continue to buy and sell licence entitlements throughout the UK and any investments made in the past or future are protected. Under paragraph 10 of the FMA, owners of vessels registered in the Bailiwick holding a valid licence to fish within the 12 mile area may apply for and will normally be granted by DEFRA an equivalent licence to fish in UK waters.

- **Protecting inshore Crab/Lobster grounds by preventing towed methods of fishing to be used on or around the South and South west potting grounds.**

New areas will be digitally mapped and defined as potting areas and other methods such as dredging and trawling will be prohibited within these areas. This will be part of the fishing vessel licence conditions and can be changed according to modern fishing practices and movement of species.

4. The support of the Bailiwick industry

- 4.1 For many years the Bailiwick's fishermen have recognised that a fishing vessel licensing scheme is essential for the 12 nm area if the Bailiwick is to manage the resource in a sustainable manner. The BFMC consulted each of the three islands' fishing industries through a series of evening meetings and received unanimous

support from both fishermen and fish wholesalers to implement legislation in line with the negotiated Fisheries Management Agreement.

- 4.2 The President of the Guernsey Fishermen's Association, along with the President of the Alderney Licensed Fishing Vessel Owners Organisation, recently made public the views of their respective fishermen's groups, which fully supported the FMA and proposed Projet de Loi. Steve Taylor a member of the Sark Sea Fisheries Committee, which represents the interests of Sark fishermen, also said the signing of the FMA can only be good news for the future of not only Sark's fishing industry, but also the fishing industries in Alderney and Guernsey, and that this was a step towards ensuring that the Bailiwick's fishing fleets can continue to fish sustainably in the future.
- 4.3 The Bailiwick has many wholesalers who rely on fish being landed by Bailiwick licensed vessels for wholesale distribution to hotels, restaurants, shops and retail customers. Catches are landed to these wholesalers in Guernsey and Alderney and the price paid to fishermen for their catches depends on the market demand. Because the area of sea extending from the 3-12 nm limits is currently unlicensed, there are many unlicensed fishing vessels catching fish outside of the licensed 3 nm limit which is landed and sold for profit throughout the Island.
- 4.4 This landing of unlicensed fish is known throughout the UK industry as "Black Fish". It is extremely difficult (almost impossible) for the Sea Fisheries Section to trace and quantify this kind of unlicensed fishing whilst the area of sea beyond 3 nm remains unlicensed. When questioned about catches, unlicensed fishermen simply declare that they caught the product outside 3 nm miles and they are therefore not committing any offence as the area of sea beyond 3 nm is exempt from any fisheries licence controls.
- 4.5 Most recently fishermen throughout the Bailiwick have reported an increase in the quantities of "black fish" being landed and sold for profit to hotels, shops and the general public. As such, Bailiwick fishermen have reported that local sales have suffered by as much as 50% for prime fish during the summer months. Therefore this practice decreases the profitability of fishing businesses and is deemed a significant risk, to not only the livelihoods of the 171 licensed fishermen who fish legitimately within Bailiwick waters, but also the wholesalers who rely on locally caught fish as a supply source. Implementing a fishing vessel licensing scheme throughout Bailiwick waters by legislation will immediately ensure that any fisherman selling fish from an unlicensed vessel (i.e. "black fish" landing) would be committing an offence and liable to prosecution.
- 4.6 Black fish affect the prices paid by the wholesalers to fishermen. The practice also undermines the investments made by bona fide commercial fishermen in purchasing vessels and licences. An example of a cost of a licence for a 30ft fibre-glass potter (with shellfish entitlement enabling the vessel to catch crab and lobster) would be no less than £10,000. (i.e. £200 per VCU x 50 VCU's).

- 4.7 By way of specific example of the conservation function of licence conditions, within Bailiwick waters there are two significant fin fish conservation areas. Bailiwick waters are within the International Council for the Exploration of the Seas (ICES) area VIIIE. All of European waters are divided and mapped and ICES is the scientific organisation which provides fisheries advice to the European Commission. It is on this advice that Fisheries Ministers of Member States make their decisions on the quantities of pressure or quota stocks which can be caught within each ICES area. (Appendix 3 – Chart Q6353 British Fisheries Limits and ICES Areas)
- 4.8 ICES Area VIIIE is already designated as part of a “Sole Recovery” area. This means that Sole (Solea solea) stocks in this area are depleted to such a level that fishing effort for this species must be controlled in such a way that the fish stocks are given a chance to recover.
- 4.9 Conditions on the types of gear, the days at sea and the amount of this type of species that can be landed, all contribute to helping with the recovery of the stock. Without any enforceable fishing vessel licensing scheme within the Bailiwick, the Islands cannot effectively control this fishing effort by licence condition.
- 4.10 Licensing controls will also help prevent the damage to static gear (Crab and Lobster pots) which is laid in certain areas of Bailiwick waters. In recent months large UK nomadic scalloping vessels have towed their dredges through areas which are potted by local boats, damaging both the fragile habitat on the crab and lobster fishing grounds, but also the fishing gear itself.
- 4.11 A pot rigged with bobbers (“boughs”) and lines is estimated to cost approx £100.00. These are rigged in strings of 20 to 50 and if snagged by towed gear can be moved miles and be lost. This leaves two problems, firstly the cost of the replacement of pots has to be paid by the fishermen and secondly the lost pots whilst on the seabed continue to “Ghost Fish” which means they continue to catch even though they are not being hauled. Most recently the Sea Fisheries Section has been involved in claims between fishermen for the loss of pots (as many as 70 to 100) which result in costs of up to £10,000 being claimed. This damage, if left to continue uncontrolled, could lead to small inshore fishermen’s businesses becoming unprofitable and therefore is a significant risk to the viability of the inshore potting sector.

5. The legal requirement for Fishing Vessel Licensing

- 5.1 Open access to fish stocks is often cited as the main cause of fish stock depletion, and in accordance with the Common Fisheries Policy (CFP) and European law, all Member States are required to operate restrictive fishing vessel licensing schemes which has proven effective in the conservation and management of the fish stocks in European waters.

- 5.2 It is also a requirement as part of the Illegal, Unreported and Unregulated Fishing Regulation (IUU) (EU Regulation EC 1010/2009) that vessels landing into any European Union member state must possess a fishing vessel licence.
- 5.3 A licensing scheme will therefore deliver protection and safeguards for the Bailiwick's 3 to 12 mile waters and the islands' fleets in uniformity with that in force within the remainder of British fishery limits (including the waters surrounding Jersey and the Isle of Man).

6. The Fisheries Management Agreement

- 6.1 Before the Bailiwick could formally request support from HM Government for legislation to license and control fishing effort in 3-12 nm waters adjacent to the Bailiwick, the MOJ and DEFRA required the Bailiwick to have in place a Fisheries Management Agreement (FMA). The FMA sets out the overall details of how the Bailiwick intends to license and regulate fishing activities within the 3-12 nm limits.
- 6.2 The FMA is an agreement made between the States of Alderney General Services Committee, the Sark Chief Pleas Sea Fisheries Committee and the States of Guernsey Commerce and Employment Department on the one hand and DEFRA, Marine Scotland, the Welsh Government and the Department of Agriculture and Rural Development Northern Ireland on the other. (Appendix 4 - Fisheries Management Agreement)
- 6.3 In 2009 the relevant committees of the States of Alderney, Sark Chief Pleas and States of Guernsey agreed that a Bailiwick Fisheries Management Commission (BFMC) should be formed so that negotiations could commence with DEFRA and the Devolved Administrations towards agreeing an FMA.
- 6.4 In November 2010, the BFMC held its inaugural meeting in the Island of Sark and Commissioners from each of the Islands were appointed to progress with negotiations with HM Government (DEFRA and the Marine Management Organisation (MMO)). This new, tri-partite, officer led approach was received well by DEFRA and the MMO and, by having regular meetings in London, significant progress was being made towards agreeing an FMA. The Commissioners reported back to their relevant committees seeking approval for each of the critical decision points of the FMA.
- 6.5 By the late summer of 2011 the BFMC had completed negotiations with the UK authorities and a draft FMA was in place for approval by the Bailiwick's fishing industries and the relevant committees of the three insular governments.
- 6.6 On the 12th, 13th and 14th September the Commission invited all members of the Bailiwick fishing industry in each of the respective Islands to a presentation of the BFMC's work and an explanation of the current draft FMA. The BFMC

received unanimous support from each of the Island's fishing industries confirming that the Commission's negotiations were on track and clearly reflected the needs of all Bailiwick fishermen.

- 6.7 Once the consultation with industry had been completed, the Commissioners returned to their respective committees to seek approval of the FMA. Once signed on behalf of the relevant Bailiwick Governments, the BFMC worked with the Devolved Administrations in Wales, Northern Ireland and Scotland to seek their approval of the FMA. On 1st November 2011 the final official signature from DEFRA was (with the support of the MOJ) added to the other six Government signatures.
- 6.8 The Fisheries Management Agreement is not legally binding, but is a governmental memorandum of understanding which gives the Bailiwick the authority to move ahead with requesting support from HM Government for legislation which will license fishing effort within the 3-12 nm waters.
- 6.9 The Bailiwick's FMA covers the following principles:
 - The implementation of the Common Fishery Policy rules and regulations apply within Bailiwick waters.
 - The system through which the Bailiwick can introduce fishery management measures in Bailiwick waters.
 - The provision of fair access for Bailiwick and UK vessels to each administration's waters.
 - The management of the relationship between the Bailiwick and the UK fisheries authorities.
- 6.10 Through these four principles, the FMA details how the Bailiwick intends to license and manage commercial fishing vessel activities in its waters and ensures that there are relevant safeguards in place which offer assurances to HM Government that the area is being managed in the appropriate manner.
- 6.11 These safeguards are;
 - All fisheries matters within the 3-12 nm area must respect the relevant Bailiwick of Guernsey, United Kingdom, European and international obligations, and Bailiwick waters should be managed in a manner consistent with UK and EU legislation and procedures (and it is important to note in this respect that EU restrictions and obligations relating to sea fishing have been in force in the Bailiwick's 12 mile waters since the enactment of the Fishing (Bailiwick of Guernsey) Law, 1989)

- The Bailiwick will respect and recognise the historical access and any rights of fishermen from France (specified under various conventions), the United Kingdom, Isle of Man, and the Bailiwick of Jersey.
 - The Bailiwick agrees that any technical measures introduced within the 3-12 nm limit should not discriminate between fishermen by reason of nationality.
 - Any new fisheries management measures introduced should be justifiable, evidence based, and non discriminatory and the Bailiwick will follow UK Government best practice guidance when consulting with industry.
- 6.12 With the FMA now completed, the Bailiwick is on a level playing field with the other Crown Dependencies (Jersey and the Isle of Man already have FMA's) and can now formally request approval for the necessary Projet de Loi to license commercial fishing in the 3-12 nm area of Bailiwick waters.

7. Licensing Legislation

- 7.1 There are several routes which can be taken to introduce a fishing vessel licensing scheme in Bailiwick waters and the following section describes each of the different legislative frameworks and clearly defines the route being proposed.

Option 1 - Ministerial Order

The previous States of Guernsey Sea Fisheries Committee was approached in early 1992 by the, then, Ministry of Agriculture Fisheries and Food (MAFF), now DEFRA, who were concerned that whilst the Bailiwick fishing fleet was regarded as part of the UK fleet, UK licensing legislation did not cover vessels fishing within the Bailiwick's 12 mile waters. Consequently, discussions commenced on how best to implement a licensing scheme enforceable in the Bailiwick to cover all British fishing vessels fishing in those waters.

In September 1992 the Sea Fisheries Committee announced that a licensing scheme would be introduced having been promised by MAFF a Ministerial licensing Order under section 4 of the Sea Fish (Conservation) Act 1967 (an Act of Parliament extended to the Bailiwick). MAFF on behalf of the UK would therefore enact powers for the Committee to license fishing vessels within the Bailiwick's 12 mile waters.

The Committee mirrored the licensing scheme in place in the UK by a non-statutory shadow scheme and pursued the Ministerial Order route, however this proved to be an extremely lengthy and complex process and progress was slow. Eventually (some nine years later) the Sea Fish (Conservation) (Channel Islands) (Amendment) Order, 2001 was passed by Her Majesty in Council on 14th March 2001. This amendment extended the power of UK Ministers to make an Order

prohibiting fishing without a licence to the whole of the 12 mile waters adjacent to the Bailiwick, including the territorial seas of Alderney, Sark and Guernsey.

This legislation came into force on 3rd April 2001 and everything was therefore now in place to introduce licensing within the whole of the Bailiwick's 12 mile waters by means of a UK Ministerial Licensing Order. However, on the 6th August 2002, the Lord Chancellors Department informed the States of Guernsey that a Licensing Order would not be enacted until agreement had been reached between Jersey and Guernsey over access arrangements for vessels wishing to fish in each other's waters. Negotiations were pursued, but proved fruitless.

As part of the renewed work to establish a durable sea fisheries licensing scheme in 2010, the Bailiwick Fisheries Management Commission re-opened discussions on the option of enacting a Ministerial Order with HM Government but were informed that, due to HM Government financial cuts, services such as access to legal resources within DEFRA had been significantly reduced and there was no forecast timetable to deal with the drafting and enacting of this legislation.

On the basis that the Bailiwick's request for a Ministerial Order might not be actively pursued by HM Government and that there were no legal resources within DEFRA to support this legislative route it was clear this path was no longer a viable option for the Bailiwick. In addition history suggests that this particular route, where the drafting and enactment of the Order is outside the immediate control of the Bailiwick authorities, may be time consuming and the timetable impossible to assess.

Option 2 - Extension of the Bailiwick's Territorial Seas

Her Majesty may (pursuant to the Territorial Sea Act 1987) extend the territorial sea of each of the Islands of the Bailiwick from 3 to 12 nm by applying the Act to the Bailiwick by Order in Council. Orders in Council have been made for Jersey and the Isle of Man and if made for the Bailiwick would give the three Bailiwick parliaments the power to legislate by Ordinance for sea fisheries licensing in the Bailiwick's 12 mile waters.

However, because of the jurisdictional division of Bailiwick waters between Guernsey, Alderney and Sark, the matter is complex. The issue is being thoroughly investigated by the States of Guernsey Policy Council and if the Bailiwick territorial seas were extended from 3 to 12 nm there are many liabilities and obligations (besides fisheries) which the Islands would assume responsibility for, including;

- Search and Rescue
- Maritime Pollution
- Border Control in the 0-12 nm area
- Military Wrecks

There is also the issue of the Hurd Deep to the north-west of Alderney where polluting materials and munitions are believed to have been dumped in significant quantities and in respect of which any clean-up operation could be extremely difficult and expensive.

These are just some of the broader topics which need to be considered before the Bailiwick takes full responsibility from the Crown for the 3-12 nm area. However, this route is being actively pursued by the Policy Council and it is hoped that this may be a viable option in the near future.

But once again, this particular legislative route depends on the enactment of UK legislation and the Bailiwick authorities would have little control over the legislative process and the timetable is impossible to assess.

Option 3 – Preferred Option - Projet de Loi

In the light of the likely difficulty of obtaining a Ministerial Order and the as yet unknown timetable for the establishment of territorial seas, the BFMC, having consulted the Law Officers, agreed that the best way for the Bailiwick to implement a sea fish licensing scheme would be by the enactment of a Projet de Loi.

A draft Projet has therefore been prepared by the Law Officers and, although it is unusual to prepare legislation before the States have passed the necessary resolutions it was necessary to do so in this case so that DEFRA lawyers would have the opportunity of commenting on the Projet and indicating that they would support this particular legislative route.

It is important to note that the Bailiwick would not now have an agreed FMA had the legislative framework not been prepared in draft and discussed during the FMA negotiations. In particular, Scotland and Wales requested that the BFMC demonstrate how the Islands intended to legislate and may not have signed the FMA had a legislative route not been agreed.

Should the States of Deliberation agree to approve the Projet, which is submitted with this report, the draft legislation will then be submitted to the States of Alderney and the Sark Chief Pleas for their approval. Once approved by the Bailiwick parliaments, the Projet will be submitted to the MOJ and thence to the Privy Council for Royal Sanction.

8. The Jersey Dimension

- 8.1 In recent weeks, the States of Jersey and the Jersey Fishermen's Association have shown significant interest in the progress that has been made towards introducing licensing legislation in the 3-12 nm area and there has been considerable media attention on the Jersey position.

- 8.2 The BFMC has worked hard to maintain good relations with both organisations and intends to treat all Jersey fishermen fairly. They will be eligible to apply (alongside their UK counterparts) for a sea fish licence to fish in Bailiwick 12 mile waters.
- 8.3 The BFMC has engaged directly with the President of the Jersey Fishermen's Association and, in late November 2011, arranged a meeting with the Jersey Fishermen's Association and the Jersey authorities. Significant progress was made and both parties were re-assured that fishing licensing controls were a conservation and management necessity within Bailiwick waters which Jersey had themselves enjoyed for many years, that the neutrality of the proposals was fair to all British fishermen, and this was reflected in the FMA. The Jersey Fishermen's Association have now expressed their agreement with the principle of licensing all British fishing vessels in Bailiwick 12 nm waters, although there is still unease with regards to future access.
- 8.4 Some Jersey fishermen feel that provision should be made for access to the 12 nm waters in the future that is not based on past records of access. Indeed, the access rights initially requested by the Jersey Fishermen's Association were to allow a certain number of vessels to have permanent access within Bailiwick waters. This type of access right would be discriminatory and contrary to the FMA and is therefore not a viable option. That being understood, constructive dialogue between the BFMC and the Jersey Fishermen's Association continues.

9. Implementing Licensing Controls

- 9.1 The Bailiwick 3-12 nm area (approximately 1000 sq nm) will, subject to States approval, change from an unlicensed fishery into a licensed area and therefore any British vessel wishing to fish in this area will require a fishing vessel licence. Foreign fishing vessels cannot fish within 12 mile waters at all with the exception of French vessels within the northern and western parts of the so called "outer belt", which is the area of Bailiwick waters between 6 and 12 miles from the baselines. The proposed licensing Projet de Loi will not apply to them and indeed cannot under the terms of the international agreements giving them access. But they are already required to be licensed by the flag state under EU law.
- 9.2 When the legislation is implemented, the Commerce and Employment Department will, on behalf of the Bailiwick, be able to apply licensing controls in a non-discriminatory way whilst respecting historical access rights of those fishermen who have fished in Bailiwick waters for many years. Therefore the BFMC has carefully developed a specific licensing application framework which complies with each of the specific criteria of the FMA.

10. Resources

10.1 The introduction of licensing legislation within the Bailiwick's 3 - 12 mile waters

- will not lead to a requirement to employ any additional Sea Fisheries Officers, and
- will not increase vessel operating costs in respect of the Leopardess and Puma.

10.2 The 3 - 12 mile zone is already patrolled by the Department's Sea Fisheries Section and the British Sea Fishery Officers employed therein for the purpose of enforcing the UK legislation applicable within that zone (for example, the Fishery Limits Act 1976) and the EU restrictions and obligations relating to sea fishing in force there pursuant to the Fishing (Bailiwick of Guernsey) Law, 1989.

The level and cost of patrolling will not change once the new legislation comes into force.

11. Consultations

11.1 The Commerce and Employment Department Sea Fisheries Section has completed a comprehensive consultation process before seeking approval for the proposed legislation from the States of Deliberation.

2010

- The Inter-Island Bailiwick Fisheries Management Commission (BFMC) was formed by agreement between the States of Guernsey Commerce and Employment Department, Sark Chief Pleas Sea Fisheries Committee and States of Alderney General Services Committee.
- Detailed negotiations with DEFRA and the Devolved Administrations begin.

2011

- The draft FMA was presented for approval by the Commerce and Employment Department, the Alderney General Services Committee and the Sark Chief Pleas Sea Fisheries Committee.
- The BFMC presented the FMA to the States of Guernsey Policy Council External Policy Group on the 22nd July 2011 for approval.
- September 2011, the BFMC visited Wales to consult with the Welsh Government about the FMA.

- The BFMC visited Scotland to consult with Marine Scotland about the FMA.
- The BFMC visited Belfast to consult with Department of Agriculture and Rural Development Northern Ireland about the FMA.
- October 2011, the BFMC visited Scotland again to consult with Marine Scotland about final amendments and signature.
- The BFMC consulted with both the States of Jersey Sea Fisheries Section and Jersey's Chief Minister's Office regarding the FMA and the proposal to implement licensing controls within the Bailiwick 3-12 nm limit.
- The BFMC consulted the Bailiwick fishing fleets in Sark, Alderney and Guernsey to seek industry approval before seeking completion and final signatures on the FMA.
- November 1st, BFMC visited DEFRA in London to obtain final signature on FMA.
- The BFMC visited Jersey and presented to the Jersey Fishing Industry the proposals to license fishing in the 3-12 nm area. The President of the Jersey Fishermen's Association agreed that licensing should be implemented although there are still concerns regarding historical access to discuss in the future.

12. Summary and Conclusion

- 12.1 The 3-12 nm area adjacent to the Bailiwick (of approximately 1000 sq nm) is the only area of British fishery limits adjacent to the UK, the Bailiwicks of Guernsey and Jersey and the Isle of Man that is not protected by licensing legislation.
- 12.2 Fishing vessel licensing is an essential tool in the conservation and management of fish stocks and it is imperative that legislation is put in place to safeguard these stocks.
- 12.3 Licensing legislation will help ensure that the Bailiwick's fishing fleets can continue to operate on a basis corresponding to that of fishermen in the UK and the other Crown Dependencies, whilst protecting the industry in the future from nomadic and intensive fishing practices.
- 12.4 The Commerce and Employment Department Sea Fisheries Section (and more recently the Bailiwick Fisheries Management Commission) have been working with HM Government since 2007 to re-instate a fishing vessel licence scheme corresponding to and reciprocal with the similar procedures applicable in the UK.

- 12.5 The absence of sea fish licensing controls in the Bailiwick's 3 - 12 mile zone has led to nomadic vessels exploiting the Bailiwick fish stocks in an uncontrolled manner whilst simultaneously attempting to establish a historical track record.
- 12.6 The Department has consulted fully with the External Relations Group sub-committee of the Policy Council, the Sark Chief Pleas Sea Fisheries Committee and the Alderney General Services Committee throughout the negotiations and they are supportive of the proposals to implement legislation to license fishing activities in the 3-12 nm zone to be administered and enforced in consultation with the BFMC by the Commerce and Employment Sea Fisheries Section.
- 12.7 The conclusion of this issue is also welcomed and supported by the professional commercial fishermen of Guernsey, Alderney and Sark in the interests of fisheries management, conservation, access to markets and reciprocity of licensing with the UK.
- 12.8 The Department has complied with the six principles of corporate governance in the preparation of this States Report.

13. Recommendation

- 13.1 The Commerce and Employment Department therefore recommends the States to;
- a) Approve the proposals set out in this report; and
 - b) Approve the Projet de Loi entitled "The Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012".
- 13.2 I am grateful to the Presiding Officer for allowing the Projet to be placed before the States concurrently with this States Report.

Yours faithfully

C S McNulty Bauer
Minister

M Lainé
Deputy Minister

R Matthews
A Brouard
M Storey
States Members

Appendix 1

DRAFTING OF LEGISLATION – PRIORITY RATING SCHEME**STATES REPORT - IMPLEMENTING FISHING VESSEL LICENSING
CONTROLS WITHIN BRITISH FISHERIES LIMITS ADJACENT TO THE
BAILIWICK****Criterion 1 – Need for legislation**

To implement fishing vessel licensing controls within British Fisheries Limits adjacent to the Bailiwick.

Criterion 2 – Funding

There are no immediate funding requirements.

Criterion 3 – Risks and Benefits associated with enacting/not enacting the legislation

The Bailiwick has been without a formal fishing vessel licensing scheme within the area of sea extending from 3-12 nautical miles adjacent to the Bailiwick of Guernsey since 2007.

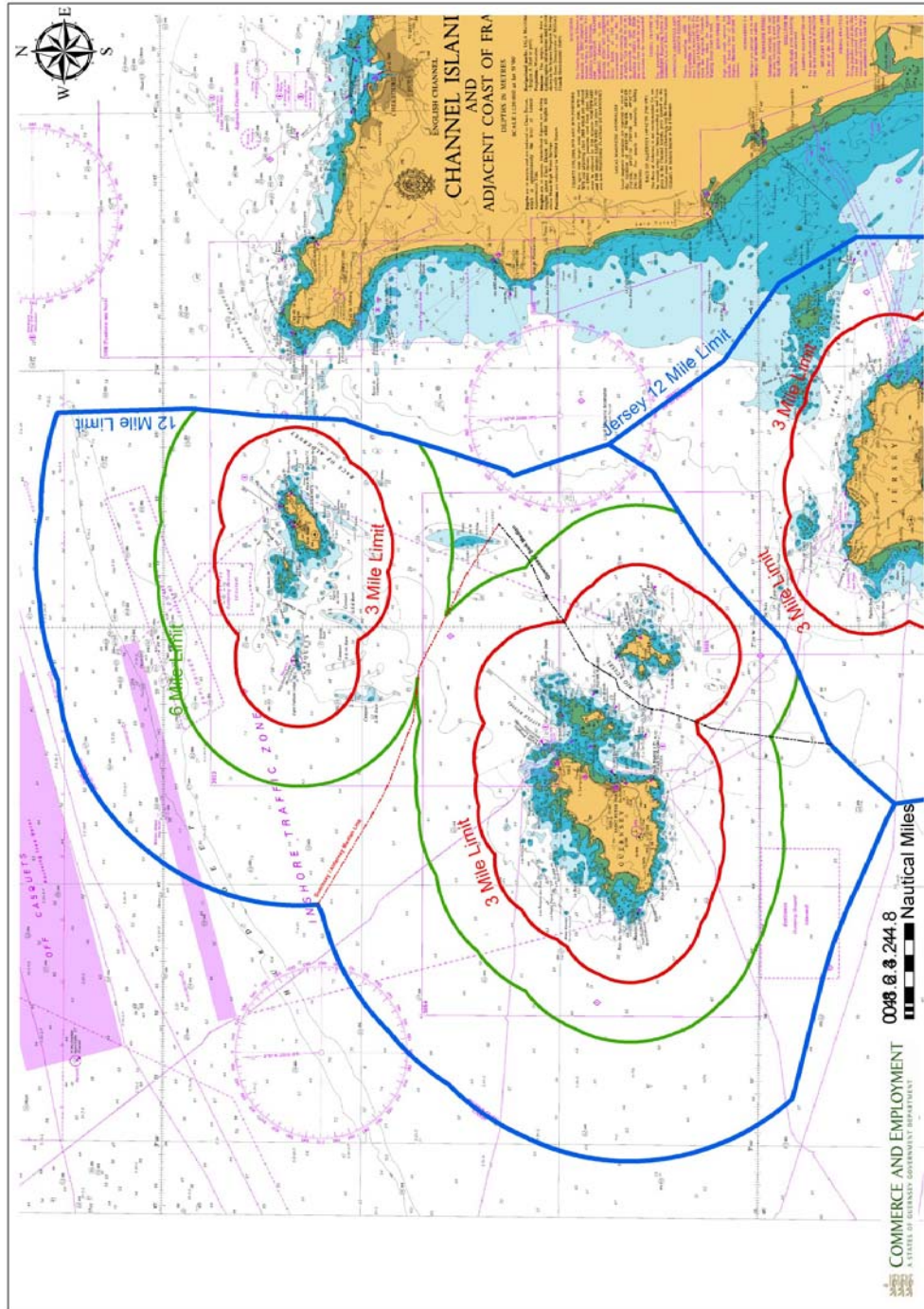
Fishing in the area of sea extending from 3-12 nautical miles adjacent to the Bailiwick of Guernsey is not subject to a fishing vessel licensing scheme. Without licensing controls, the Commerce and Employment Sea Fisheries Section in conjunction with the States of Alderney General Services Committee and the Chief pleas of Sark Sea Fisheries Committee are unable to control or manage fishing effort in the 3-12 mile zone.

Risks include, a significant increase on fish being caught within Bailiwick waters; large nomadic visiting vessels being able to develop a track record and thus attempt to claim “Historical Rights” to Bailiwick waters; no control on the metiers or locations where fishermen can fish; Regular and unsustainable damage to Bailiwick fishermen’s fishing gear and grounds; an overall lack of protection for the Bailiwick’s fishing industries.

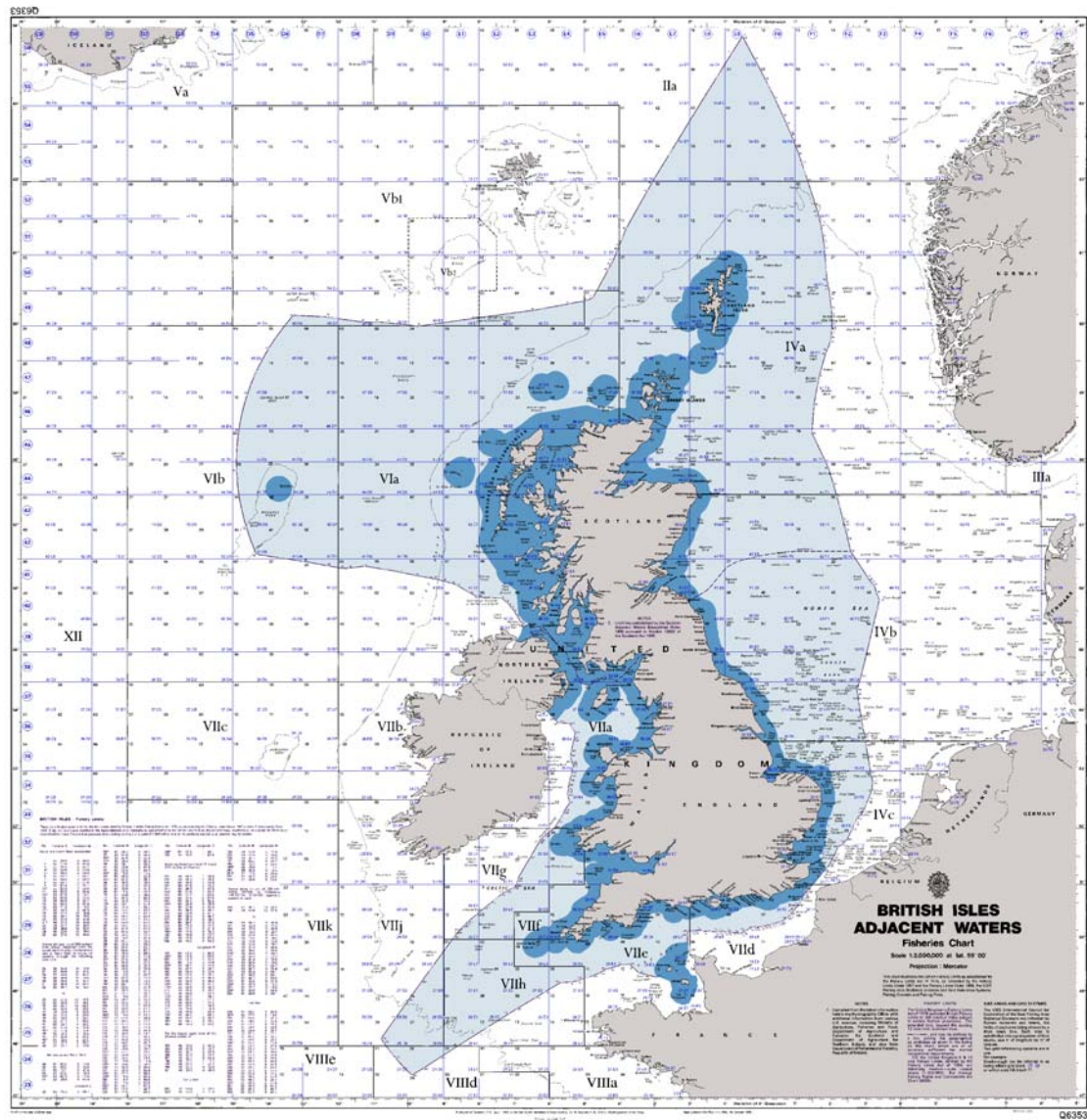
Criterion 4 – Estimated Drafting Time

Negligible as the drafting of the legislation has been completed.

Appendix 2 – Bailiwick Fisheries Limits



Appendix 3 – Chart Q6353 British Fisheries Limits and ICES Areas



Appendix 4

FISHERIES MANAGEMENT AGREEMENT

Preamble

This Agreement is made between the Department for Environment, Food and Rural Affairs (“Defra”), Marine Scotland, the Welsh Government and the Department of Agriculture and Rural Development Northern Ireland on the one hand, and the States of Guernsey Commerce and Employment Department, the Chief Pleas of Sark Sea Fisheries Committee and the States of Alderney General Services Committee on the other.

This agreement is specific to the above-named parties and stands alone, without being potentially applicable by extension to any other party.

It sets out the main aspects of the arrangements for the management of fisheries between the United Kingdom and Bailiwick of Guernsey in British fishery limits adjacent to the Bailiwick of Guernsey; namely:

1. The implementation of Common Fishery Policy rules and regulations in Bailiwick waters.
2. The system through which the Bailiwicks can introduce fishery management measures in Bailiwick waters.
3. Fair access for Bailiwick and UK vessels to each Administration’s respective waters.
4. How the relationship between the Bailiwicks and UK fisheries will be managed.

Location

Fishery Limits: British fishery limits adjacent to the Bailiwick of Guernsey shall be construed as a reference to that part of those limits not exceeding 12 international nautical miles of 1,852 metres from the baselines from which the breadth of the territorial sea adjacent to the Bailiwick of Guernsey is measured, but not extending beyond a line every point of which is equidistant from the nearest points of such baselines and the corresponding baselines of the Bailiwick of Jersey and France, and shall be referred to in this Agreement as “the 3-12 mile area”;

Legislation: fisheries matters in the 3-12 mile area must take account of relevant Bailiwick of Guernsey, United Kingdom, European Union and international obligations, and whereas fisheries (as defined below) in the 12 mile area should be managed in a manner consistent with UK and EU legislation and procedures;

Access Rights: the 3-12 mile area is not an exclusive fisheries zone and the rights of fishermen from the UK, the Isle of Man and the Bailiwick of Jersey generally and the particular rights of fishermen from France under the various conventions should be respected, and technical conservation measures should not discriminate between fishermen by reason of nationality;

Governance: the States of Guernsey Commerce and Employment Department (referred to in this agreement as “the Department”) will be responsible for the administration and enforcement of a fishing vessel licensing scheme and fisheries management/enforcement for British fishing vessels wishing to fish in the 3-12-mile area.

Bailiwick Fisheries Management Commission: the Department, the Chief Pleas of Sark Sea Fisheries Committee and the States of Alderney General Services Committee will form a body known as the Bailiwick Fisheries Management Commission (BFMC) (referred to in this Agreement as “the Commission”). The Commission will (subject to the functions conferred on the Department by the preceding paragraph) manage the living marine resources within the 3-12 mile area under a Bailiwick Fisheries Management Agreement (BFMA).

The Commission will be the sole conduit for communications between the Bailiwick and Defra when the Bailiwicks wish the UK Government to consider fisheries legislation they wish to introduce (though the Islands can contact Defra on an individual basis to discuss specific issues).

Definition: this Agreement sets out the main aspects of the arrangements for fisheries between the UK and Bailiwick of Guernsey in respect of shellfish (which expression in this Agreement shall include crustaceans and molluscs of any kind other than nephrops) and sea fish (which expression in this Agreement shall include nephrops and any other TAC stock) and provides for a regular consultation process to deal with routine business and particular issues as they arise; and in this Agreement “fisheries” means shellfish and sea fish.

General

1. Except as may otherwise be agreed, and always subject to paragraphs 18-22 below, members of the Commission agree:
 - a. to keep the rules and laws relating to the regulation of fishing and the management and conservation of seafish and shellfish in the 3-12 mile area consistent with the requirements of enforceable European Union law relating to sea fishing and UK policy in relation to such matters, allowing for any additional conservation measures which may be imposed by local legislation on British registered fishing vessels or by licence condition on British registered fishing vessels in relation to such stocks as the Commission deems necessary for the purpose of managing the inshore fishery at a sustainable level;
 - b. to accept that there will be concurrent UK and Bailiwick of Guernsey jurisdiction in relation to fisheries in the 3-12-mile area;

- c. and for the purposes of this Agreement the expression “British registered fishing vessels” means fishing vessels registered in the Bailiwick of Guernsey and the UK.
- 2. Proposals for future fisheries management and technical controls in that part of the 12 mile area beyond 3 international nautical miles from the baselines referred to in the first recital above (referred to in this Agreement as the “extended territorial sea”) will be presented, by the Commission prior to any wider consultation, to the Devolved Administrations and Defra for views and will normally be of Bailiwick wide application.
- 3. However, should Guernsey, Alderney or Sark require specific legislation to deal with fisheries management or socio economic factors in their own part of the extended territorial sea, the proposal will be presented to Defra by the Commission with an explanation as to why it is required and why it will not be of Bailiwick wide application.

However, in this respect Defra acknowledges that the legal powers necessary to apply rules equivalent to the UK rules on aggregation and penalties do not exist in the Bailiwick of Guernsey.

- 4. The Bailiwicks will take account of Defra’s views (which should reflect the views of the devolved administrations) and provide the Department with any revisions prior to wider consultation.

Memorandum of Understanding

- 5. Guernsey, Alderney or Sark will agree a Memorandum of Understanding with the Marine Management Organisation (MMO) on operational aspects of fishery management. This will include agreeing how the Islands will manage the licensing of vessels, quota management, the supply of statistical data and data transfer between the Islands and the MMO and enforcement.
- 6. The MoU shall accompany the FMA and agreement on the FMA is subject to the MoU being in place.
- 7. The MMO and the Commission shall consult on practical arrangements with regard to the enforcement of fisheries laws within the 3-12 mile area. This will be set out in the MoU.
- 8. The Islands, MMO and Defra will meet annually to review the MoU (the latest copy of the MoU is attached at Annex 1 of this agreement), taking account of any views held by the devolved administrations on the MoU. The MoU will cover the following aspects of the Islands’ fisheries management:

Fishing vessel licensing

9. Within the 3-12 mile area the Commission shall operate a restrictive licensing scheme for British registered fishing vessels parallel with that operated in the UK.
10. Owners of vessels registered in Guernsey and holding a valid licence to fish within the 12 mile area (a “Guernsey Waters Licence”) may apply for and will normally be granted by Defra an equivalent licence to fish in UK waters outside the 3-12 mile area (a “UK Waters Licence”). The Department agrees to operate reciprocal arrangements for UK registered and licensed vessels wishing to fish within the 3-12 mile area. When determining licence applications to fish in the 12 mile area the Department may have regard to whether vessels have an established record of fishing in those waters.
11. The issue and transfer (including aggregation) of licences that are transferable between fishing vessels registered in the Bailiwick of Guernsey and those registered in the UK shall be subject to the same rules as apply to equivalent UK licences, as set out in the MoU.
12. Except insofar as is allowed by paragraph 1(a), the Department shall ensure at all times that fishing vessel licences issued by it contain conditions and limitations equivalent to those contained in comparable UK licences.

Fisheries quota management

13. The Commission and the MMO will hold annual meetings to discuss yearly quota for key species in the Islands fisheries.
14. TAC stocks caught by any registered fishing vessels within or without the 12-mile area shall count against the quotas allocated to the UK under the Common Fisheries Policy.
15. Defra and the MMO will actively involve the Commission in any policy or operational discussions on the management of fisheries in ICES Division VIIe.

Supply of statistical data

16. The Commission shall supply to the MMO all statistical data necessary to enable the UK Government to carry out its quota management and vessel licensing responsibilities and to fulfil its EU obligations.
17. The MMO and the Commission will work to ensure data transfer work effectively between both organisations.

Consultation on Fisheries Measures

18. The Commission shall:

- Consult, and take account of the views of Defra and the Devolved Administrations, prior to consulting more widely with industry and other interested parties on new fishery measures.
- Ensure that new regulations are justifiable, evidence based and non discriminatory.
- Produce Impact Assessments for new measures;
- Follow UK Government best practice guidance when consulting;
- Ensure that measures are consistent with concordats and other agreements we have with the DAs, and ensure that equal access continues to apply for UK and Island vessels in each other's waters.

19. Defra will advise the Commission about any measures, additional to quota management, which in their view should apply in the 3-12 mile area.

20. On fisheries measures being proposed by the EU, which would affect fishing in ICES Division VIIe, Defra will advise the Commission of these whenever possible and will take any points the Commission makes into consideration when preparing the UK position.

21. After such consultation provided for above, each party may issue consultation documents, if appropriate, to their industries and will liaise with the other on the handling of the outcome of such consultations and the development of any measures arising.

Enforcement

22. The MMO and the Commission shall consult on practical arrangements with regard to the enforcement of fisheries laws within the 12-mile area. This will be set out in the MoU.

Meetings

23. The parties shall meet at least once each year (as set out in paragraph 7) and more frequently if appropriate.

Commencement

24. This agreement will take effect on the date when the relevant legislation has been enacted.

Signatories

Signed for and on behalf of the Department for Environment, Food and Rural Affairs

By.....on.....

Signed for and on behalf of the States of Guernsey Commerce and Employment Department

By.....on.....

Signed for and on behalf of the Chief Pleas of Sark Sea Fisheries Committee

By.....on.....

Signed for and on behalf of the States of Alderney General Services Committee

By.....on.....

Signed for and on behalf of Marine Scotland

By.....on.....

Signed for an on behalf of the Welsh Assembly Government

By.....on.....

Signed for and on behalf of the Department of Agriculture and Rural Development Northern Ireland

By.....on.....

(NB As there are no resource implications identified in this report, the Treasury and Resources Department has no comments to make.)

(NB The Policy Council supports the proposals contained in this Report.)

The States are asked to decide:-

I.- Whether, after consideration of the Report dated 13th December 2011, of the Commerce and Employment Department, they are of the opinion:-

1. To approve the proposals set out in this report.
2. To approve the Projet de Loi entitled "The Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012" and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

HOME DEPARTMENT**WIRELESS TELEGRAPHY**

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

21st November 2011

Dear Sir

1. Executive Summary

- 1.1 The Law Officers' Chambers have identified several anomalies in the Bailiwick's wireless telegraphy and telecommunications statutory regime, most of which have resulted from the failure of the relevant United Kingdom authorities to transmit some statutory measures for registration in the Royal Court.
- 1.2 One result of this state of affairs is uncertainty regarding the lawful authority of the regulator Ofcom to exercise its statutory functions in the Bailiwick, which in turn creates potential difficulties for persons and businesses operating in the telecommunications sector. Other difficulties arise from the non-registration of a range of technical wireless telegraphy statutory instruments, and several sets of television licensing regulations. Moreover, there will be acts done in reliance upon the effective extension of provisions under those instruments that are unlawful as matters stand, in circumstances in which no blame can attach to those concerned.
- 1.3 It is clearly important to remove any uncertainty by regularising the legislative position and taking steps to put everyone in the legal position in which they thought they were throughout and to ensure that no-one suffers any unfair loss or prejudice. To achieve this, a Projet de Loi has been prepared in full consultation with the United Kingdom authorities. The Department believes that enactment of the Projet is the most appropriate and pragmatic way to ensure that the remedial steps recommended in the letter from Her Majesty's Comptroller, set out below, are given effect.

2. Proposals from Her Majesty's Comptroller

Her Majesty's Comptroller has written to the Department in the following terms:

“Introduction

- 2.1 *Several anomalies in the complex legislative regime governing wireless telegraphy and related matters in the Bailiwick have recently been identified by the Law Officers' Chambers. One of them – the ineffective extension to the Bailiwick of certain provisions in the Communications Act 2003 – is particularly significant. In my view, it is important that these anomalies are rectified as soon as possible, and I consider that the most appropriate and pragmatic way to do that is by a Projet de Loi in the terms attached, developed in close consultation with lawyers from the relevant United Kingdom authorities.*

Background

- 2.2 *Wireless telegraphy legislation has traditionally been approached in the Bailiwick on the basis of Acts of Parliament being extended by Orders in Council under appropriate permissive extent provisions. For example, the Wireless Telegraphy Act 1949 was extended by the Wireless Telegraphy (Channel Islands) Order, 1952, and more recently most of the Wireless Telegraphy Act 2006 was extended by the Wireless Telegraphy (Guernsey) Order 2006. It has been a feature of such extending measures that subordinate legislation made as a matter of UK law will also apply to the Bailiwick, but will only have effect after registration in the Royal Court. The purpose of this requirement is clearly to provide local control and supervision of this legislative process, ensuring that the United Kingdom does not legislate for the Bailiwick against its will.*
- 2.3 *A new, independent regulator for the communications sector was established in the United Kingdom by the Office of Communications Act 2002. This is a body corporate known as the Office of Communications or Ofcom. Ofcom replaced a number of separate regulatory bodies such as the Radio Authority and the Broadcasting Standards Commission.*
- 2.4 *As with previous enactments in relation to this sector, the 2002 Act contained a permissive extent provision. In order to flesh out the bare establishment of Ofcom, the Communications Act 2003 confers functions on it and makes other provision, including about the regulation of the provision of electronic communications networks and services and of the electro-magnetic spectrum, as well as regulation of broadcasting and the provision of television and radio services. The 2003 Act contains a similar permissive extent provision (section 411(6)).*

Extension of the Communications Act 2003

- 2.5 *In consultation with the Bailiwick authorities, an Order in Council was prepared that extends the relevant provisions of the 2002 Act and the majority of the provisions of the 2003 Act identified as being needed for the Bailiwick. This was part and parcel of a wider project in the British Islands to bring into force from 29 December 2003 the provisions relating to Ofcom in order to transfer to it the full range of functions set out in Schedule 1 to the 2003 Act. This was entirely*

consistent with the previous approach to legislation in this area and was supported by the Bailiwick authorities. The Communications (Bailiwick of Guernsey) Order 2003 (SI 2003/3195) was made on 10 December 2003. A similar measure in respect of Jersey was also made.

- 2.6 *By virtue of the 2003 Order, the provisions extending the 2002 Act were expressed to come into force on 29 December 2003. However, the provisions extending the 2003 Act had complicated and inter-related commencement provisions, which were designed to ensure that the provisions as extended would not enter into force in the Bailiwick earlier than the dates on which they were being commenced by two Commencement Orders made in respect of the UK as a matter of UK law under the 2003 Act. The specific provision setting this out was also subject to those two UK Commencement Orders being registered in the Royal Court.*
- 2.7 *Whilst the 2003 Order itself was forwarded through official channels for the purposes of registration under a letter from the Department for Constitutional Affairs dated 22 December 2003, with registration thereof being affected on 19 January 2004, the two UK Commencement Orders were not transmitted in this way and so were not registered. They have still not been registered: to have done so when the non-registration was first identified, some five years later, would have caused problems relating to the lawfulness of what had already been done under the relevant provisions in that period. In respect of Jersey, where there are comparable commencement provisions on the face of its extending Order in Council, we have been told that the UK Commencement Orders as well as the principal Order in Council extending the Acts were registered on 2 January 2004. Despite making enquiries of all those concerned in the usual chain of communication for official correspondence, it remains a mystery as to why the documents transmitted to Jersey for registration were complete, whereas those sent to Guernsey omitted the two Commencement Orders.*

Communications Act 2003: the consequences of non-registration

- 2.8 *The non-registration of the relevant Commencement Orders was identified by a lawyer at the Law Officers' Chambers, who considered that its legal effect was that the provisions of the 2003 Act being extended by the 2003 Order were not yet effective and so, in particular, the functions conferred on Ofcom by the 2003 Act had not been conferred on that body in respect of the Bailiwick. When the issue was drawn to my attention I concurred with this view. The matter was raised with officials at the Ministry of Justice and subsequently with officials and lawyers at Ofcom, who also agreed with our analysis, and the need to address the issue.*
- 2.9 *The effective non-extension of these provisions is not merely a legal problem, but also and more importantly a practical one. Ofcom performs a variety of functions within the Bailiwick, affecting different groups of people and businesses, all of whom must be able to rely on it having the lawful authority to exercise those functions.*

Non-registration of other measures

- 2.10 *Having identified the problem of non-registration outlined above, further extensive work has been undertaken in conjunction with Ofcom and the Ministry of Justice to ascertain whether other measures, in particular those made by Ofcom since its establishment at the end of 2003, that require registration before they come into effect have indeed been registered. This analysis has identified several wireless telegraphy statutory instruments that have not been registered and so, as a matter of law, do not currently have effect. In many cases, the measures create exemptions from the requirements that would normally apply – for example, the Wireless Telegraphy (Automotive Short Range Radar) (Exemption) Regulations 2005 (SI 2005/353).*
- 2.11 *Again, this creates potential practical problems for those affected by these instruments in their work or leisure pursuits, and who rely on their being in force.*
- 2.12 *It was also discovered that several sets of regulations amending the television licence fee were not registered when they should have been. These regulations are made by the Secretary of State under powers that have properly been extended to the Bailiwick by the Communications (Bailiwick of Guernsey) Order 2004 (SI 2004/307), which did not contain complex commencement provisions. However, the way in which the relevant section of the 2003 Act has been extended requires any regulations made by the Secretary of State to be registered in the Royal Court before they have effect. As extended, that section also provides that, upon registration, the regulations have effect from the following day, or on the date specified therein, whichever is later.*
- 2.13 *The original Communications (Television Licensing) Regulations 2004 (SI 2004/692) were registered on 29 March 2004. However, the amendments made in 2005 (SI 2005/606), 2006 (SI 2006/619) and 2010 (SI 2010/640) were not registered. The amendment regulations made in 2008 (SI 2008/643) were registered on 30 July 2008 and became effective the following day, some four months after they were intended to take effect on 1 April; as a result, refunds were subsequently paid in respect of the small overpayments made by licence fee payers in the Bailiwick who had acquired or renewed television licences that commenced from 1 April to 31 July. These refunds were paid by TV Licensing, the UK Agency responsible for these matters.*
- 2.14 *These amending regulations, which are issued most years, deal not only with licence fees but also other issues relating to the television licence, such as special provision for licences in accommodation for residential care. They also amend the basic provisions to keep them up to date with machinery of government changes in Guernsey. This makes it all the more important to use this opportunity to regularise the position with respect to them.*

Why the measures were not registered

- 2.15 *While one case has been identified where non-registration was as a result of an oversight here in Guernsey, so far as we can ascertain at present in all the other cases the relevant measures were simply never forwarded by the United Kingdom authorities for registration in the Royal Court as they should have been, as a result of administrative error either within Ofcom or Her Majesty's Government.*
- 2.16 *Since these problems have been identified, the relevant Guernsey authorities, including the Law Officers' Chambers, have been working closely with the relevant United Kingdom authorities, including the Ministry of Justice, to put in place systems and measures aimed at eliminating the risk of relevant measures not being transmitted to the Bailiwick for registration in the future. Work has also been undertaken to address the risk of legislation that is transmitted to Guernsey becoming "lost in the system" and not registered in the proper way.*

The Projet de Loi

- 2.17 *The non-registration of the various measures discussed above has been, as noted, the result of administrative error. In every case the clear intent was that they be registered and have effect here, and they have been relied upon as if they had been so registered. As such, the broad purpose and effect of the Projet de Loi is to put the Bailiwick into the position it would be in if the measures had been registered when they should have been; and to ensure that no-one suffers loss or other prejudice as a result of their non-registration.*
- 2.18 *To achieve that, it does the following:*
- *it deems the Commencement Orders relating to the Communications Act 2003 to have been registered on the same date that the 2003 Order was registered;*
 - *it deems the other measures identified above to have been registered on appropriate dates – that is, on dates when they would have been registered had they been transmitted to Guernsey in the normal way;*
 - *it renders lawful any acts which were not lawfully done because of the failure to register these measures – for example, a reliance on an exemption in a non-registered wireless telegraphy statutory instrument, or the collection by Ofcom of a statutory fee; and*
 - *it provides (for the avoidance of doubt) that no person shall be guilty of an offence under the provisions of the Communications Act 2003 extended by the 2003 Order, where the act or omission in question took place before the commencement of the Law.*
- 2.19 *This is not the first example of this sort of remedial legislation in Guernsey. The most recent example of the States of Deliberation legislating to validate something that should have happened but had not was in relation to the failure to appoint members to the Guernsey Tax Tribunal upon the expiry of the terms*

of office of the original appointees to that body. The Tribunal had continued to operate without anyone having noticed that the terms of office had expired and so the members' entitlement to sit had lapsed. New appointments were then made, but it was necessary to validate what had happened in the meantime. This was achieved by the Guernsey Tax Tribunal (Validation) (Guernsey) Law, 1999. This Law followed a pattern that had been used previously in relation to elections, beginning with the Sark Elections (Validation) Law, 1950.

- 2.20 *I therefore recommend that the attached draft Projet de Loi, the terms of which been discussed and agreed with the relevant United Kingdom authorities, together with this explanation of why it is needed, should be considered by the States of Deliberation at the earliest opportunity.”*

3. Consultation

- 3.1 The States of Alderney and Chief Pleas of Sark have been consulted regarding the proposals in this Report and support the proposal of remedial legislation.
- 3.2 The Law Officers support the legislative amendments proposed within this Report.
- 3.3 TV Licensing, the United Kingdom agency charged with collection of the television licence fee, has been contacted and is aware of the position and has been kept informed about progress towards the recommended remedial legislation route.
- 3.4 The Ministry of Justice in the UK is fully conversant with these proposals and has been closely involved in the drafting of the Projet de Loi.
- 3.5 Ofcom and the United Kingdom Department for Culture, Media and Sport are supportive of addressing this issue at the earliest opportunity, and again have been consulted in relation to the terms of the legislation.
- 3.6 The Office of Utility Regulation has been consulted and supports the recommendations.

4. Resources

- 4.1 These proposals will not result in any additional expenditure by the States.

5. Good Governance Principles

- 5.1 The proposals made in this States Report are in accordance with the Principles of Good Governance as outlined in Billet d'État IV 2011, particularly Principle 5 “*developing the capacity and capability of the governing body to be effective.*”

6. Legislation

- 6.1 A Projet de Loi will be required to effect the recommendations set out in this Report. As Her Majesty's Comptroller recommends rectifying the anomalies identified in his letter as soon as possible, the Department has sought the approval of the Policy Council and the Presiding Officer for this Report and the Projet de Loi to appear in the same Billet d'État. The Department is grateful to the Policy Council and the Presiding Officer for their consent in this regard.

7. Recommendations

- 7.1 The Department recommends that the States:

1. Approve the enactment of legislative provision deeming that the following measures were registered in the Royal Court on 19 January 2004 -

The Communications Act 2003 (Commencement No 1) Order 2003
[S.I. 2003/ 1900]

The Office of Communications Act 2002 (Commencement No 3) and
Communications Act 2003 (Commencement No 2) Order 2003
[S.I. 2003/3142],

2. Approve the enactment of legislative provision deeming that the measures set out in the following table were registered in the Royal Court on the relevant corresponding date set out in the table -

Wireless Telegraphy (Licence Charges) Regulations 2005 [S.I. 2005/1378]	6 June 2005
Wireless Telegraphy (Automotive Short Range Radar) (Exemption) Regulations 2005 [S.I. 2005/353]	7 March 2005
Wireless Telegraphy (Automotive Short Range Radar) (Exemption) (No 2) Regulations 2005 [S.I. 2005/1585]	4 July 2005
Wireless Telegraphy (Automotive Short Range Radar) (Exemption) (No 2) (Amendment) Regulations 2008 [S.I. 2008/237]	18 February 2008
Wireless Telegraphy (Radio Frequency Identification Equipment)(Exemption) Regulations 2005 [S.I. 2005/3471]	9 January 2006
Wireless Telegraphy (Radio Frequency Identification Equipment)(Exemption) (Amendment) Regulations 2007 [S.I. 2007/1282]	14 May 2007
Wireless Telegraphy (Inspection and Restrictions on Use of Exempt Stations and Apparatus) Regulations 2005 [S.I. 2005/3481]	9 January 2006

Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) Regulations 2007 [S.I. 2007/2084]	1 October 2007
Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) (Amendment) Regulations 2007 [S.I. 2007/2440]	1 October 2007
Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) Regulations 2009 [S.I. 2009/2517]	5 October 2009
Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) (Amendment) Regulations 2010 [S.I. 2010/2761]	6 December 2010
Wireless Telegraphy (Licence Charges) (Amendment) (Channel Islands and Isle of Man) Regulations 2003 [SI 2003/2984]	1 December 2003
The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2006 [SI 2006/2894]	4 December 2006
The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2007 [SI 2007/2326]	1 October 2007
The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2008 [SI 2008/139]	18 February 2008
The Wireless Telegraphy (Licence Charges) (Amendment) (No. 2) Regulations [SI 2008/2106]	8 September 2008
Wireless Telegraphy (Exemption) Amendment Regulations 2006 [SI 2006/2994]	13 November 2006
Wireless Telegraphy (Exemption) Amendment Regulations 2008 [SI 2008/236]	18 February 2008
Wireless Telegraphy (Exemption) Amendment (No. 2) Regulations 2008 [SI 2008/2426]	6 October 2008
Wireless Telegraphy (Exemption and Amendment) Regulations 2010 [SI 2010/2512]	8 November 2010

3. Approve the enactment of legislative provision deeming that the measures set out in the following table were registered in the Royal Court on the relevant corresponding date set out in the table -

The Communications (Television Licensing) (Amendment) Regulations 2005 [S.I. 2005/606]	14 March 2005
The Communications (Television Licensing) (Amendment) Regulations 2006 [S.I. 2006/619]	21 March 2006
The Communications (Television Licensing) (Amendment) Regulations 2010 [S.I. 2010/640]	23 March 2010

4. Approve the enactment of legislative provision which will render lawful any acts or omissions which were not lawfully done because of the failure to register the measures set out in paragraphs 7.1.1, 7.1.2 and 7.1.3 above, including for the purposes of criminal proceedings, acts or omissions rendered unlawful by the ineffective extension to the Bailiwick of the Communications Act 2003, and
5. Approve the Projet de Loi entitled the Wireless Telegraphy and Related Matters (Deemed Registration and Validation) (Bailiwick of Guernsey) Law, 2011.

Yours faithfully

Geoff Mahy
Minister

F W Quin, Deputy Minister
J M Tasker
M S Laine
B N Kelly

A L Ozanne

ANNEX 1

DRAFTING OF LEGISLATION - PRIORITY RATING SCHEME

Criteria
<p>Criteria 1 - Need for legislation</p> <p>Legislation is required to remedy the ineffective extension to the Bailiwick of several United Kingdom legislative provisions relating to wireless telegraphy and telecommunications, including most of the Communications Act 2003.</p>
<p>Criteria 2 - Funding</p> <p>This proposal will not result in any additional expenditure for the States.</p>
<p>Criteria 3 - Risks and benefits associated with enacting/not enacting the legislation</p> <p>These proposals will remove the legal and practical uncertainty engendered by the failure to effect the extension of these measures, and will render lawful acts done in reliance on them which otherwise would be unlawful.</p>
<p>Criteria 4 - Estimated drafting time</p> <p>The legislation has been drafted and is to be included in the same Billet d'État as this States Report. The Ministry of Justice and Ofcom have been fully involved in the preparation of the draft legislation.</p>

(NB As there are no resource implications identified in this report, the Treasury and Resources Department has no comments to make.)

(NB The Policy Council supports the proposals contained in this report.)

The States are asked to decide:-

II.- Whether, after consideration of the Report dated 21st November 2011, of the Home Department, they are of the opinion:-

1. To approve the enactment of legislative provision deeming that the following measures were registered in the Royal Court on 19 January 2004 –

The Communications Act 2003 (Commencement No 1) Order 2003
[S.I. 2003/ 1900]

The Office of Communications Act 2002 (Commencement No 3) and
Communications Act 2003 (Commencement No 2) Order 2003
[S.I. 2003/3142],

2. To approve the enactment of legislative provision deeming that the measures set out in the following table were registered in the Royal Court on the relevant corresponding date set out in the table -

Wireless Telegraphy (Licence Charges) Regulations 2005 [S.I. 2005/1378]	6 June 2005
Wireless Telegraphy (Automotive Short Range Radar) (Exemption) Regulations 2005 [S.I. 2005/353]	7 March 2005
Wireless Telegraphy (Automotive Short Range Radar) (Exemption) (No 2) Regulations 2005 [S.I. 2005/1585]	4 July 2005
Wireless Telegraphy (Automotive Short Range Radar) (Exemption) (No 2) (Amendment) Regulations 2008 [S.I. 2008/237]	18 February 2008
Wireless Telegraphy (Radio Frequency Identification Equipment)(Exemption) Regulations 2005 [S.I. 2005/3471]	9 January 2006
Wireless Telegraphy (Radio Frequency Identification Equipment)(Exemption) (Amendment) Regulations 2007 [S.I. 2007/1282]	14 May 2007
Wireless Telegraphy (Inspection and Restrictions on Use of Exempt Stations and Apparatus) Regulations 2005 [S.I. 2005/3481]	9 January 2006

Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) Regulations 2007 [S.I. 2007/2084]	1 October 2007
Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) (Amendment) Regulations 2007 [S.I. 2007/2440]	1 October 2007
Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) Regulations 2009 [S.I. 2009/2517]	5 October 2009
Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) (Amendment) Regulations 2010 [S.I. 2010/2761]	6 December 2010
Wireless Telegraphy (Licence Charges) (Amendment) (Channel Islands and Isle of Man) Regulations 2003 [SI 2003/2984]	1 December 2003
The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2006 [SI 2006/2894]	4 December 2006
The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2007 [SI 2007/2326]	1 October 2007
The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2008 [SI 2008/139]	18 February 2008
The Wireless Telegraphy (Licence Charges) (Amendment) (No. 2) Regulations [SI 2008/ 2106]	8 September 2008
Wireless Telegraphy (Exemption) Amendment Regulations 2006 [SI 2006/2994]	13 November 2006
Wireless Telegraphy (Exemption) Amendment Regulations 2008 [SI 2008/236]	18 February 2008
Wireless Telegraphy (Exemption) Amendment (No. 2) Regulations 2008 [SI 2008/2426]	6 October 2008
Wireless Telegraphy (Exemption and Amendment) Regulations 2010 [SI 2010/2512]	8 November 2010

3. To approve the enactment of legislative provision deeming that the measures set out in the following table were registered in the Royal Court on the relevant corresponding date set out in the table -

The Communications (Television Licensing) (Amendment) Regulations 2005 [S.I. 2005/606]	14 March 2005
The Communications (Television Licensing) (Amendment) Regulations 2006 [S.I. 2006/619]	21 March 2006
The Communications (Television Licensing) (Amendment) Regulations 2010 [S.I. 2010/640]	23 March 2010

4. To approve the enactment of legislative provision which will render lawful any acts or omissions which were not lawfully done because of the failure to register the measures set out in propositions 1, 2 and 3 above, including for the purposes of criminal proceedings, acts or omissions rendered unlawful by the ineffective extension to the Bailiwick of the Communications Act 2003.
5. To approve the Projet de Loi entitled “The Wireless Telegraphy and Related Matters (Deemed Registration and Validation) (Bailiwick of Guernsey) Law, 2012” and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

**THE FORFEITURE OF MONEY, ETC IN CIVIL PROCEEDINGS
(BAILIWICK OF GUERNSEY) (AMENDMENT) LAW, 2012**

The States are asked to decide:-

- III.- Whether they are of the opinion to approve the Projet de Loi entitled “The Forfeiture Of Money, Etc In Civil Proceedings (Bailiwick Of Guernsey) (Amendment) Law, 2012” and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

THE MONT VAROUF SCHOOL (GUERNSEY) LAW, 2012

The States are asked to decide:-

- IV.- Whether they are of the opinion to approve the Projet de Loi entitled “The Mont Varouf School (Guernsey) Law, 2012” and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

ADMINISTRATIVE DECISIONS (REVIEW) (GUERNSEY) LAW, 1986

NEW DEPUTY CHAIRMAN OF PANEL OF MEMBERS

The States are asked:-

- V.- To elect, in accordance with the provisions of section 4 (2) of the Administrative Decisions (Review) (Guernsey) Law, 1986, a Deputy Chairman of that Panel, who shall be one of the Deans of the Douzaines but who shall not have a seat in the States, to complete the unexpired portion of the term of office of Mr. R A R Evans who has ceased to be a Douzenier, that is to the 31st May 2012.

(NB The Deans of the Douzaines are Douzeniers R L Heaume, MBE, J E Foster, M A Ozanne, Mrs B J Hervé, N N Duquemin, P I Le Tocq, N M Dorey, G C Le Mesurier, S J Roper and A M J Courtney.)

SOCIAL SECURITY DEPARTMENT

**MODERNISATION OF THE SUPPLEMENTARY BENEFIT SCHEME
PHASE 1**

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

21 December 2011

Dear Sir

EXECUTIVE SUMMARY

1. The States Strategic Plan for 2011 to 2016, approved by the States on 12 October 2011 (Billet d'Etat XVI of 2011), includes the following General Objectives for social policy:

'An inclusive, caring society which supports communities, families and individuals;

Individual independence, achieved where possible, but with States assistance when needed, in order to encourage personal responsibility and self-help;

...

Greater equality, social inclusion and social justice;

Less poverty and good standards of social welfare.

...'

2. The States also approved, among others, the following specific social policy objectives:

'Adequate assistance to meet welfare needs, incentivise working and reduce duplication of administration.

To review the benefit system, including supplementary benefit and disability benefits, to ensure that: minimum income standards of living in Guernsey are considered; both in work and out of work benefits are

incorporated; working is incentivised throughout the tax/ benefit system; gaps in provision for vulnerable groups are addressed...'

3. Review of the supplementary benefit scheme is certainly a key part of helping to meet the general social policy objectives quoted above. The current scheme has seen very few fundamental changes since its creation in 1971 and although Guernsey has experienced many social changes during the same period, remains constructed on an outdated model which has failed to keep pace with social change.
4. The supplementary benefit scheme needs to be transformed into part of a highly-effective welfare system which protects the most vulnerable in society, promotes social cohesion and enables all islanders to play an active part in the life of the community, through employment, education and cultural participation.
5. A review of the benefits and contributions system was classed as a Very High Priority project in the 2009-13 Social Policy Plan (Billet d'Etat XXVI, 2009). For the Social Security Department, the review has been its top priority project since 1999. The Department has worked closely with other States Departments and in consultation with external agencies. This is a major project, large in scope and depth, and is so wide-ranging that it requires significant time and resource. The Department has, therefore, decided to develop the project in phases. Each of these phases will bring the supplementary benefit subsistence scheme closer to a modern form of Income Support, which can meet and respond flexibly to the needs of individuals. To reflect these changes, the Department intends to re-name supplementary benefit as Income Support.
6. Through this review, the Social Security Department hopes to achieve a single rent and income support system which has a strong focus on work and personal responsibility, provides better support for vulnerable young people and pays benefit rates which meet people's minimum needs for social inclusion.
7. This Report focuses on Phase One of the review and reform of the supplementary benefit scheme. The content of later phases will be defined, to some extent, by the decisions taken by the States on the proposals contained within this Report. However, later phases are likely to give consideration to the additional benefits available to supplementary benefit households – including fuel allowance and medical cover, assistance with mortgage capital re-payments and the supplementary benefit income assessment. It is also intended, as part of a later phase, that proposals will be developed for the repeal of supplementary benefit legislation and its replacement with legislation establishing a statutory Income Support scheme.
8. Through Phase One of the review and reform of the supplementary benefit scheme, the Social Security Department aims to do four things:-

- promote and enable personal independence through employment (for those who are able) – using work-focused meetings, access to training, structured action plans and targeted sanctions;
 - improve support, both in and beyond education, for vulnerable young people, and to increase its emphasis on parental responsibility for dependent children by raising the age a person can claim benefit from age 16 to 18;
 - develop one system of rent and income support for all islanders on low-incomes by integrating the Housing Department's rent rebate scheme with the new supplementary benefit scheme;
 - ensure that benefit levels are sufficient to provide reasonable accommodation as well as a level of funds for day-to-day living to avoid social exclusion.
9. The new focus on work and personal responsibility will be vital in ensuring that supplementary benefit is fit for purpose in the future – that it encourages and supports people who seek work, improve their earnings or increase their hours of work. The work-focused initiatives set out in this Report will begin to be implemented as soon as possible, and the Department expects to see a real change in the willingness of some people, who are able and expected to work, to engage with work or training, and to become financially independent.
 10. The Department also plans to replace the supplementary benefit limitation with maximum rent allowances. Firstly, maximum rent allowances will ensure that all elements of supplementary benefit are responsive to the needs of different households and secondly, ensures that the States have an agreed and reliable method of controlling expenditure. This, along with the Housing Department's plans to phase out the rent rebate scheme, will enable all islanders with low-incomes to be able to access financial assistance to meet their accommodation and daily living needs through a single system of Income Support, regardless of whether they live in social housing or in the private sector.
 11. In September 2011, the States agreed to increase the supplementary benefit limitation (Billet d'Etat XV, 2011). However, while this arbitrary limit still exists, it continues to restrict the total benefit payable to some of the poorest islanders, and leaves them unable to meet even their subsistence level needs. Families who need more than the benefit limitation, as a basic minimum, are required to absorb a shortfall in income which requires whole families to get by with less than enough to meet their needs. It also means that people who are earning slightly more than the limitation, but who still struggle to make ends meet, cannot access any help at all.
 12. It is of course not just the benefit limitation, but the amount of supplementary benefit paid, that forces people to make choices that most of the local community would find unacceptable. Supplementary benefit rates are low, and they increase

by less than earnings and contributory benefits each year – which means, in effect, that people claiming supplementary benefit are becoming poorer, compared with the rest of the island. This helps to explain the fact that the proportion of islanders living in relative poverty (16%) did not decrease at all between 2002 and 2005, despite the island's growing prosperity at that time.

13. As such, the Department recognises that it is imperative to increase benefit rates to a level which protects the health and wellbeing of all people claiming supplementary benefit – over half of whom are pensioners and people who cannot work because of ill-health or disability. Through the findings of the Minimum Income Standard study (conducted in 2011) the Department is, for the first time, able to recommend benefit rates which are evidence based and set with reference to a socially acceptable minimum standard of living, identified by the people of Guernsey.
14. The increases in benefit rates that the Department is recommending, informed by the Minimum Income Standard evidence, are relatively modest. The Department is not recommending benefit rates that will immediately meet the Minimum Income Standards, although that would be a worthy objective in the longer term. For claims of more than 6 months duration, the Department is recommending an increase of around £14 per week for a single householder (from £158.41 to £172.40 per week) before rent. For a householder couple, the increase would be around £50 per week (from £228.97 to £279.30 per week) before rent. Given that the full old age pension for a married couple is £269.71 per week, the proposed new supplementary benefit rate for a couple could be broadly summarised as 'equal to the pension rate plus a rent allowance (if rent is being paid)'. While this is a definite improvement on the current inadequate supplementary benefit rate, it surely cannot be considered over-generous.
15. A review of the supplementary benefit scheme is well overdue, and has been a top priority for the States since 2007. Although the Department fully recognises that the financial implications of these proposals may seem unacceptable at a time of recession and spending constraints, it is equally aware that this is the very time when those who are struggling most in society need the appropriate assistance. If even people with a steady income and savings are finding the economic situation difficult, people who have to live week-to-week, on a subsistence-level income, have much less of an ability to handle the many financial pressures they face.
16. The changes proposed in this Report involve a major shift in the provision of welfare support in Guernsey and Alderney. They are essential to protect the welfare of children and adults who depend on the State for any amount of financial assistance.
17. The Department believes that the States have a moral duty of care towards the most vulnerable islanders, to ensure that they are not forced into poverty or socially excluded. However, transformation will be gradual, and hedged with controls to ensure that benefits remain targeted and overall expenditure does not

become excessive. These changes must be sustainable – and the Department recognises that they have to be introduced, step by step, in order to ensure that the necessary funding is secured.

18. At least three successive States of Deliberation – from the Corporate Anti-Poverty Programme in 2002 to the States' Strategic Plan a decade later – have recognised that poverty is too widespread and too deep in Guernsey, for an island of considerable wealth and security. Introducing an improved Income Support based system over a phased period ensures that the financial implications are managed with due care. However, the States of Guernsey must be clear, above all, that waiting another ten years before implementing changes is simply not an acceptable option.

Summary of Benefits, Cost and Resource Implications

19. It is inevitable that improving the scope and adequacy of benefits in an out-dated and inadequate welfare system will come at a significant cost. Indeed, the higher the cost, the stronger the indication of a serious inadequacy in the current system. While these costs may be large they are unavoidable if the States are truly committed to social inclusion and ensuring that the poorest families in our community receive sufficient financial support.
20. It is estimated that when all of the proposals contained within this Report have been implemented General-Revenue costs will increase by between £8.34m, in a best case scenario, and £19.89m in a worst case scenario (annual figures). In addition to the increased cost of formula-led supplementary benefit, there will be additional staffing and expenditure implications relating to the implementation of these proposals. It is anticipated that 17 permanent posts will be required in the long-term, which will enable the Department to deliver a system of Income Support which can meet and respond flexibly to the needs of low-income households. Additionally, a further 7 transitional staff will be needed to adequately resource the initial phase and implementation of a modernised supplementary benefit scheme. A detailed breakdown of the staffing and expenditure costs is set out in paragraphs 360 to 387.
21. The proposals contained within this Report should, in due course, also produce savings. The Department expects to deliver savings by activating more working age people (already in receipt of benefit) into work, by improving the educational outcomes for vulnerable young people and through the introduction of new and more efficient working practices. The Department anticipates savings will be in the region of £664,500 per annum. These financial benefits are expected to be realised from Year 3 onwards. A detailed breakdown of the expected financial benefits can be found in paragraph 382.
22. Table 1 shows a summary of the anticipated financial costs of these proposals over a phased period of three years. Year 3 represents the Department's ultimate aim, where all of the proposals have been introduced and the rent rebate scheme has closed down.

Table 1:- Summary of proposals showing predicted cost to General-Revenue

	Current (2011) cost	Estimated cost Best case scenario			Estimated cost Worst case scenario		
		Year 1	Year 2	Year 3	Year 1	Year 2	Year 3
a) Current beneficiaries	£23.03m ¹	£25.46m	£26.14m	£26.51m	£27.71m	£28.39m	£28.76m
b) New beneficiaries living in social housing	£4.88m ²	£5.67m	£6.46m	£7.25m	£5.67m	£6.46m	£7.25m
c) New beneficiaries living in the community	£0	£1.20m	£1.92m	£2.40m	£5.85m	£9.36m	£11.70m
d) Additional staffing / other costs	-	£1.13m	£797k	£772k	£1.13m	£797k	£772k
Total cost (a+b+c+d)	£27.92m	£33.46m	£35.31m	£36.93m	£40.36m	£45.00m	£48.48m
Additional cost of proposal in 2011 terms	-	£5.54m	£7.39m	£9.01m	£12.44m	£17.08m	£20.56m
Anticipated saving	-	N/A	N/A	(£665k)	N/A	N/A	(£665k)
Net cost of proposals in 2011 terms	-	£5.54m	£7.39m	£8.34m	£12.44m	£17.08m	£19.89m

23. Further information on the benefits, cost and resource implications of these proposals is contained in paragraphs 360 to 387.
24. The Department acknowledges the current Fiscal and Economic Policy objective of a real term freeze on aggregate States Revenue expenditure.
25. The start date of the implementation of the proposals contained in this Report is not specified at this stage. The Department is seeking States approval for the changes to the supplementary benefits system, on the understanding that the Department will, following such approval, engage in discussion with the Treasury and Resources Department as to the possible sources of funding. Such

¹ This includes £5.2m which is the cost (to the Housing Department) of the rent rebate scheme for people who currently receive supplementary benefit

² This figure represents the cost (to the Housing Department) of the rent rebate scheme for people who are not currently claiming supplementary benefit

discussions, in addition to including new sources of funding, will also investigate whether there is scope to reduce or target any of the current universal benefits that are financed wholly or partly from General Revenue.

26. Subject to the States approving the policy change proposals contained in this Report, the Department will, following the appropriate discussions with the Treasury and Resources Department, return to the States with proposals for the sources of funding and the proposed start date of implementation.
27. Although the financial projections are shown over a 3 year period, the phasing in could be over a longer period. There are concerns as to the number of individuals and families that might become newly entitled to benefit under the revised system. It should be noted that, if additional claim numbers, and consequently costs, increase faster than expected, the phasing can be stopped at the point reached and increased no further. The fact that the proposed new requirement rates and the lifting of the benefit limitation can both be progressed incrementally, offers this control.

Recommendations

28. The Department recommends the States:

1. to resolve that the Supplementary Benefit (Guernsey) Law, 1971 and associated items of supplementary benefit legislation are amended in order to:

- a) enable the Department to define, by regulation, when a person is, or shall be deemed to be, 'capable of work' on either a full-time or a part-time basis;

(paragraphs 93 to 96)

- b) make entitlement to supplementary benefit subject to such conditions and sanctions as the Administrator may reasonably determine in order to ensure that any person deemed 'capable of work' is obliged, if so directed by the Administrator:

(paragraphs 103 to 119)

- ii. to engage with work or work-related activities;

- iii. to attend work-focused meetings held by the Department;

- iv. to attend a mandatory work or training placement;

- c) enable the Department to define by Regulation persons and categories of persons who are, or shall be deemed to be, 'incapable of work', by reason of age, ill-health, impairment or caring responsibilities;
(paragraph 95)
 - d) classify parents whose youngest dependent child is aged seven or older as a jobseeker (that is to say a person who is actively seeking employment);
(paragraphs 120 to 127)
 - e) enable the Administrator, at his discretion, to:
 - i. fund reasonable short-term childcare costs in order to facilitate occupational training or work rehabilitation for parents claiming supplementary benefit;
(paragraphs 147 to 150)
 - ii. extend entitlement to medical cover for up to six months if a supplementary benefit claim is terminated by reason of the claimant entering or increasing employment;
(paragraphs 151 to 154)
 - f) set the minimum age of entitlement to supplementary benefit as eighteen years, and after the completion of full-time education subject to such exceptions as the Department may by regulation specify;
(paragraphs 163 to 174)
 - g) enable payment of supplementary benefit to enable a person who is estranged from his family or leaving care, without financial support, to continue in full-time education;
(paragraphs 175 to 177)
 - h) replace the supplementary benefit limitation for persons resident in the community with maximum rent allowances linked to household size over a phased period;
(paragraph 224 to 238)
 - i) make it a criminal offence to use a rent allowance for any purpose other than for the payment of rent;
(paragraphs 238 and 394)
 - j) amend the definition of a dependant to include persons under the age of 18 who have left full-time education but are not gainfully employed;
(paragraphs 193 to 196)
2. to resolve that the 1971 Law and associated supplementary benefit legislation be amended to give greater clarity to certain existing provisions,

add new provisions and remove redundant provisions, as set out in Appendix 3 of this Report and as may be necessary, supplementary or incidental thereto;

(paragraphs 336 to 345 and appendix 3)

3. to resolve that requirement rates should be increased with reference to the Minimum Income Standard for Guernsey as defined in Part 5 of this Report;
(paragraphs 299 to 328)
4. to resolve that the Social Insurance (Guernsey) Law, 1978 and associated items of social insurance legislation be amended in order to enable the Department by resolution to pay grants from the Guernsey Insurance Fund to third sector organisations who engage with insured persons or employers to facilitate work rehabilitation or a return to work;
(paragraphs 109 to 111)
5. to direct the Housing Department to report to the States as soon as possible with proposals for the phasing-out of the rent rebate scheme;
(paragraphs 283 to 289)
6. to note the Education Department's support (in principle) for integrating the Educational Maintenance Grant and Clothing Grant with the new supplementary benefit scheme;
(paragraphs 197 to 199)
7. to note the Department's intention to re-name supplementary benefit 'Income Support';
(paragraphs 159 to 160)
8. to direct the Treasury and Resources Department to approve the additional staffing resources necessary to implement the proposals contained in this report;
(paragraphs 360 to 387)
9. to direct the Social Security Department, in consultation with the Treasury and Resources Department, to report back to the States, no later than September 2013, with proposals for the sources of funding necessary to give effect to the proposals contained in this report;
(paragraphs 360 to 387)
10. in the event that proposals for the sources of funding necessary to give effect to the proposals contained in this report are approved by the States, to direct the preparation of legislation necessary to give effect to the above recommendations.

REPORT

PART 1

STRATEGIC CONTEXT

29. The States Strategic Plan for 2011 to 2016, approved by the States on 12 October 2011 (Billet d'Etat XVI of 2011), includes the following General Objectives for social policy:

'An inclusive, caring society which supports communities, families and individuals;

Individual independence, achieved where possible, but with States assistance when needed, in order to encourage personal responsibility and self-help;

...

Greater equality, social inclusion and social justice;

Less poverty and good standards of social welfare.

...'

30. The States also approved, among others, the following specific social policy objectives:

'Adequate assistance to meet welfare needs, incentivise working and reduce duplication of administration.

To review the benefit system, including supplementary benefit and disability benefits, to ensure that: minimum income standards of living in Guernsey are considered; both in work and out of work benefits are incorporated; working is incentivised throughout the tax/ benefit system; gaps in provision for vulnerable groups are addressed...'

31. Review of the supplementary benefit scheme is certainly a key part of helping to meet the general social policy objectives quoted above. The current scheme has seen very few fundamental changes since its creation in 1971 and although Guernsey has experienced many social changes during the same period, remains constructed on an outdated model which has failed to keep pace with social change.
32. The supplementary benefit scheme needs to be transformed into part of a highly-effective welfare system which protects the most vulnerable in society, promotes social cohesion and enables all islanders to play an active part in the life of the community, through employment, education and cultural participation.

PURPOSE OF SUPPLEMENTARY BENEFIT

33. Supplementary benefit, in its current form, provides means-tested support to the very poorest in Guernsey and Alderney. It defines a minimum weekly income level below which no one should be expected to live and, for those who cannot reach that level unassisted, it makes up any difference between their actual income and the subsistence-level floor. This may be as little as a few pounds a week, or as much as the two or three hundred pounds that bridge the gap between absolute poverty and subsistence.
34. The General Revenue funded system of supplementary benefit has always supported certain groups of people who could not reasonably be expected to work. However over the years, coverage of the scheme has gradually increased as responsibility for claimants has transferred from parish support to supplementary benefit. Until July 2005, a separate Parish Assistance scheme catered for unemployed people who could not receive Unemployment Benefit. In 2005, the two schemes were unified. The Social Security Department is now responsible for providing all means-tested assistance to people who, for whatever reason, are currently or permanently unable to support themselves.

HISTORY OF SUPPLEMENTARY BENEFIT

The Supplementary Benefit Scheme

35. Supplementary benefit legislation was introduced in 1971 to replace the earlier non-contributory pension scheme, which first came into being in 1955. However, beyond the change of name, the 1971 Law made only minor changes to the existing scheme. The system which exists today is based on forty year old legislation, and a structure which is nearly sixty years old.
36. In its forty year history, the Supplementary Benefit Law has been amended to take account of social and medical developments – for example, people who have ‘suffered a loss of income in order to undergo treatment for tuberculosis’ no longer form a single claimant category. More significant changes, such as the 2005 transfer of Parish Assistance, have also been incorporated. However, the fundamental rules and requirements of the Law have, for the greater part, remained unchanged.
37. The rates at which supplementary benefit is paid have, of course, also changed over the years, as has their relation to average earnings in Guernsey. Supplementary benefit is, and has always been, intended to be a subsistence-level payment, consisting of a ‘requirement rate’, which covers day-to-day living costs, and a ‘rent allowance’, which is intended for rent or other housing expenses.
38. The requirement rates are decided by the States each year, and usually follow changes in the price indexes. Since 2009, supplementary benefit rates have

increased by the same amount as RPIX. The rent allowance for each claim is decided by or on behalf of the Administrator of the Social Security Department and, although the amount allocated may be below the rent charged for a given property, overall expenditure on rent allowances is broadly governed by the cost and availability of basic housing stock.

A concern of the States

39. The number and situation of people living in poverty in Guernsey has always been a concern of the States. Major surveys, as well as government programmes, business plans and strategies, have sought to define, locate, target and reduce the problem of poverty.
40. A 1998 Requête on low-income earners (Billet d'Etat XII, 2000) led to the 2003 Anti-Poverty Strategy and Corporate Anti-Poverty Programme (CAPP), based on the 2002 Townsend Report on the Survey of Guernsey Living Standards (SGLS). The SGLS found that 16% of islanders experienced relative poverty, and another 5% were at risk of poverty, even though the majority of Guernsey people had a high standard of living.
41. Although the SGLS was never repeated, a Household Expenditure Survey (HES) was carried out in 2005-06, which provided information and detailed analysis about the income, expenditure and social aspects of different household compositions, based on a sample of a thousand local households. The survey showed that people living in social housing and private rented accommodation had a level of weekly household expenditure which was significantly lower than the mean average for Guernsey (£749 per week), at £414 and £673 per week respectively.
42. Three years after the launch of the Anti-Poverty Strategy, the HES showed that 16.6% of the population – a figure almost identical to that of the Townsend Report – remained in relative poverty, defined as an income equal to 60% or less of the median Guernsey income. Two thirds of this group had no more than half of the average income, an even greater degree of deprivation.
43. The Government Business Plan subsumed the Anti-Poverty Strategy and CAPP in 2007, and reiterated the States' desire to reduce poverty in Guernsey, by 'redistribut[ing] wealth wisely in the community'. The 2010 Social Policy Plan (Billet d'Etat XIX of 2010) outlined the States' core values and strategic objectives, which once again centred on the need to reduce poverty, improve welfare support and increase social inclusion.
44. The various States strategies have taken a holistic view of Guernsey's needs and the general measures that could be taken in order to meet them – 'fostering an inclusive and caring society', 'removing barriers to equality and social inclusion' and 'maintaining a healthy society'. However, both surveys, SGLS and HES, have provided indications as to the sections of society where poverty is most often a

major concern. SGLS showed that single pensioners and families, including single parent families, were most likely to experience hardship.

45. HES showed that three quarters of those with less than 60% of average income were living in social housing. On the one hand, it is reassuring to know that many of the poorest islanders are already in receipt of housing support, reducing the risk of homelessness. On the other, it is unacceptable to see that a group of people, who have been clearly identified by the State as having a particular need, are continuing to live in relative poverty.

Lifting People Out of Poverty

46. Although the supplementary benefit scheme is a key part of the support available to people who are struggling to reach a subsistence-level income, neither the Social Security Department nor the States of Guernsey have ever considered it to be the only, or even the main, way to lift people out of poverty.
47. During much of the 1980s, the supplementary benefit rate paid to an elderly couple happened to match the old age pension rate. In 1989, the then Social Security Authority decided to raise the value of the pension substantially so that, at its maximum, it was worth £7 a week more than supplementary benefit. In doing so the report said that, 'hundreds of persons who now qualify for a supplementary benefit' no longer needed that benefit. Although pension rates increased they were not set with reference to a 'living wage' and were therefore not necessarily sufficient to live on. Pension rates were again raised significantly between 2003-05, in direct response to the findings of the Townsend Report. Strengthening the support provided by a contribution-funded benefit was a simple and effective way of improving islanders' financial circumstances.
48. The Social Security Department believes that, wherever possible, the best route out of poverty is financial independence, achieved through employment. Working has a double advantage: it ensures a regular, and potentially growing, income during working life; and, through the payment of Social Insurance contributions, it means that former workers are more likely to be dependent on contribution- rather than taxation-funded benefits during periods of illness and unemployment, as well as in retirement.
49. Although unemployed people with low incomes came under the auspices of supplementary benefit for the first time in 2005, no budget allocation was then made for work rehabilitation initiatives which could assist jobseekers in a return to work. This Review will present the opportunity for a major, work-focused restructuring of the supplementary benefit scheme.

THE CASE FOR REFORM

50. Review of the current supplementary benefit scheme has been on the States' agenda since at least 2007, when the Government Business Plan outlined the need to 'review existing tax allowances and non-contributory benefits [...] to target assistance towards those who are vulnerable to, or suffering from, relative poverty and away from those who do not require such assistance.'
51. In 2009, the States Strategic Prioritisation process assigned 'Very High Priority' status to a 'review of the benefits/contributions system for providing financial assistance for low-income households', acknowledging that this review would 'potentially [involve] overhauling the system.' In the same year, the Social Security and Treasury and Resources Departments agreed that modernisation work should begin, based around some guiding principles. These included assistance for low-income workers and their dependants, much greater provision of work incentives and the rationalisation of means-tested schemes provided across different States Departments.
52. Many of the objectives in the 2010 Social Policy Plan will be unattainable without proper reform of the supplementary benefit scheme. An arbitrary benefit limitation, which sets a cap on the benefit paid, regardless of a household's level of need, stands in the way of an 'inclusive society' which 'supports families' and 'safeguards vulnerable people'. An absence of motivating factors does nothing to promote work, which enables 'people to help themselves'. Benefit levels which are set with no regard to evidence-based assessments of what people actually need cannot be sure to 'reduce poverty' or 'remove barriers to equality [and] social inclusion'.
53. The actual number of those living in poverty in Guernsey has not changed significantly since the 1970s. While shifts in the economy and the main employment sectors have brought security and even prosperity to most islanders, some are still falling far short. Redundancy, unemployment, job insecurity, low pay and long-term sickness are a very real problem for many; these, coupled with the need to support a family and maintain a home, can lead to serious social exclusion and relative poverty.
54. Thankfully, better information and changing attitudes have led to more people, who are struggling to cope, claiming means-tested benefits with dignity. At the same time, however, more needs to be done to break inter-generational cycles of welfare dependency, and the work-focused aspect of supplementary benefit provision, which was introduced with the transfer of Parish Assistance in 2005, must keep pace with the number of working-age people claiming the benefit. All these aspects lead to the inevitable conclusion that a comprehensive, just and work-focused reform of supplementary benefit cannot be delayed any longer.

SCOPE OF THE MODERNISATION PROJECT

55. The Review of Supplementary Benefit is a major project, large in scope and depth, which requires significant time and resource. In order to achieve recognisable progress within one term of the States, the project has been broken down into phases, each of which will develop key policies for approval by the States, and then work on their operational implementation. The content of later phases will be defined, to some extent, by the decisions the States takes on Phase 1 of the project.
56. This Report focuses on four important areas in which provision is currently inadequate or inappropriate, and makes recommendations for change, in order to:
 - promote and enable personal independence through employment (for those who are able) – using work-focused meetings, access to training, structured action plans and targeted sanctions;
 - improve support, both in and beyond education, for vulnerable young people, and to increase its emphasis on parental responsibility for dependent children by raising the age a person can claim benefit from age 16 to 18;
 - develop one system of rent and income support for all islanders on low-incomes by integrating the Housing Department's rent rebate scheme with the new supplementary benefit scheme;
 - ensure that benefit levels are sufficient to provide reasonable accommodation as well as a level of funds for day-to-day living to avoid social exclusion.
57. These changes will promote work and improve training and employment opportunities for people, reducing the risk, and even the possibility, of prolonged benefit dependency among low-income households. This will encourage financial independence across the community, and will give the States and the public confidence that benefits are being paid to those who are not able, or cannot be expected, to work – including pensioners, carers and people with serious health problems - and to those who are working or actively looking for work but require assistance. For example, this could be due to a low wage, high living costs or during periods of temporary, acute need, by reason of sudden unemployment or bereavement.
58. Support for vulnerable young people will be improved, but the concept of parental responsibility, introduced in the 2008 Children Law, will alter the way the Department provides for under-18s in general. Young people who need to continue in full-time secondary education on-island, but cannot receive any form of financial support from their parents, will be enabled to do so.

59. The recommended changes will also remove a major injustice which currently exists within Guernsey's overall system of welfare provision: namely, the amount of day-to-day living support available to people living on very low incomes in private rented accommodation, compared with people in social housing. In line with proposals first debated by the States in July 2011, the Social Security Department is recommending that it should take on responsibility for providing all means-tested rent and living support. If the recommendation is approved, the Housing Department's rent rebate scheme will be withdrawn in stages.
60. Both Departments are keen to ensure that this will not have a negative impact on current social housing tenants, although the support provided to higher earners in social housing may be somewhat reduced. The Social Security Department accepts that any improvement in the way benefits are targeted, carries with it an imperative to ensure that the support available, through requirement rates and rent allowances, is sufficient and appropriate to meet minimum needs.
61. These changes cannot, therefore, take place without a full re-examination of the adequacy of the day-to-day living support provided by supplementary benefit requirement rates, as well as by the rent rebate scheme. The rates, set by the States on an annual basis, establish a 'bottom line' or subsistence-level income, below which no one in Guernsey should be expected to live. However, until now, they have not been set with reference to any form of empirical evidence, beyond the annual RPIX increases.
62. While the Social Security and Housing Departments were working together on the future of the rent rebate scheme, they commissioned a Minimum Income Standard study for Guernsey, which was completed in summer 2011. The results of the study, which form Appendix 1 to this report, have been used to inform an objective review of the adequacy of current requirement rates.
63. The size of the gap between requirement rates and minimum needs varies for people in different household compositions, but nowhere are the current requirement rates sufficient to meet the minimum needs of a household.
64. The Department considers that the Minimum Income Standard study methodology is robust, and that the Minimum Income Standard provides the correct basis against which to measure the adequacy of requirement rates. As such, the Department will be proposing that increases in supplementary benefit requirement rates, with reference to the findings of this study, are effected in two stages (see paragraphs 310 to 319).

MAKE-UP OF SUPPLEMENTARY BENEFIT CLAIMS

65. The Social Security Department currently pays supplementary benefit to 2,273 households. 76% of these households (1,724 claims) are home owners or are receiving a rent allowance, including 734 households living in social housing. The

other third either live with family or friends (so only receive support with their day-to-day living costs) or live in residential or nursing care and receive help towards the long-term care co-payment.

66. People claim supplementary benefit for a range of different reasons. The 2,273 claims, taken from a snapshot week in July 2011, can be broadly categorised as follows (see table 2 below):

Table 2:- Make-up of supplementary benefit claims (snapshot July 2011)

Reason for claiming	Number of claims	Percentage of total claims	Number of claims with earnings	Percentage of claims with earnings
Pensioner	737	32%	17	2%
Incapable of work due to illness or incapacity	539	24%	17	3%
Single parent family ³	422	19%	87	21%
Jobseeking or low earner	318	14%	139	44%
Disabled	187	8%	67	36%
Incapable of self-support ⁴	51	2%	11	22%
Carer	19	1%	5	26%
Total	2273	100%	343	-

67. Pensioners, those unable to work due to ill-health and carers, are not normally expected to work. These groups represent 57% of the people receiving supplementary benefit. While some of the remaining claimants may be able to work (and do work) many will not, due to disabilities or caring responsibilities.
68. In fact, 343 claimants are already in work and earning on a part or full-time basis. The people already in work therefore represent around 35% of those who could reasonably be expected to work, even though they amount to only 22% of all working-age claimants (this is further discussed in paragraphs 89 and 90).
69. This is not an insignificant proportion, and it demonstrates that it is wrong to associate supplementary benefit with worklessness. Unless a person is signed off sick, they are always permitted, and often actively encouraged, to work. However, age, disability and obligations of care towards young, dependent children often make it difficult to secure work.
70. People who work full-time, and earn as much as they can, may still require a top-up from supplementary benefit in order to meet their weekly need. In the July

³ A person is treated as a single parent if he/she is not living with a partner (perhaps because of relationship breakdown or widowhood) and is fully or partly maintaining a dependent child (who is under the age of 12)

⁴ A person is treated as incapable of self-support if he is able to undertake some work but, because of a prolonged physical or mental-health condition, he is unable to support himself fully through employment.

2011 Green Paper (Billet d'Etat XIII), the Social Security and Housing Departments stressed that the vast majority of supplementary benefit claimants would prefer – if they could – not to be dependent on the States for financial support; and many already strive to become financially self-sufficient, although low wages and a high cost of living often stand in their way.

71. The evidence above is enough to disprove the generalisation that supplementary benefit claimants are 'scroungers' or 'workshy'. While there are people, in every walk of life, who try to take what is not rightfully theirs, these people are a minority – as much among supplementary benefit claimants as anywhere else. The Social Security Department already takes appropriate action in such cases, and will continue to do so. However, the States would fail in its duty of care towards islanders if it did not provide, to those who are doing all they reasonably can to support themselves, any shortfall between actual household income and the level of household need, as defined by the requirement rates.

SUPPLEMENTARY BENEFIT – THE MECHANICS

72. As already described, supplementary benefit has two distinct components: a 'requirement rate', and a 'rent allowance'. Each member of a household is assigned a requirement rate, which is greater in value for adults and older teenagers, and lowest for very young children. Partners receive a couples' requirement rate, which is greater than a single adult's, but less than that for two adults. A household's overall requirement is the sum of each member's requirement rate. This means that supplementary benefit is responsive to the needs of different household compositions, at least in terms of day-to-day living costs.
73. A rent allowance can be paid to people renting in the private sector and in social housing, or to cover mortgage interest payments for home-owners. Rent allowances do not cover capital payments. At the moment, the Department's staff carry out an informal assessment of the rental value of the property, and a rent allowance is paid up to this amount. The rent allowance may be lower than the actual rent being charged to the tenant.
74. The household's requirement rates, plus any rent allowance, add up to the total weekly need of the household. Any income from earnings or other sources is then taken into account, except income from Attendance Allowance, Education Grants and Fostering Allowances. The value of the home is not counted, provided the person claiming benefit is still living in it. However, capital above £5,000 is reckoned to give a notional income, on a *pro rata* basis, and those with capital in excess of £20,000 are not entitled to claim. The notional income formula on savings is designed to encourage people to draw down capital and works by assuming a weekly income from any savings above the £5,000 limit. The formula has no connection with actual interest rates.

75. The benefit calculation also excludes a small amount of income, ranging from a maximum of £30 for earned income, including Invalid Care Allowance; to £20 for war and disability pensions; and £10 for 'other income'. Once all income has been accounted for, any remaining difference between a household's resources and its total weekly need should be made up by supplementary benefit.
76. In principle, then, supplementary benefit should cover a person's day-to-day living costs, and ensure that he has access to accommodation, whatever his family size. In practice, however, the benefit limitation often makes this impossible.
77. The benefit limitation had previously existed in the public assistance scheme and was introduced into the supplementary benefit scheme in 1971, in order to ensure that people on benefit were no better off than low-paid workers. When an official minimum wage was introduced in Guernsey in 2010, the States acknowledged that this would not be a living wage, by setting it at a level which meant that a single adult working full time would not earn enough to pay his rent and meet his subsistence-level needs. This means that people who work full-time and earn minimum wage may still need additional financial support from the States. Any attempt to link the benefit limitation to the wages of the lowest paid workers would now, in effect, require those workers, as well as people wholly dependent on benefit support, to live without enough income to meet even their most basic requirements.
78. Like requirement rates, the benefit limitation is decided by the States on an annual basis. In 2012, the limitation is £450.00. This means that apart from income from family allowances and the earning disregard no household, no matter how great their need and how scarce their means, can receive more than £450 per week in total, if their income includes any amount of supplementary benefit. This is a crude and unjust method of controlling expenditure, which has a pronounced effect on households with children, in particular, who have a higher level of need.

79. The supplementary benefit calculation and the effect of the benefit limitation are, perhaps, best demonstrated in practice (see example below):-

A family with two parents and two children (aged 12 and 15):

Requirement rate – adult couple	£	228.97
Requirement rate – child aged 15	£	64.40
Requirement rate – child aged 12	£	64.40
Rent allowance	£	276.76
Total requirement rate	£	634.53

<i>Weekly earnings</i>	£	420.00
<i>Minus £30 earnings disregard</i>	£	30.00
Earnings counted	£	390.00

Actual need: **£634.53 - £390.00 = £ 244.53**

80. As the total requirement rate is more than the benefit limitation, the rules of the benefit limitation must apply. This limits the amount of supplementary benefit which can actually be paid to £60.00 per week (£450 less earnings of £390).
81. The benefit limitation has the consequence of forcing this small, working family, with two children of school age, to try and live with less than the States has decided is the minimum they would reasonably need. Recognising the unfairness here, the Department takes steps to ease its impact, by allowing family allowance to be paid in addition to supplementary benefit when the limitation is in force⁵, as well as winter fuel allowance, if applicable.

Total requirement rate	£	634.53
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Total gross income		
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• weekly earnings	£	420.00
• supplementary benefit	£	60.00
• family allowance	£	30.80

Weekly shortfall	£	123.73 (or almost £6,500 per annum)
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⁵ Family Allowance is always included as an income when calculating the amount of supplementary benefit payable – except when a family is impacted by the benefit limitation.

PART 2

WORK-FOCUSED BENEFITS

Able and Expected to Work

82. People claim supplementary benefit for many reasons. Some are pensioners whose pensions alone are too small to live on. Some have health problems or disabilities which make finding or remaining in employment difficult. Some are young people who have had to leave the family home, and are struggling to live independently. Some are working age adults who do not earn enough to support themselves and their families; or who have fallen out of employment and do not have the personal, financial safety net to support themselves in periods of worklessness. Some have demanding and ongoing caring responsibilities for young children, frail parents or other dependants.
83. It is important to stress from the outset that the Department is not, and will never be, oblivious to the circumstances of individuals. There are some people for whom work is simply impossible, for a range of reasons including age and ill-health. There are others whom it would be unreasonable to expect to work, in some cases because of the responsibilities they have to others who depend on them wholly.
84. For this reason, although much of this report talks about a new, ‘work-focused’ approach to supplementary benefit, that focus will never be universal. Those who are not able, or not expected, to work will not be under any obligation to do so. Nor will the focus on work ignore the many barriers to employment which some people face – barriers including lack of appropriate training or qualifications, long-term absence from work or lack of basic application and presentation skills. Rather, for those who are able and expected to work, the scope of return-to-work support available will be expanded and tailored to meet their needs, and allow them to meet their obligations.
85. These work-focused proposals reflect the evolving role of social security systems worldwide, as providers of services targeted at work and personal independence, rather than just financial assistance. The Department has carried out extensive research and has received expert advice on the development of work incentivisation programmes, and best practice in other jurisdictions. This research has also involved consultation with the Social Security Department in Jersey which introduced an Income Support scheme in 2008. The Income Support scheme in Jersey replaced many benefits which had previously been paid through other States Department’s and the Parish Welfare system. The Jersey Income Support scheme is built with a strong focus on work and contains an expectation that people will work or seek work unless they are exempt.

Activating the Household

86. Supplementary benefit takes account of the needs of each member of the family. However, the benefit claim is made by one person – the ‘primary claimant’ – and it is that person, at present, whose capacity for work is evaluated, and who alone faces the obligation to go out and find work if necessary.
87. This is based on a social model which was far more prevalent in the 1950s than it is now – a household in which one partner goes out to work and the other stays at home to maintain the house and look after the children. It is now much more common for both partners in a household to be working, either full- or part-time. Generations of parents have shown that it is both possible and reasonable to combine a career and child-raising responsibilities, at least once the children have reached school age.
88. In a survey of current supplementary benefit customers, carried out in April 2011, three quarters of those surveyed said that partners should have to work, if they were able to. The Department considers it appropriate to expect any working age adults within a household to face the same work-focused requirements as the primary claimant for that household. The same fundamental question – whether a person is able and can be expected to work, on either a full- or part-time basis – will apply equally to those other adults.

Working Age People

89. Currently, 343 supplementary benefit claims take some level of earnings into account (as shown in table 3). This may be because the primary claimant is working, or a partner, or both. 17 of these claims are made by people who have already reached pension age.

Table 3:- Snapshot showing supplementary benefit claims with earnings

Reason for claiming	Breakdown of earnings (£)						Total
	1-30	31-99	100-199	200-299	300-399	400+	
Pensioner	11	1	3	2	-	-	17
Incapable of work due to illness or incapacity	3	5	4	4	1	-	17
Single parent family	22	26	25	7	6	1	87
Jobseeking or low earner	4	29	47	39	18	2	139
Disabled	40	6	12	7	-	2	67
Incapable of self-support	1	3	6	1	-	-	11
Carer	1	3	1	-	-	-	5
Total	82	73	98	60	25	5	343

90. A snapshot of supplementary benefit claims from July 2011 shows that 1,532 (67%) of primary claimants were aged between 16 and 64. There are also 272 supplementary benefit dependents who are aged between 16 and 64. While not all will be able or expected to work, there are many who, with the appropriate support and assistance, should be able to enter part- or full-time employment in due course.

PUTTING WORK FIRST

A new approach to taking claims

91. In many cases, a person claiming supplementary benefit has an immediate and pressing need for financial assistance. The Department would fail in its duty of care if it did not seek to meet that need as an absolute priority. However, it is not enough simply to respond to a crisis on a repeated basis; the Department must also try to find sustainable solutions to prevent such crises arising. For many individuals, the most appropriate and long-term solution is work.
92. As such, a focus on work must be built into the claims process, even for the most urgent requests for assistance. Sometimes it will be possible to deal with work rehabilitation issues at the same time as entitlement to benefit is assessed, particularly for the more straight-forward claims for supplementary benefit. On other occasions, especially in the midst of significant time constraints, it may be necessary to make an appointment for a separate work-focused meeting to be held in the near future. In either case, the work-related conversation must be a primary focus and carry equal importance to the benefit assessment. This formalises the work-related conversation as part of the claims procedure and represents a structural shift in emphasis. While meeting financial needs remains paramount, the focus must, from now on, be on the individual's responsibilities first and foremost.

Work-focused meetings

93. People who claim supplementary benefit, at present, must fit one of eight classifications, ranging from jobseekers to pensioners, to people who are incapacitated or incapable of self support. In effect, however, all people whose income is deemed inadequate to meet their need are entitled to claim supplementary benefit, and the question of classifying them appropriately is a secondary matter.
94. The Department recommends that supplementary benefit legislation is amended in order to reflect this principle more clearly. The amended legislation would entitle all people with income below a given level to claim supplementary benefit, but would place work-focused obligations on all working-age people receiving supplementary benefit, including the dependants of primary claimants, unless by exception.

95. People who are over retirement age would be exempt from work-focused requirements in all cases. People would also be exempt on the grounds of ill-health, impairment or caring responsibilities, or, in some cases, their work requirement might be reduced. These exemptions would be set out in the legislation, and other exceptional circumstances would also be considered at the Administrator's discretion.
96. At present, a person who supplies a valid medical certificate is classified as incapable of work, while those who meet the definition of 'handicapped', set out in the 1971 Law, are classified as such (the Department is aware that such terminology is considered offensive and intends to remove it - see paragraph 339). The proposed new criteria would give the Department the ability to respond to people's immediate need, whatever their health or family situation, and would then provide a basis for deciding whether or not any kind of work-focused meeting should be arranged.
97. As part of the ongoing claim management process for incapacity claims, the Department is able to refer claimants to an Incapacity Advisory Board. The Incapacity Advisory Board is a panel of two doctors who provide the Department with an independent medical opinion on a person's ability to undertake any form of work. While not everyone who is unable to work due to illness will be required to attend a Board, the Incapacity Advisory Board provides a valuable resource for monitoring claims. The Department has no plans to introduce a separate medical assessment of capacity for work, but it will (when appropriate) continue to monitor claims through the Incapacity Advisory Board process.
98. Many people however, will clearly meet the exception criteria in the new supplementary benefit legislation, and will continue to be exempt from any requirement to prepare for or seek work. In cases where it is less clear what level of work requirement a person should face, initial work-focused meetings will provide an appropriate forum for supplementary benefit staff to understand the extent of the barriers to work faced by an individual, and to set reasonable expectations in light of that.
99. Work-focused meetings would look at 'employability' – the barriers that stand between an individual and employment. A set of standard questions, drawn up by the Department's Work Rehabilitation Officers, Job Centre staff and other stakeholders and used at the initial meeting, would help to show the particular work-related obstacles faced by each person, and to inform the approach that is taken to reduce or remove these barriers.
100. Beyond the purely work-related issues – qualifications, skills and experience – the very first work-focused conversation would also look at outside factors: current health, long-term conditions and medication, caring responsibilities for children or other dependants. This would help to determine the extent to which further work-focused meetings were needed, as well as the kinds of work-focused requirements different individuals might be expected to face.

101. Some people of working age, who have very young dependants or who are claiming supplementary benefit in a period of sickness may, having regard to their circumstances only need a very brief conversation to make them aware that work will become a priority if they continue to claim supplementary benefit once they are in good health, or when their children are older. Others may have a thorough work-focused assessment, and begin to access work rehabilitation services immediately. If a person is not able or expected to work – through age or ill-health, for example – a work-focused conversation would only take place by request.
102. While any employment is preferable to none, people doing jobs which do not suit their skills and interests are more likely to fall out of work, and struggle to achieve within work. On the other hand, it is unreasonable to expect that everybody should find their ‘dream job’, or have the luxury of waiting until the perfect opportunity appears. Work-focused conversations would allow the Department to strike a balance between promoting work as a priority, and getting to know an individual’s strengths and personal ambitions, in order to help them prepare for and find work which will be rewarding and sustainable.

MAKING PEOPLE ENGAGE

103. The Department already provides considerable support to jobseekers, from motivational courses to regular, one-on-one work rehabilitation. A full list of current work-related initiatives can be found in Appendix 2. While these initiatives are frequently of real value to the people who use them, it is only those who are motivated enough to turn up in the first place that can benefit from them.
104. This report recommends the creation of powers for the Administrator to determine some standard requirements for all people who are able and expected to work, and to tighten the rules around attendance and engagement, so that people who fail to turn up without good cause may see a temporary reduction or suspension of their benefit. It recommends that the range of work-related initiatives available is expanded and that Case Managers are introduced for customers with significant or complex barriers to work. It also recommends that the scope for private and third sector provision of work rehabilitation is widened.

Compulsory work-focused meetings

105. If a work-focused scheme is to be effective, it must also be personalised. For this to happen, individuals will have to engage regularly with supplementary benefit staff to discuss work-related issues – the assistance they may need to return to work or do well in work; the problems that are holding them back at present; the actions they can take, with support from the Department, to overcome those barriers. These discussions will inform ‘action plans’, setting out the individual’s goals, requirements and obligations.

106. At the moment, all jobseekers are obliged to attend work-focused meetings. The Department proposes that this obligation is extended to all new and existing customers of working age – including both primary claimants and their partners. 16 and 17-year-old dependants, who are not in education or employment, would also be expected to engage. For some people, who are not expected to work, this would be no more than the work-focused conversation outlined above, when their claim is first taken. For others, work-focused meetings would continue – more or less frequently, depending on the individual's needs and circumstances – and action plans would be updated on a regular basis. Appointments would be arranged in advance, and might increase in intensity as the length of the benefit claim increases.

Case managers

107. The Department firmly believes that, if its work-focused ethos is to be meaningful, it must, where necessary, actively support claimants to fulfil their work-related responsibilities. The staff conducting routine work-focused meetings would have the ability to design and adapt packages of support to enable individuals to meet their specific goals. However, some people – particularly those with multiple and complex needs – will require greater and more sustained assistance and encouragement.
108. The proposed Case Manager role would be a new and vital addition to the supplementary benefit team. Case Managers would oversee the delivery and management of work focused meetings and would arrange and coordinate a diverse work rehabilitation package which might include case conferences and input from other States Departments and outside agencies. Their primary focus would be to ensure that appropriate action plans are developed and that the necessary coordinated support is in place to enable people to fulfil their responsibilities – especially those for whom work is a distant prospect, and whose barriers to work are especially significant.

Work-related initiatives

109. The Department's experience in providing back-to-work support and training initiatives shows that a variety of diverse approaches are needed to cater for people with different needs, abilities and experiences. One practical work-related activity may suit one person, but another may benefit from a completely different approach.
110. The Department proposes to amend its Back to Work Benefits regulations in order to enable the payment of grants from the Social Insurance Fund to third-sector organisations, on the basis of a solid business case, to enable them to work together with individuals or employers to facilitate returns to work. Recognising the need for multiple and diverse activities to enable people to prepare for work effectively, the Department also hopes to support initiatives from private- and third-sector organisations which seek to develop and promote suitable work

rehabilitation activities. It is also hoped that the launch of the Skills Strategy for Guernsey will, in due course, result in greater provision of training and development opportunities for people seeking to return to work or to improve their employment prospects.

111. In some cases, a person may benefit most from a return to full-time education, rather than part-time or on-the-job training. Each case would be considered individually, with input from Work Rehabilitation Officers and Case Managers, as well as the Careers and Adult Guidance Service. The Department would only agree to support a return to full-time education if it was confident that this was in the best interests of the individual (and the tax-payer) and would greatly enhance his prospects of returning to work. Highly-skilled adults who chose to return to full-time education for career advancement or personal development would not receive supplementary benefit support.

Mandatory work placements

112. One strategy for improving the employment options of the long-term unemployed, in particular, is the use of work placements to develop confidence, skills and a work-like routine. Placements would be unwaged, but benefit would remain in payment throughout. It is likely that work placements would involve a form of meaningful community-based activity outside the participant's home area. For some mature, long-term jobseekers, appropriate placements might be found by community or volunteer-run organisations.
113. People who participate fully in the Job Centre and meet the requirements of their action plans would not necessarily be expected to undertake a work placement. However, people who have remained unemployed for at least six months, or for whom some form of re-engagement with the workplace is considered to be a priority, may be required to take part. While it is hoped that work placements would often include a development-focused aspect, it may, in some cases, be most important just to encourage people to gain a regular routine and to do something productive within the community. It is proposed that supplementary benefit legislation is amended to give the Administrator power to make entitlement to supplementary benefit subject to appropriate conditions and sanctions including the making of work placements mandatory, on a case by case basis.

Conditions and Sanctions

114. The obligations placed on each individual would be responsive to their particular needs – requiring them to address particular issues or carry out specific jobseeking activities. Employment Support Officers and Case Managers would be responsible for providing regular support to enable people to participate and develop in a way that is appropriate for them, and to address any issues that may make it particularly difficult for someone to complete a given task or activity.

115. It is not proposed that people should be required to attend activities that are patently unsuitable. The development of options for participation in work and training for people claiming supplementary benefit will be a gradual process, in tandem with the development of a wide field of suitable work rehabilitation activities.
116. For people who repeatedly fail to meet their obligations without good cause, it is proposed that a series of short but progressively escalating sanctions will be available for use by the Administrator. These are needed to ensure that people understand the importance of their obligations and the serious consequences of failing to meet such requirements. Sanctions would be administered consistently, but set at various levels to reflect the nature and significance of the requirements placed on each individual.
117. The officers responsible for coordinating action plans would also be responsible for ensuring that people have a clear awareness and understanding of potential sanctions, and the behaviour that would lead to those being applied. Sanctions would only be used after a reasonable number of warnings and modifications to the individual's action plan – such as changing to more frequent reporting periods, for example.
118. At present, sanctions can be applied to jobseekers who fail to engage to a sufficient or appropriate degree in job-related activities. The Department recommends that the Administrator should have the authority to apply sanctions to any person with a work-related requirement, including preparation for work or attendance at work-focused meetings. This would be an extension of the current sanctions, which include suspension of benefit payment for up to 10 weeks, a reduction in benefit for a specified period, or an escalating combination of the two, following an appropriate warning or series of warnings.
119. In the case of the most serious and persistent failures, it might be necessary to suspend payment or disqualify the individual from claiming supplementary benefit. If given the powers proposed, the Administrator would take steps, wherever possible, to ensure that any financial sanctions do not jeopardise the individual's accommodation situation, and would always take into consideration the welfare of the family. This means that, where children are dependent on a claim, a reduction in benefit would usually be preferred to a suspension. It is proposed that the Administrator would have authority to reinstate or vary any suspended payment, and that all decisions to implement sanctions would be governed by the appropriate appeals process.

WORKING AND PARENTING

120. Parenting is a fundamental pillar of society, and the State has a duty not to interfere with the decisions parents make about child-rearing, unless those decisions are clearly detrimental to the child. The Department is conscious that it

cannot put obligations on parents which would compromise their ability to parent well. That is, parents must not be forced to find childcare or preschool for their child, in order to go out to work, before that child reaches compulsory school age, although those who choose to do so will be supported in their choice.

121. Until recently, the reality of supplementary benefit was far from such concerns. Partners of primary claimants did not face work-focused requirements and could therefore look after children of any age; single parents did not have to look for work until they stopped receiving Family Allowance for their children – which could be as late as the August after the child's nineteenth birthday. However, in 2009, the Department decided that all single parents whose youngest child was aged 12 or above would be treated as jobseekers.
122. The change affected 62 people, of whom 31 were re-classified as jobseekers. Within the first 6 months 23% of these newly classified jobseekers were either working full or part-time or had completed periods of temporary work. Based on the success of this change, and the fact that children are established in full-time education by age six, the Department is now recommending that single parents should be treated as jobseekers from the time their youngest dependent child reaches the age of seven.

Employment Opportunities for Parents

123. Parents face particular difficulties in returning to work, not least the lack of suitable work opportunities during school hours and term time, and the need to find suitable childcare. Parents who have not worked in a number of years may lack confidence, up-to-date skills and jobseeking abilities, and appropriate experience. In some cases, young people may have gone straight from school to parenthood, without ever entering the workplace.
124. At present, one-in-five single parents claiming supplementary benefit are already undertaking some form of paid work. A more structured programme of support, which builds up as the children grow older, would help more parents prepare for work and ensure they are ready to re-enter the workplace when their children are old enough.
125. Single parents, like all other working age people, should have a work-focused conversation when their claim is first taken, and regular work-focused meetings afterwards. Until the youngest child is five years old, these meetings might only take place once a year, to set the scene with regard to future responsibilities and expectations. Between the child's fifth and seventh birthdays, the amount of contact time and support would intensify, in preparation for work. Case Managers would ensure that the appropriate support is given to parents and the Education Department or Adult Guidance service might also provide advice. Assistance with childcare costs, which is discussed further in paragraphs 147 to 150, will also continue to be available when it is needed.

126. Once the youngest dependent child reaches the age of seven, the Department recommends that single parents are treated as jobseekers, and proposes to develop action plans which require them to seek work and engage with work-related activities. Even at this stage, the obligations placed on single parents would be sensitive to the age of the children – an eight year old may need picking up from school or met from the school bus, where a thirteen year old may make their own way home– and to any particular needs they might have. Parents would be able to arrange training, work experience and work around school hours, wherever the opportunities exist.

Partners with Children

127. As discussed above, the working age partners of primary claimants should be required to seek work if they are able and expected to work. This would be evaluated in exactly the same way for partners as it is for primary claimants – which means, among other things, that a partner who is responsible for children aged seven or above would be subject to the same kind of jobseeking requirements as single parents.

MAKING WORK POSSIBLE

128. Supplementary benefit is paid when a person cannot, for whatever reason, make his income up to subsistence level through work. It is therefore, perhaps, reasonable to assert that someone who has the capacity to enter work or increase his earnings should accept that this will result in a pound-for-pound reduction in his benefit, and should not expect to see any additional financial gain until he is no longer dependent on supplementary benefit at all.
129. On the other hand, rewards are often more effective motivators than sanctions, and the Department is keen to reward those who show a willingness to work. As such, it is proposing to continue applying a small earnings disregard, to encourage people with low earning capacity to seek work, and to reward people entering sustainable employment.
130. As discussed further in paragraphs 155 to 158 the Department recognises that for many of the people receiving supplementary benefit, employers will play a vital role in making work possible. As part of this review and the launch of the Skills Strategy for Guernsey, the Department intends to work more closely with employers to help facilitate more work opportunities and initiatives for benefit claimants.

Earnings disregard

131. At present, people claiming supplementary benefit are able to keep the first £30 of earned income, each week, in addition to their benefit. The purpose of this small disregard is to make sure that all people in work get some additional reward from

their earnings and, importantly, to safeguard the earnings of people who may only be able to work short hours due to health or caring responsibilities.

132. During the research stages of this Report, the Department has extensively investigated the various earnings disregards available in different jurisdictions. These include temporary incentives or rewards, and permanent, percentage-based disregards, in which a person retains a proportion of earnings and, therefore, experiences a concrete benefit from working overtime or taking a promotion.
133. The use of tax allowances or tax credits to protect the income of lower-earning households is another potential tool for poverty reduction, and was investigated by the Treasury and Resources Department, together with the Social Security Department, in 2008. However, after due consideration this angle of approach has not been pursued.
134. A presentation on tax credits, made to both Departments, showed that the UK Government's experience of tax credits has proven to be costly and difficult to administer. Typically tax credits are far less responsive to changes in people's circumstances than Social Security benefits (which are designed to be flexible).
135. Security of income is vital for low-income families, and the ability of Social Security systems to respond rapidly to changing personal and financial circumstances is essential to avoid households experiencing financial hardship or having to pay back overpayments. It was also considered unlikely that the introduction of tax credits would reduce administration or rationalisation of functions, as a welfare support system would still need to be in place for those people who were not in work.
136. The effectiveness of earnings disregard systems, likewise, has yet to be proven. Despite significant analysis, no one solution to work incentivisation, through earning disregards, has been found in any jurisdiction. There is a risk that introducing time-limited incentives may encourage cyclical behaviour: repeated periods of unemployment and incentivised employment. While percentage disregards, which allow a person to always retain a proportion of their earnings, could result in the Department foregoing relatively large sums from higher earners, without providing any credible work incentive to lower earners.
137. People who are motivated to work will do so, whether or not they stand to gain financially. This is already clear from the fact that over 300 supplementary benefit claimants work, and many earn more than the £30 disregard. Work can provide a range of important benefits to people, from respite and social contacts to dignity and improved self-esteem, which are as important to people who require supplementary benefit support to top up their income as they are to those who have sufficient resources of their own.
138. In Guernsey, the rent rebate scheme functions as a percentage disregard, increasing a person's rent proportionally to the value of his earnings (but only up

to the maximum rent for the property). Furthermore, no social housing tenant pays more than 25% of his income on rent. Despite a system that should provide a significant encouragement to work, the Housing Department has, nonetheless, experienced cases in which tenants have refused additional hours or promotions for fear their rent rebate would be reduced or they would need to leave social housing.

139. Therefore, a financial incentive of whatever sort, may not be enough to change the habits or preferences of people who are not motivated to work or have misconceptions as to its effect. The Department believes that its proposed work-focused meetings and ongoing requirements will be the major factor in changing behaviour in this area. The Department considers that, at present, work incentives should be limited to protecting the earnings of those who are unable to increase their total earning potential, and to rewarding significant changes in behaviour, which see people move from long-term unemployment to sustainable employment.
140. Moreover, at a time when the Department is proposing to improve the adequacy of supplementary benefit, which will inevitably carry a cost, it considers it unwise to introduce an untried system of earnings disregards, which could be significantly more expensive and might not successfully incentivise many people to work.
141. As such, the Department plans to retain the current £30 earnings disregard, and to make use of the back-to-work bonus (part of the Back to Work Benefits, which became available to people claiming supplementary benefit from November 2011) as an additional reward. This bonus is paid to people who have been unemployed for at least six months, once they have been in a new job for four consecutive weeks. It is currently £500 for a person in full-time work and £300 for a person working part-time. These amounts are equal to only a few months' worth of earnings disregards, but of greater use to people who are otherwise unable to save sufficient money to pay for household repairs or settle expensive bills, for example.
142. The Department is conscious that, if the rent rebate scheme is removed and the benefit limitation is lifted, more people who are in work, but on inadequate incomes, will be able to claim supplementary benefit. For that reason, this Report seeks to reposition supplementary benefit as an in-work benefit. As the proportion of people claiming while in work increases, it may also be necessary to revisit the question of earnings disregards to enable people to maximise their earnings and move off benefit altogether. This will be monitored on an ongoing basis and, if necessary, the Department will return to the States with proposals in due course.

Reducing administration

143. Supplementary benefit claimants who are in work are expected to report their earnings on a regular basis. People who are paid weekly have to send in their

wage slip every week and, if there are any changes in their earnings from week to week, the amount of benefit they receive is adjusted accordingly.

144. The Social Security Department is only open during office hours and the need to report earnings on a regular basis can present an obstacle, particularly for people who are working away from the town centre. In some cases, employers submit wage slips on behalf of their employees; however, the Department is keen to streamline the earnings reporting process for all those who are in work.
145. If a reporting tolerance were introduced, as in some other jurisdictions, claimants would be required to report changes in their earnings only when these exceeded a certain threshold. This would have a similar function to an earnings disregard, in that it would allow claimants to keep a small proportion of additional earnings; however, it would only benefit those people with fluctuating earnings, and make no difference to those with a steady income.
146. A reporting tolerance also carries the risk that the Department could lose a sizeable amount of money by not adjusting the amount of benefit paid out as soon as income levels changed. Rather than introduce a process which does not uniformly benefit working claimants, and which could come at a significant cost, the Department is working to develop a simple, online facility for reporting earnings on a weekly basis, with regular, random, in-person checks to minimise the possibility of fraudulent reporting. This new facility will simplify and speed up the reporting process for people in work, will enable the Department to process changes faster, and will reduce the frequency with which people have to present themselves at the Social Security Department once they are in work.

Childcare costs

147. The Commerce and Employment Department's 2009 'Workforce Participation Survey' and the 2009 'Childcare Needs Survey' both highlighted the fact that family-friendly working arrangements and more accessible childcare provision would give parents more opportunity to improve their participation in the labour market.
148. At present, a person claiming supplementary benefit, who is both earning and using childcare, is able to offset childcare costs against net earnings, in acknowledgment of the additional costs and barriers to work faced by many working parents. In effect, this increases the amount of supplementary benefit payable in order to cover the costs of childcare – but at a net saving to the Department, as people in work need less benefit to supplement their income.
149. Since 2005, the Department has also covered childcare costs for long-term supplementary benefit claimants who are attending training, provided that the individual signs up to a 'return to work' plan (including the obligation to repay childcare costs if the course is not completed), and that the course is appropriate

to the individual's abilities and will improve their chances of finding work. To date, very few parents have made use of this particular provision.

150. The Department currently offsets childcare costs against earnings for people in work, and this support will continue to be available to people with children of all ages. Childcare options would be routinely discussed with parents, in the course of work-focused meetings, once their youngest child had reached the age of seven. If an individual's action plan also required them to engage in other work preparation activities, including work experience, the Department would be prepared to consider funding reasonable, short-term childcare costs where necessary.

Additional benefits

151. Subject to certain capital limits, people who are entitled to supplementary benefit also have access to free prescriptions, free medical and para-medical cover, Legal Aid, the schools' dental service and the Telephone Assistance Scheme operated by Sure, Cable & Wireless. The loss of these benefits is keenly felt by people as they cross the threshold from benefit dependence to financial independence.
152. This additional cover is provided because the existing requirement rates alone are not considered sufficient to meet these essential needs, once household expenses and bills have been paid. In Jersey, for example, the Income Support rates are deemed to be high enough to cover the cost of four doctor's consultations per year, in addition to ordinary expenses, and any further financial assistance for medical treatment is available on application.
153. The loss of medical cover, in particular, is very challenging – particularly for people with children – given the high cost of consultations in Guernsey. In order to prevent the potential loss of cover acting as a disincentive to work, the Department proposes that access to free medical cover should be extended for up to six months, based on the individual's circumstances, if a claim has ended by reason of the claimant or his partner entering work or increasing his earnings within work.
154. The Department also notes that people who have become financially independent, but still have relatively low incomes, may in some cases be able to access assistance through the means-tested Medical Expenses Assistance Scheme (MEAS), which supports people who fall outside the scope of supplementary benefit support. Alternative forms of support with medical expenses will be explored in a later phase of the review.

Encouraging employers

155. The Department recognises that for many of the people receiving supplementary benefit, employers will play a vital role in making work possible. The Department believes that work focused initiatives described in this Report will

have a positive impact in terms of the motivation of individuals but acknowledges that it must also work with employers in order to increase work opportunities, including skills development through future Skills Strategy initiatives.

156. By working closely with employers the Department hopes to encourage them to employ and facilitate work opportunities for long-term claimants. People who have been unemployed for some time often have complex barriers to work, and continue to require additional support even when they enter the workplace. This carries a cost for employers which often discourages them from employing such people.
157. The Social Insurance Law enables the Department to pay a recruitment grant to employers who have employed people who had previously been long-term unemployed or were returning to work following a prolonged illness. The recruitment grant has helped facilitate a return to work for 26 individuals in the past 18 months. From November 2011, supplementary benefit claimants have been able to access back-to-work benefits through the Social Insurance Law, which means the recruitment grant can also be paid on their behalf.
158. The Department believes that providing incentives to employers, as well as to individuals, is an effective way of increasing the range of routes into work for unemployed people. In order to encourage employers to take on people who have been out of employment for a long time, and who may face considerable barriers to work, the Department will continue to use and enhance the recruitment grant where appropriate.

INCOME SUPPORT

159. The Department will promote work for all people who are able and expected to work. This change in emphasis will be accompanied with an expansion in the support provided by supplementary benefit staff, and through access to external services. Some people in work will, however, always struggle to earn enough to fully support themselves, these may be people with large families whose requirements are high as a consequence; or individuals with low earning potential who are nonetheless doing as much as they can. It is as important that supplementary benefit supports these people as it is that it supports people who are not able or expected to work at all.
160. The name 'Supplementary Benefit' has become wrapped up in stigma over time, and is enough, in itself, to put some people off applying. Rebranding the benefit 'Income Support' better reflects its greater focus on work. Of course, old names die hard, and people may well be 'on the social' decades hence. But the change of name is an important statement of purpose for the Department, setting out its goal for the benefit, its desire to move away from outdated expectations and to encourage people to claim with dignity and self-respect.

WORK-FOCUSED BENEFITS – BENEFITS, COST AND RESOURCE IMPLICATIONS

161. These work focused proposals should, in due course, produce savings as people are encouraged and supported into sustainable employment. As supplementary benefit becomes Income Support, however, it is likely that the Department will pay more people small amounts of benefit – to top up income from work – on a regular or ongoing basis.
162. Early interventions, one-to-one meetings, action plans and obligations will only be effective if the staff are available to design and deliver the packages of support. This must be seen as an invest-to-save opportunity, in which a properly-resourced supplementary benefit team will actively engage with individuals and establish a work-focused approach with the necessary support, challenge and encouragement in place. This more intense approach will enable people to return to work earlier than they would otherwise have done, and will support those who seek to improve their earning potential and eventually achieve financial independence. A detailed breakdown of the staffing and expenditure costs is set out in paragraphs 360 to 387.

PART 3

SUPPORTING YOUNG PEOPLE

163. The introduction of the new Children Law in 2008 has underlined the importance of the concept of parental responsibility for young people aged seventeen and under. In line with the provisions of this Law, the Department has reconsidered the manner in which it supports adolescents and young people. In particular, it will cease to provide for minors who should properly and legally be supported by their parents, but will improve its support for young people who are in need or at risk.
164. The Department proposes to strengthen the assistance it provides to young people who are committed to remain in post-16 education, who are estranged from their families and lack any other form of structured support. Working with the Education Department, it will also take steps to integrate some education-related means-tested grants within supplementary benefit, in order to further streamline the provision of all forms of welfare support in Guernsey.

Parental Responsibility

165. ‘Parental responsibility’ is defined in Law by seven core duties which all parents have towards their children. The first of these, which effectively summarises all seven, is ‘to safeguard and promote the child’s health, education, development and welfare’. All parents have a duty of parental responsibility to their children

until those children reach the age of 18, unless a Court Order rules otherwise. In such cases, another adult or the State will take on parental responsibility for the child.

166. Not only do the core duties include responsibility for the child's welfare, they also require the parents 'to determine all aspects of [the child's] upbringing'. The Law is clear throughout that the State should not interfere with parenting decisions unless such decisions are clearly detrimental to the child's wellbeing.

Supporting Teenagers

167. A supplementary benefit requirement rate is payable in respect of every person in a household, from infants to adults. Children under school-leaving age cannot, however, claim supplementary benefit in their own right; rather, they are treated as dependants and the value of the requirement rate is paid to the parent, reflecting the parent's responsibility to provide for the child.
168. At present, people can begin to claim supplementary benefit independently from the age of sixteen, if they have left full-time education, which can encourage some young people to leave school before they are work ready. This also implies that the Department is prepared to consider any 16 or 17 year-old as an autonomous adult, despite the provisions of the Children Law which states that young people should be the responsibility of their parents until the age of 18.
169. The payment of supplementary benefit to minors is counter to States' policy on parental responsibility to adolescents. Moreover, it can also, in some cases, have a detrimental impact on the household in which those adolescents live, and encourage them to leave education or even home before they are really ready to do so.
170. Parents who claim supplementary benefit themselves are entitled to a requirement rate in respect of each child (up to the benefit limitation). However, once a young person reaches 16 years old, he is entitled to claim benefit in his own right and use that income as he sees fit, even though he may still be living at home with parents who are largely providing for his upkeep. When parents no longer receive any benefit support to maintain a teenage son or daughter there is a risk that some may be willing to see that child leave home prematurely.
171. The Department recommends that, in line with the provisions of the Children Law on parental responsibility, people should only be able to claim supplementary benefit in their own right from the age of 18, unless in exceptional circumstances.
172. Young people (because they are aged sixteen or seventeen) will continue to be supported through supplementary benefit but as dependents on their parents' claim, in recognition of a parent's duty to provide for his children while they are under the age of 18.

173. While some of these young people will be in full-time education or training, others will have left school in order to find work. Although these young jobseekers will be treated as dependents on their parents claim they will still be expected to attend work-focused meetings and seek work or attend work preparation activities.
174. Working with the appropriate departments and agencies, the Department will offer the necessary support to these young jobseekers to help them find suitable employment.

Young People at Risk and in Need

175. It is not always possible for a young person to remain in the family home until adulthood. Sometimes, it presents such a risk to the young person that alternative living arrangements – with relatives or friends or, if necessary, in statutory care – have to be found. In these cases, young people may require support to live independently before the age of 18.
176. The Department has worked closely with the Health and Social Services Department and the Education Department to develop a set of criteria to identify young people who may be entitled to supplementary benefit support as independent adults, by exception, before the age of 18. These proposed criteria would also apply to young people, aged 18, who are still in their final year of full-time education. The criteria are set out in table 4.

Table 4:- Criteria for paying supplementary benefit to young people aged under 18

Circumstances		
Home Situation (One of these must apply)	AND Parental Support (One of these must apply)	AND Government Support (One of these must apply)
No fixed abode	SSD are satisfied and NGO (e.g. Action for Children) confirms that parental support is absent	Classified as “at risk” by HSSD according to the definition within the Children Law*
Temporary arrangements – e.g. living with a friend’s parents	SSD are satisfied that parents are unable to provide support due to changes in their own circumstances	Classified as “in need” by HSSD according to the definition within the Children Law
Living independently	Considered to be an independent family unit (i.e. teenage parent[s] or care-leaver)	Leaving care with the assistance of a social worker
Moving from care into alternative accommodation	Parents unwilling~ to provide support due to a child returning to education, who has formerly supported himself through employment	As part of a case conference SSD, HSSD and/or Education recommend support together with an agreed action plan
Pregnant (expecting to give birth within 12 weeks) - living alone or with parents	-	-
Caring for a dependent child – living alone, with a partner or with parents	-	-
Has severe disabilities and is unable to work or is continuing in full-time education – living alone or with parents	-	-

* Children classified as “at risk” will be able to receive supplementary benefit in all circumstances, unless they are taken into care.

~ The Department intends to explore the possibility of placing a legal obligation on parents who are unwilling, but financially able, to support a child (under 18), where relevant.

Independent Family Units

177. The majority of these criteria apply to young people who cannot live in the family home, either because they are at risk there or because they have become estranged from their family. However, young people who are parents before the age of 18 would automatically be treated as independent family units, whether or not they were living in the family home. That is, a young parent of any age would be able to claim supplementary benefit as an independent adult. This, again, returns to the principle set out in the Children Law, that parents must have the ability and autonomy to ‘determine all aspects of [their child’s] upbringing’, and ensures that parents, of any age, will at least have the disposable income necessary to meet their child’s immediate, day-to-day needs.

Case Conferences

178. Young people at risk or in need are likely to require support from a range of different providers, including social services, education services and third-sector organisations such as Action for Children. If these young people are claiming supplementary benefit, the Department is keen to work together with other agencies, in a structured way, to enhance provision of advice, support, education, training and work experience opportunities.
179. The Study of the Guernsey Voluntary and Charitable Sector, commissioned by the Guernsey Community Foundation in 2011, found that marginalised young people would benefit more from a form of service provision that was delivered by the voluntary sector, which could “provide services that were more accessible and less stigmatised than those that could be provided by the States” (pages 130 to 131). This also indicates that a multi-agency approach, with full involvement of the voluntary sector, would be the most effective way of supporting and engaging with young people.
180. It is envisaged that supplementary benefit Case Managers (discussed in paragraphs 107 and 108) would, where necessary, coordinate case conferences with representatives of different agencies. Additionally, they would organise ongoing work and education-related support for young people – which could range from basic assistance with independent living, money management skills and personal presentation, to more targeted education opportunities and preparation for work. This would ensure regular and productive dialogue between service providers, and increase the likelihood of positive outcomes for young people.

YOUNG PEOPLE IN EDUCATION

Full-time Education

181. At present, supplementary benefit is only paid if a person is in or seeking work, or fits one of the other criteria for eligibility, such as ill-health, disability, old age or caring responsibilities. There is no scope to support those who are continuing in full-time education, even before the age of 18, so young people in need of financial support are expected to leave school in order to become jobseekers. In some cases, if a young person is committed to remaining in education but has no parental support, the Education Department will pay a grant towards living expenses during term-time, and supplementary benefit will be paid during school holidays, provided the young person finds or attempts to find work at that time.
182. The Department believes that it is important for young people to remain in education, vocational training or apprenticeships until at least the age of 18. The States-wide Skills Strategy has also emphasised the need for a well-skilled workforce. If a 16 or 17 year-old meets the criteria in table 4, and is therefore entitled to claim supplementary benefit, the Department proposes that he should receive the benefit while continuing in full-time education, without facing job-seeking requirements.

Supporting Over-18s in Education

183. There are some cases where continuing in full-time education or training beyond the age of 18 is clearly in the best interests of the individual, and may significantly enhance his prospects of finding meaningful work. The reasons for continuing education may vary – from a need for increased maturity before entering the workplace, to a young person having missed a year of school through illness and therefore not finishing the normal course of secondary education until the year of their 19th or 20th birthday.
184. The Department would, in all such cases, consult with the Education Department. If both were satisfied that a return to education, or continuation in education, after the age of 18 would be in the best interests of the individual, the Department would be prepared to pay supplementary benefit for the duration of the agreed course or training period, without enforcing job-seeking requirements.
185. Young people who turn 18 before the end of School Year 13, in the course of normal secondary education, would not receive supplementary benefit support unless the Department was satisfied that their home situation reflected that set out in table 4.
186. The Education Department will retain responsibility for supporting young adults in off-island tertiary education. The Department's support would only extend to on-island education and training opportunities for young people who still require significant support to improve their skill sets and become work-ready.

Improving Work-Readiness

187. 38 young people, aged 16 or 17, currently claim supplementary benefit as independent adults. Of these, 26 people, or 68%, are classified as jobseekers. Although education is no longer compulsory from the end of school Year 11, many of these young people are not yet work-ready, and would benefit from another period of education or training before attempting to enter the world of work. However, at present, supplementary benefit cannot be paid to those in full-time education; and these young people are enabled to achieve financial independence from their parents only if they leave school and attempt to find work.
188. Eight (31%) of these 16 and 17 year-old jobseekers have claims which have lasted in excess of three months, demonstrating how difficult it is for these young people to find work. This is often due to a lack of suitable skills and maturity, and an employment market which is scarcely open to those without a range of qualifications or experience. For many, a sustained period of unemployment so early on can have serious detrimental effects: leading to low self-esteem, lethargy and apathy in the short-term; and proven lower outcomes in terms of income, accommodation standards and health well into the future.
189. The Department believes that every year of a young person's education is important and that the last few years of full-time secondary education – which may take the form of further academic study, vocational education, or apprenticeships linked to employment – are vital in enabling young people to develop the necessary skills and habits to become work-ready. It is therefore keen to ensure that young people are encouraged, wherever possible, to remain in a suitable form of secondary education or training until the age of 18.
190. It is also hoped that the Skills Strategy will develop various initiatives to promote education and encourage work-readiness among young people. A focus on people under 25 who are Not in Employment, Education or Training (NEETs), under the umbrella of this strategy, should improve the level of support available to such people and ensure that this potentially vulnerable group are given the tools they need to develop their skills and improve their prospects in education and in work.

Removing False Incentives

191. The Department believes that, if young people are generally unable to claim supplementary benefit before the age of 18, this will remove the incentive for some to leave education prematurely, in order to achieve a financial independence through benefits which they would not yet be capable of achieving through work.
192. 30 (79%) of 16- and 17-year-olds claiming supplementary benefit are still living with family or friends, and the proportion of young people doing so is expected to increase once it is no longer possible for the majority to claim supplementary benefit as independent adults. It is hoped that the greater emphasis on parental

responsibility will encourage some parents to take a more active role in supporting and encouraging older teenagers through education and into employment.

Support with Job-seeking

193. It is unlikely that all sixteen-year-olds will decide to continue in full-time education, whatever changes are made to supplementary benefit provision. Some will no doubt do very well in their work life, without the need for financial assistance. For others, access to appropriate support and guidance will remain vital.
194. As part of the Department's work-focused approach to supplementary benefit, discussed in Part 2 of this Report, it will continue to provide work preparation courses and targeted assistance to young people. While these young people will often be dependants on their parents' claims, rather than independent adults, they will still be expected to attend work-focused meetings and seek work or attend work preparation activities. Parents will continue to receive supplementary benefit support to maintain a teenage son or daughter, based on this condition.
195. The Department considers it important to offer work-focused support as soon as young people leave full-time education, in order to avoid young people experiencing prolonged unemployment and losing, or failing to enhance, any work-related skills they had gained through education.
196. These young jobseekers will hopefully be successful in finding suitable employment. The Department recognises that at this point financial support from parents is likely to reduce as a young person gains more independence. Therefore the Department proposes to remove a sixteen or seventeen year old jobseeker from his parent's supplementary benefit claim, once his earnings have reached a certain level. The Department believes that this level is reached when a young person earns at least £30 more than the support being given to his parents, through supplementary benefit. This simulates the effect of the current earnings disregard and provides an incentive for parents to support their child into employment.

Means-tested Education Grants

197. The Education Department currently pays two types of means-tested grant to assist with the cost of on-island primary and secondary education. The first of these, the Clothing Grant, is payable to any household that would struggle to meet the cost of buying school uniforms. The second, the Educational Maintenance Grant, is payable to the parents of students aged 16-19, who are undertaking a course of full-time education lasting at least one year, as a contribution towards the cost of keeping those young people in education. An Educational Maintenance Grant was paid in respect of 35 applicants in 2010-2011. The Clothing Grant assisted approximately 660 children during the same period.

198. It is likely that the majority, if not all, of those entitled to claim these grants are likewise entitled to claim supplementary benefit. The Department therefore believes it would be appropriate to include the grants within the scope of supplementary benefit, to reduce the number of distinct means-tested benefits provided by the States of Guernsey; to avoid any overlap in provision between benefits; and to ensure that all eligible families receive the support to which they are entitled.
199. The Education Department believes that with the current level of support available through supplementary benefit, the Educational Maintenance Grant and the Clothing Grant are still needed to meet the needs of a specific target group. However, with the changes being proposed as part of the review of supplementary benefit, the Education Department has given its support (in principle) to the inclusion of both grants within supplementary benefit at a suitable point in the future. The Education Department and the Social Security Department have agreed to work together to determine the best way to integrate the grants with supplementary benefit – subject to the States approving the recommendations contained within this Report.

SUPPORTING YOUNG PEOPLE – BENEFITS, COST AND RESOURCE IMPLICATIONS

200. Raising the minimum age of eligibility for supplementary benefit establishes the Department's belief that parental and financial responsibility for a child remains with his parents until the age of 18 (in accordance with the principles of the Children Law).
201. While this may prevent some young people, who would otherwise have made a claim to supplementary benefit, from receiving financial support independently, this support may instead be paid to parents. However, not all parents will choose to claim or be eligible to claim supplementary benefit, therefore, some limited financial savings may be achieved. The Department does not, however, expect to see any substantial financial savings in relation to this change in policy.
202. Additionally the Department is keen to ensure that the necessary support is available to assist young people - either as dependents on their parents claim or because they are at risk or in need. Therefore the appropriate staff resources will need to be in place to enable the Department to work effectively with young people and help them achieve a positive outcome. This support will be provided in a structured way, in consultation with other departments and agencies.
203. While the Department believes that additional resource will be required to work effectively with young people, it recognises that most of this work will be carried out by case managers and employment officers through work focused meetings and unemployment review meetings. The resource requirements are therefore covered within the detailed breakdown in paragraphs 380 and 381.

PART 4

INTEGRATING THE RENT REBATE SCHEME

204. The Social Security Department and the Housing Department reported to the States in July 2011 (Billet d'Etat XIII) on the 'Future of the Supplementary Benefit and Rent Rebate Schemes'. The Report set out a fundamental injustice within Guernsey's current systems of welfare provision: that low income families living in private rented accommodation are almost always worse off than their counterparts in social housing, even if both families are claiming supplementary benefit. Social housing tenants benefit from the rent rebate scheme, which has no equivalent in the private rented sector. Furthermore, because of higher rents, tenants in the private sector are far more likely to be affected by the benefit limitation.
205. The discussion around proposals to effectively transfer the rent rebate scheme to supplementary benefit therefore focuses on principles of equality and social justice. The first is a matter of simple equality – ensuring that means-tested welfare provision evaluates the needs of all islanders equally, and meets those needs in equal measure. The second is a matter of social justice – examining whether the level of benefit support currently provided by the welfare system is sufficient.

Purpose of social housing

206. Social housing exists to provide good quality accommodation to people with low incomes, especially elderly people and people with large families. Social housing is rented on a weekly basis, and rents for Housing Department tenancies are set with regard to the actual costs of building and maintaining properties. They are not profit driven, nor are they linked in any way to market rents. As a result, the weekly cost of living in social housing is generally lower than that of living in the private sector.
207. It is clear that social housing still has a vital function within our society. It allows single people and families who could not afford to rent privately to live in affordable, good quality accommodation. For elderly and disabled people in particular, it provides accommodation of a standard which allows them to maintain a good quality of life, good health, and freedom of movement and independence within their own home.
208. The proposals in this Review will not change the purpose of social housing or the way in which the Housing Department sets its rents. It will however, ensure that low income tenants in both private and social housing can access the financial support necessary to pay their rent, and to ensure broadly comparable standards of living.

The rent rebate scheme

209. Although social housing rents are usually lower than those for equivalent properties in the private sector, social housing tenants are among the poorest in the community and a majority of tenants would still struggle to pay the ordinary rent (the standard weekly rent) for their property. In order to mitigate this, the Housing Department operates a rent rebate scheme. Since 2004, when that Department's rent-setting mechanism and rebate scheme were both reconsidered by the States, the purpose of the scheme has been to reduce the re-instatement based standard weekly rents to affordable rents for the individual tenants. By definition, 'affordable' implies that the level of rent is such that it leaves the tenant with enough income to meet day-to-day living expenses, including food and clothing. No social housing tenant spends more than 25% of his income on rent. At the lowest income levels, tenants are expected to pay 14% of their income as rent, but this may be further reduced through allowances for dependent children.
210. Of the 1583 tenants in social rented housing managed by the Housing Department, 1411 (89%) are claiming a rent rebate. An additional 196 (95%) of the 206 Guernsey Housing Association's nominated tenants, are also in receipt of a rent rebate. At this stage, it is important to note that in terms of their main source of household income, 514 tenants (32%) are working, 734 (46%) are in receipt of supplementary benefit and 541 (34%) are in receipt of an old age pension; however it is possible – and commonplace – for a tenant who is working or receiving a pension to also be supported by supplementary benefit. That is, even with a significantly rebated rent, their own initial level of income is so low that they cannot meet their day-to-day living costs.

Two rent support mechanisms

211. At present, three systems of accommodation support exist in Guernsey:
- (a) The supplementary benefit scheme provides for the payment of an allowance towards a person's accommodation costs whether they reside in social housing, private rented accommodation or mortgaged homes;
 - (b) The rent rebate scheme is restricted to tenants of the Housing Department and to those tenants of the Guernsey Housing Association whose income is below the threshold for acceptance onto the Housing Department's social housing waiting list. Other social housing tenants of the Guernsey Housing Association have incomes above this threshold but, even if they are in receipt of supplementary benefit, they do not qualify for rent rebate.
 - (c) Mortgage Interest Tax Relief is a universal tax allowance for all islanders with a mortgage associated with the home in which they reside.

212. This report only concerns the first two forms of assistance although the Department recognises that the relevance of Mortgage Interest Tax Relief may need examination at some future date as part of a wider review of universal benefits and allowances disbursed by the States. It is also worth noting that many of those who claim a private sector rent allowance through supplementary benefit, are people who are temporarily unable to finance their own accommodation costs because of a sudden change in their circumstances. Although these are people with a significant and acute housing need, they would not be likely to require social housing unless their change in circumstances became permanent.
213. By assisting people with their accommodation needs both the supplementary benefit scheme and the rent rebate scheme provide varying degrees of protection for that part of their income needed for day-to-day living costs. However, neither scheme guarantees that sufficient funds will be left (after the payment of accommodation costs) to provide a reasonable standard of living. This is particularly true of the supplementary benefit scheme which can reduce, arbitrarily, allowances granted for both living and accommodation costs as described in paragraphs 76 to 81.
214. The rent rebate scheme (unlike the supplementary benefit scheme) does not apply specific allowances for the requirements of a tenant's household, neither does it apply an allowance for the rent itself. Rather it applies tariffs proportionate to the assessed income of the tenant and the tenant's partner (should they have one). While the broad intention of the scheme is to preserve a reasonable degree of the tenant's income for day-to-day living costs there is no guarantee that it will do so and this is especially true for those tenants on low income (or with large families) who might also need to claim supplementary benefit as well as a rebate.
215. Where the rent rebate scheme really differs from the supplementary benefit scheme is that there is no benefit limitation. Tenants with higher levels of wages and pensions retain levels of disposable income substantially higher than their counterparts in the private sector – therefore avoiding financial hardship and many of the social issues associated with a lack of funds.
216. While it is thought that the effect of the rent rebate tariff system is more generous than the supplementary benefit scheme this is primarily down to the fact that it has no benefit limitation, so social housing tenants benefit in full from the assessment system without suffering any artificial cut off. However, despite these significant differences, the aims of both schemes are identical; they both seek to enable low-income islanders to afford their rent and to be capable of meeting their day-to-day living costs. They are two different approaches to achieving the same welfare goal.
217. Despite the above, neither scheme can give any degree of assurance that the basic needs of a person will be met after they have paid their accommodation costs. Rent related poverty is a real issue for many tenants in the private sector and for those tenants with large families on low income living in social housing. The

problem exists because neither the supplementary benefit requirement rates nor the rent rebate tariffs have been informed by an evidence-based evaluation of the actual costs of day-to-day living. The Social Security Department and the Housing Department have sought to address this issue, for the first time, through a Minimum Income Standards study for Guernsey, which is covered in detail in Part 5 of this Report.

Unifying the two schemes

218. In 2004, the States agreed to introduce a standard formula for the setting of social housing rents. The formula reflected the true cost of providing social housing and a repeatable method for ensuring that rents were updated consistently in line with building costs and maintenance expenses etc. The formula ensured that rents charged would not stagnate as had been the case for the previous two to three decades. The resultant artificially low rents in the years leading up to the application of the formula had distorted the cost of accommodation in relation to a tenant's overall budget. This in turn had reduced the need for more realistic rent rebate tariffs as well as the need for a realistic supplementary benefit limitation.
219. The result of the 2004 decision was to make a clear distinction between the assessment of the tenant's need - which led to the rebated rent – and the setting of the standard rent for any property. With this separation in place, it is evident that the rent rebate scheme is effectively another form of welfare benefit and, since 2008 at least, the Housing Department has been in dialogue with the Social Security Department to investigate the possibility of transferring rent rebates to the supplementary benefit scheme.
220. In July 2011, the Social Security and Housing Departments brought a Green Paper on the 'Future of the Rent Rebate and Supplementary Benefit Schemes' to the States (Billet d'Etat XIII). This set out the principles behind each scheme and the purpose of aligning the two. The central argument was that it is unjust to maintain two separate schemes aimed at achieving the same goal, especially when one group of people – rent rebate recipients – are thereby consistently advantaged over another.
221. Although families living in social housing cannot be considered well-off in any way, *comparable* families in private rented accommodation – families with the same number of dependent children, and the same initial level of income – are substantially worse off. A family in social housing could claim both a rent rebate and supplementary benefit, if necessary; while a family renting privately could only claim supplementary benefit. The effect of the supplementary benefit limitation means that a maximum of £450 per week would be available to the family in the private sector, who could be spending £340, or 75%, of that income on rent, leaving only £110 to meet their day-to-day living costs. On the other hand, the social housing tenant would not, in any circumstances, have to spend more than 25% of their income on rent.

222. The need for a unified system for providing rent support to those who cannot meet their own need for accommodation and day-to-day living is, in principle, self-evident. However, the example above raises the question of the level of rent support which it is appropriate to provide. The following paragraphs set out the key components of an effective and equitable system of rent support. Subject to States' agreement, it is proposed that these should form the basis of a single housing-related benefit, to form part of the supplementary benefit (and future Income Support) scheme.
223. The introduction of a single, fit-for-purpose, housing-related benefit would, of course, mean that a rent rebate scheme was ultimately no longer required. Paragraphs 283 to 292 of this report consider the effect on social housing tenants of removing the rent rebate scheme and replacing it with a rent-related element of supplementary benefit – including the effect, for some, of becoming new supplementary benefit claimants – and the way in which the rent rebate scheme can be withdrawn gradually in order to minimise any negative impacts on individual tenants.

EFFECTIVE RENT SUPPORT

Replacing the benefit limitation with Maximum Rent Allowances

224. It was shown, in paragraphs 76 to 81, that supplementary benefit claimants, no matter how great their need or how low their income, could receive a maximum income (apart from family allowance and any earnings disregard) of only £450 per week, if that income included any amount of supplementary benefit at all. This has a particularly severe impact on larger families (including two and three-child families in which the children are teenagers) because these families have a higher total requirement rate and are also likely to be paying more rent, in order to find accommodation of a suitable size.
225. Supplementary benefit assigns a requirement rate for each person in a household. It also assigns a rent allowance, based on its evaluation of the rental value of the property. The Department is confident that the requirement rates do not exceed, and may in fact be rather less, than the subsistence-level cost of living. The Department believes that each element of the supplementary benefit calculation is essential to calculate a household's subsistence level need; and that the values assigned to each constituent part are at or below the necessary minimum. There is therefore no justification for applying a benefit limitation which reduces the benefit payable to below the minimum needed. The 'wage-stop' was abolished in the United Kingdom in 1975, and no such arbitrary limitation exists in any other comparable jurisdiction.
226. The UK Government are, however, currently putting forward proposals to introduce a Household Benefit Cap from 2013. This cap would restrict the total amount of benefit that working-age people can receive. Although certain

exclusions will apply, the cap will limit the combined income from the main out-of-work benefits (Jobseekers Allowance, Income Support, and Employment Support Allowance) and other benefits such as Housing Benefit, Child Benefit and Child Tax Credit, Industrial Injuries Disablement Benefit and Carer's Allowance. It is estimated that the cap will be set at £350 a week for single adult households (with no children) and at £500 a week for couples and lone parent households.

227. As recognised in the UK's equality impact assessment, the Household Benefit Cap is, in particular, likely to affect large families with several children, who are currently entitled to a significant amount of Child Tax Credit and who might also live in larger family homes; as well as households in high rent areas receiving large Housing Benefit payments. This was also recognised by the Children's Society who have condemned the introduction of a Household Benefit Cap which, they believe, will disproportionately affect children – forcing low-income households into severe poverty.
228. The Department has considered this change in UK policy but firmly believes that the States has a duty of care to help the poorest and most vulnerable islanders, to ensure that they are not forced into poverty or socially excluded. The Department believes that the benefit limitation is a crude and unjust method of controlling expenditure which, in particular, has a pronounced effect on households with children who have a higher level of need. Furthermore it undermines any States commitment to adequately provide for the most vulnerable in the community.
229. As well as being of significant benefit to those supplementary benefit households currently affected by the benefit limitation, removing the benefit limitation would also enable some households, which are currently excluded from supplementary benefit, to claim for the first time. These people are currently excluded from supplementary benefit because their income exceeds the benefit limitation, even though it may still be insufficient to meet their minimum needs. The effects of this change are discussed further in paragraphs 360 to 387 – 'Benefits, Cost and Resource Implications'.

Introducing maximum rent allowances

230. As shown in paragraphs 72 and 73, the supplementary benefit requirement rates are, to an extent, responsive to the size of a household. Different requirement rates are set for couples and single adults, and for children of different ages. On the other hand, the rent allowance, at present, depends on a Visiting Officer's informal assessment of the rental value of the property and subsequent decision of the Administrator. It bears no relation to the actual need of the household for a home of a certain size, or to any formally set criteria for the values of different allowances.
231. The Department recommends the introduction of Maximum Rent Allowances. These would have a dual purpose: first, they would ensure that all elements of

supplementary benefit, including the rent allowance, were responsive to the needs of different households. Second, they would ensure that the States had an agreed and reliable method of controlling expenditure. In the absence of the benefit limitation, Maximum Rent Allowances would establish a reasonable upper limit for the amount of supplementary benefit available to any given household composition.

232. The level of Maximum Rent Allowances should be set with regard to several key considerations. The first is the fact that rent support should enable people to live in the private sector as well as in social housing. Therefore, they must be set at a level which enables private landlords to make a reasonable but not extravagant return – that is, housing supplementary benefit claimants in the private sector must be and remain commercially viable.
233. Another factor is that the purpose of social housing is, among other things, to provide accommodation for large families. It is reasonable to expect that most low-income large families should be housed in social housing, where smaller families and individuals might be more appropriately housed in the private sector, and Maximum Rent Allowances should be set at levels which reflect this. Otherwise, there is a clear risk that low-income large families seeking appropriate housing in the private sector would need to rent properties at an exceptionally high cost.
234. Maximum Rent Allowances would make the system of rent support more transparent, and would enable people claiming benefit to make informed choices about the accommodation they occupy. At present, people claiming supplementary benefit are only able to claim a rent allowance once they are living in a given property, and the level of the allowance is set with regard to that particular property, rather than the household's need for accommodation.
235. It is hoped that Maximum Rent Allowances would also promote positive behaviour among landlords. It is important to emphasise that the maximum amount would only be paid where the quality of the accommodation, as inspected by Social Security staff, justifies the rent being charged. This focus on quality should prevent less socially-minded landlords taking advantage of the Maximum Rent Allowances to increase their rent prices, while recognising the valuable provision of decent quality housing by fair and responsible landlords island-wide.
236. The Department's Visiting Officers will continue to carry out informal rent assessments, and the Department will closely monitor the value of the rent allowances being paid, in order to ensure that the introduction of this policy, which is designed to be transparent and to assist those on low incomes, is not subject to systemic abuse.
237. Furthermore, the supplementary benefit section currently endorses a system whereby tenants considering a move are expected to give good reasons as to why they need to move and approval is considered on that basis. Under a reformed

benefit system the Department intends to reinforce this policy, so that tenants are aware that they need to give advance notice of a move and have a justifiable reason for needing to move.

238. As part of a general review of legislation, the Department also plans to make it an offence to use a rent allowance for any purpose other than the payment of rent. This will provide some additional protection against fraud or simply the thoughtless use of money, and will enable the Department, where necessary, to pursue the recovery of any misspent funds.

Tenancy Groups

239. The Department recommends that the maximum rent allowances are based on tenancy groups, which in turn are based on the number of people in a household who are dependent on supplementary benefit support. The tenancy groups would be as follows:

Tenancy Group	Adults	Number of Children	Social Housing*
Group 1	Single or couple	0	1 bedroom
Group 2	Single or couple	1	2 bedrooms
Group 3	Single or couple	2	3 bedrooms
Group 4	Single or couple	3 or more	4 bedrooms

*This column shows the accommodation that the Housing Department would seek to allocate a household of this size, according to its allocation policy, if such a household were to apply for social housing.

240. Each tenancy group would have a separate Maximum Rent Allowance, linked to the highest social housing standard weekly rent or Guernsey Housing Association rent for a household of that composition. Maintaining a link between household composition, social housing rents and maximum rent allowances ensures that benefit policy and housing policy are harmonised and that unfair differences between the social and private sectors are not perpetuated.
241. It is proposed that the Maximum Rent Allowances should be the equivalent of the highest comparable social housing rent. The proposed Maximum Rent Allowances for 2011 are as follows:

Tenancy Group	Value of maximum rent allowance for 2011 (per week)
Group 1	£184.00
Group 2	£216.00
Group 3	£276.76
Group 4	£339.62

242. However, the value of the Maximum Rent Allowances would not guarantee that people could always access a home of a certain size. In view of the limited housing stock in Guernsey, it would be extremely expensive to make such a guarantee. Rather, the allowances would be set at a level that ensures people claiming benefit face the same kind of choices as their peers – choices to compromise on location in order to have more bedrooms; or on space in order to have better amenities, for example.
243. It is proposed that tenancy group 4, for a family with three or more children, should be the largest tenancy group. It would be unrealistic to have any further groups, as social housing units do not have more than four bedrooms, and private sector properties with large numbers of bedrooms are very expensive and seldom available to rent.
244. Maximum rent allowances, first and foremost, must enable claimants to secure decent accommodation in the private sector, however, as a replacement to the benefit limitation, Maximum Rent Allowances must also effectively control overall expenditure. As such, the allowances are based on housing policy – in order to ensure that people can access appropriate social housing, and to recognise the need of larger households for more space – but place the decision-making responsibility firmly with the individual.
245. Maximum Rent Allowances would reflect the number of dependent people in the household, rather than the number of bedrooms actually used. Bedroom sharing is, fundamentally, a parenting decision, and parents should be enabled to choose a house with bedrooms for all their children, or to compromise on bedrooms, for example, in order to have a garden or more play-space. In effect, this means that a person in tenancy group 3 could access £276.76, with which they might prefer to rent a decent quality two-bedroom house with a small garden, requiring their children to share a room but increasing the amount of outdoor space available.
246. Because it is the welfare of children which is at stake in a family's housing choice, the Department is confident that parents receiving rent allowances through supplementary benefit will make appropriate decisions about the compromises they are prepared to make in order to accommodate their family.
247. Importantly, the Maximum Rent Allowances would be upper limits, rather than fixed amounts given to all people within a specified tenancy group. The actual allowance paid would never exceed the rent of the property occupied, and the Department would retain the right to pay a lower rent allowance if it considered that the quality of the property did not justify the level of rent being charged. Nonetheless, published maximum allowances would enable people – who do not currently know how much rent support is available until they have moved into a property – to exercise more choice and discretion when searching for an appropriate home.

248. There will naturally be some people who, by reason of ill-health or disability, may require an additional space or a spare bedroom for a carer. In such cases, the Administrator would retain the discretion to modify the household's rent allowance accordingly.

Shared Facilities

249. Some people claiming supplementary benefit, especially many single people, occupy accommodation with communal bathroom and/or kitchen facilities, or rooms in commercial tenancies, including guest houses, hotels and bed-and-breakfast accommodation. The Department considers that such accommodation is of lesser rental value than a self-contained one-bedroom apartment, and the Maximum Rent Allowance applying to accommodation with shared facilities should be lower.
250. 'Accommodation with shared facilities' should therefore be considered a separate tenancy group (group 5), defined as accommodation which has a communal bathroom and/or a communal kitchen (including an area for washing-up). The Department would not require any person claiming supplementary benefit to occupy accommodation with shared facilities; however, should they choose to do so, their Maximum Rent Allowance would be set at the appropriate level for that accommodation type. The proposed Maximum Rent Allowance for group 5 is £144.92.
251. People who occupy a house with joint tenancy – that is, who share the liability for rent with another person who is named on the lease or rent book – would not be treated as occupying accommodation with shared facilities.

Mortgage Interest

252. At present, people claiming supplementary benefit, who are paying a mortgage on their own home, are able to claim a rent allowance for the value of their mortgage interest payment only – never for capital payments. Only around 50 of the 144 owner-occupiers currently claiming supplementary benefit are receiving a rent allowance in respect of weekly mortgage interest payments.
253. If Maximum Rent Allowances are introduced, the Department recommends that owner-occupiers claiming supplementary benefit should be assigned to a tenancy group using the same set of rules as people in rented accommodation, and mortgage interest payments should, if necessary, be funded up to the value of the Maximum Rent Allowance for the relevant tenancy group, but any capital payments should not be made. The Department does however, intend to investigate the possibility of providing support with both the capital and interest elements of mortgage payments (up to the value of the relevant Maximum Rent Allowance) within a later phase of the review.

254. Using the same set of rules for both owner-occupiers and people in rented accommodation is also important in ensuring that all people are treated fairly and equitably by the supplementary benefit scheme.

Accommodating Non-Dependants

255. The 'household' of a person claiming supplementary benefit is usually made up of the primary claimant, any partner the claimant may have, and any children who depend on the claimant for support. However, other people may also share the same accommodation – including children (whether minors or adults) who have become financially independent, and other relatives, in-laws or friends. These people are known as 'non-dependants'.
256. At present, non-dependants are expected to pay an equal share of the rent for the property. When a supplementary benefit rent allowance is calculated, a proportionate deduction is made for each non-dependant living with the primary claimant. For people in social housing, claiming a rent rebate, the Housing Department charges extra rent in respect of non-dependants (although the total rent charged never exceeds the standard weekly rent). This non-dependent charge is made directly by the Housing Department, rather than through a reduction in supplementary benefit.
257. The Department recommends that people claiming supplementary benefit should be assigned to a tenancy group based on the number of dependants in their household, and non-dependants should not be taken into consideration. That is, a family with two dependent children and one non-dependant would be treated as a family with two children, and their tenancy group assigned accordingly. If the family chose to find a larger house, in order to accommodate the non-dependant, it would be reasonable to expect that non-dependant to make up any difference between the Maximum Rent Allowance and the actual rent paid.
258. This would ensure that the rules relating to tenancy groups remained transparent, and would ensure that rent allowances met a household's genuine need, as they would take into account the people dependent on the primary claimant, and only those people. It would also reduce administrative costs, as it would mean there was no need to recalculate the claimant's tenancy group and Maximum Rent Allowance every time a non-dependant moved into or out of a household.
259. There are some cases, however, where it would be wrong to expect the non-dependant to meet additional rental costs. In particular, young people below the age of 18 who have left school should still be treated as dependent children for the purposes of rent support, whether or not they have become financially independent. Young people who are in full-time education should likewise be treated as dependent – to do otherwise would be to give the parents a reason to encourage those young people to leave home, as the parents would no longer receive a rent allowance sufficient to maintain them in the family home. Any non-dependant, of whatever age, who is in receipt of supplementary benefit in their

own right, should also be counted as a member of the household for the purpose of determining the Maximum Rent Allowance. This would particularly support elderly people living in the home of an adult son or daughter.

Managing Under-Occupancy

260. From time to time, a dependent child will grow up, become financially independent or leave the family home altogether. When this happens, the tenancy group to which the household belongs would be likely to change, and their Maximum Rent Allowance to decrease.
261. The Department believes that it is necessary to move claimants between tenancy groups to reflect changes in their household compositions. However, to avoid this having an adverse affect on the individual's finances, and potentially putting their accommodation at risk, it recommends a 'grace period' of up to six months between the change in household composition and the application of a new, lower Maximum Rent Allowance. This grace period would give people a reasonable length of time in which to search for different accommodation, should they choose to do so. During this grace period, they would be advised of the prospective change to their rent allowance, and given the opportunity to discuss their individual circumstances with the Department. A move would not be compulsory and a person may instead prefer to stay in their own home, accepting a smaller rent allowance and choosing to adjust to a lower income.
262. It is recommended that the Administrator retain the discretion to extend the grace period, by exception, based on the individual's circumstances or in order to cover a longer notice period required by a lease or rental agreement.

Social Housing

263. The Housing Department is mandated by the States to ensure that people in need of social housing are appropriately housed. The Housing Department has a policy for allocating housing based on urgency of need, and income thresholds above which people cannot access social housing. It is also working constantly to manage under- and over-occupancy of properties, in order to house people in properties that most closely meet their needs.
264. It is not the role of the Social Security Department to allocate social housing, nor is it a sign of effective government to have one Department allowed to interfere with the mandate of another Department. As such, the Social Security Department considers that people who are living in social housing should be deemed to be appropriately housed, and the Standard Weekly Rent for the property occupied should be paid.
265. As rent is normally paid directly to the Housing Department for people claiming supplementary benefit, this policy will have no impact, either positive or negative, on the behaviour of social housing tenants – they will be encouraged to move or

stay in their property at the discretion of the Housing Department rather than the Social Security Department.

266. Until the transfer takes place the Housing Department will continue to charge the full Standard Weekly Rent for the property they occupy, as to do otherwise would result in the Housing Department collecting rental income that was insufficient to manage and maintain its stock. The Social Security Department should not put a restriction on the length of time a person could under- or over-occupy a social housing property. It would not be fair to pass the cost of under-occupancy on to the tenants, who have very limited control over if or when they move.
267. Additionally it would not be reasonable to sanction the Housing Department for failing to move tenants rapidly enough – any attempt to leapfrog that Department's own under-occupancy mechanisms, which are more effective now than they have ever been in the past, would only result in a cost to the Corporate Housing Programme which would limit the development of social housing on island, to the detriment of many of the people this Review is intended to benefit.
268. Furthermore, the Housing Department has undertaken to keep the Social Security Department informed of its success in tackling under-occupancy generally, and no less than two years after the rent rebate scheme has fully closed, the two Departments will jointly consider whether it is appropriate to continue to exempt social housing tenants from reductions in rent, brought about by the application of under-occupancy rules.
269. In cases where a tenant is literally under-occupying one of the Housing Department's 47 largest and most expensive houses, and where the Social Security Department is paying a Maximum Rent Allowance that is at least £10.00 a week more than would be the case if the tenant in question was living in a smaller property, then the Housing Department has committed to prioritising their transfer above all but the most urgent cases.

Impact on Family Size

270. At present, the benefit limitation means that no household, no matter its size and its need, is able to receive an income of more than £450 per week (apart from income from family allowances and any earnings disregard), provided that income contains an element of supplementary benefit. In effect, this significantly disadvantages families with two or more children, particularly if those children are teenagers, as it more or less guarantees that those families will not be able to receive the full value of their requirement rates or the rent allowance that they need. In effect, the benefit limitation may act as a disincentive to adults, dependent on supplementary benefit, to raise large families.
271. The Department is nonetheless aware of the perception, amongst some, that the current system of welfare provision encourages some adults to raise large families, which are deemed to represent an excessive or unjustifiable cost to the

State. As such, it has given careful consideration to the introduction of an overall maximum benefit limitation linked to the number of children in a family.

272. At present, 601 families claim supplementary benefit. Of these, only 18 (2.9%) have five or more children. This is such a small number (less than one percent of all local families) that large families can hardly be considered to be commonplace. If, for example, the first four children in any family were deemed 'socially acceptable', any fifth and subsequent children might fall outside the scope of benefit provision. There are, however, only 34 of these children in families currently claiming supplementary benefit.
273. It is important to note that not all large families are the result of reproductive choice. Many are 'composite' families, including the children of two remarried parents or partners. The Department would not wish to introduce any measures which discouraged the formation of such households. Moreover, the overall low numbers of large families suggest that any benefit limitation linked to the number of children in a family would have little to no impact on the reproductive behaviour of the population in general, who are already making the choice not to have large families.
274. Most fundamentally, the Department recognises that a child has no choice in terms of the family into which he is born. He has no control over whether he is the first or seventh child. Nonetheless, he and his siblings will suffer – in all likelihood at least as much as their parents – from the impact of any family size-related benefit limitation. By impoverishing children and increasing their likelihood of social exclusion, any such limitation is likely to strengthen, rather than reduce, inter-generational cycles of benefit dependence.
275. The Department believes that a priority of the States should always be to safeguard the welfare of children and avoid child poverty. Given this vital aim and the Department's acknowledgment that the extant benefit limitation is detrimental to claimants and should be lifted (over a phased period), it recommends that no new family size-related benefit limitation should be introduced, and that the correct rent allowance and requirement rates should be paid in regard of each member of a household. The Department does, however, intend to closely monitor the effect that this change in policy may have in respect of the number of larger families receiving supplementary benefit in the future.

WITHDRAWING THE RENT REBATE SCHEME

276. The green paper on the *Future of Supplementary Benefit and Rent Rebate* explained why operating two means-tested schemes – the supplementary benefit scheme and rent rebate scheme – had created a situation where, in some instances, social housing tenants were entitled to greater financial assistance than tenants in the private sector – something that is demonstrably unfair. This approach also

represented a poor use of resources, with staff at the Social Security and Housing Departments processing the same financial information twice.

277. Replacing the benefit limitation with a range of maximum rent allowances would pave the way for the supplementary benefit scheme to become the sole source of rent support in Guernsey and Alderney. The rent rebate scheme would close down and social housing tenants would be charged the standard weekly rent applicable to the property in which they were living. If they were unable to afford the full rent they could apply for help under the supplementary benefit scheme.
278. It is important to acknowledge that the instant withdrawal of the rent rebate scheme could have a seriously detrimental effect on some social housing tenants. As such, the Social Security Department and the Housing Department propose a strategy of improving supplementary benefit support to the necessary levels, and gradually phasing out the rent rebate scheme over a period of some years, in order to ensure that social housing tenants will be affected as little as possible by the change.

Social Security Department

279. In its September 2011 Up-rating Report (Billet d'Etat XV), the Department recommended an above-RPI increase in the benefit limitation from £405 to £450. This would provide immediate assistance to some families who are impacted by the limitation, and would act as a stepping stone to the changes set out in this Report.
280. Subject to States' approval, the Department will introduce the changes outlined in paragraphs 224 to 229 as part of a phased approach. The Social Security Department would begin increasing requirement rates (Section 5 – paragraphs 310 to 328) as part of a two stepped strategy; and would begin replacing the supplementary benefit limitation with Maximum Rent Allowances over the same period as the Housing Department gradually phases out the rent rebate scheme.
281. It is proposed that, subject to the availability of funding, the initial increase in requirement rates and the introduction of Maximum Rent Allowances should be implemented at the earliest opportunity and that the overall benefit limitation and rent rebate scheme are phased out over a period of, say, 3, 5 or more years. Taken together, these measures will ensure that an adequate system of rent and living support is in existence and is able to support social housing tenants as and when the need arises.
282. It is inevitable, however, that while a benefit limitation remains in place, some low-income households will continue to be paid less than they need. While in the short-term this is regrettable, the Department is conscious of the need to manage new claims and any increase in expenditure carefully. Replacing the supplementary benefit limitation gradually will allow the Department to steadily absorb and deal with the anticipated rise in claims.

Housing Department

283. In order to ease the transition from the rent rebate scheme to supplementary benefit support, by more closely aligning the two schemes, the Housing Department proposes to phase out the rent rebate scheme gradually over a period of some years.
284. The Housing Department's standard weekly rents are calculated using a States-approved rent-setting formula designed to generate income sufficient for the Department to manage and maintain its properties. Because there is no profit element, social housing rents remain affordable relative to private sector rents. Nonetheless, 1607 (89.6%) of social housing tenants claim a rebate and are charged less than the standard weekly rent. The rebates payable – i.e. the amounts by which the standard rents are reduced – range in value from £4.18 to £283.60, depending on the financial circumstances of the tenant and the presence of dependants and non-dependants in the household.
285. The value of each rent rebate indicates the extent to which tenants would be worse off if the scheme were to close. In terms of financial support, the only way they could militate against the effects of the scheme's closure would be to claim supplementary benefit. As things stand – due to relatively low requirement rates and the existence of the benefit limitation – only a minority would be entitled to any help. But a reinvigorated supplementary benefit scheme such as the one described in this Report would mean that many social housing tenants become eligible for assistance for the first time. In some cases, they will be better off, overall, than they were whilst they were claiming a rebate.
286. To be clear, some tenants will still be worse off. Not everyone will be eligible to claim supplementary benefit to the value of their old rent rebate. But where a tenant is ineligible for supplementary benefit, or where benefit payable fails to match the value of the old rent rebate, it will be because the tenant's household income is relatively high. That being so, the value of the rent rebate would not have been great, and therefore the loss of that rebate should not be too keenly felt.
287. Of the 1607 tenants who are currently in receipt of a rent rebate, 734 already claim supplementary benefit. If the rent rebate scheme was closed they would not be any better or worse off. If the proposals in this Report were agreed by the States, a further 787 tenants would become entitled to make a supplementary benefit claim when the rebate scheme closed. In 504 cases, the amount of supplementary benefit to which they would be entitled would match or exceed the value of their rent rebate, meaning that they were no worse off. However, in 233 cases they will be worse off overall. That is, their total household income after paying the standard weekly rent will be less than it was before the rent rebate scheme was withdrawn, even after the supplementary benefit top-up.
288. The remaining 178 tenants would not be entitled to supplementary benefit and so would have to pay the increased rent entirely from their existing household

income. It is worth reiterating, however, that their lack of benefit entitlement reflects the fact that they already have income in excess of the requirement rates. Relatively speaking, these tenants would be the wealthiest relative to their peers, and would therefore be better able to absorb an increase in rent. Nonetheless, the Housing Department appreciates that changes to household income can be difficult to accommodate at short notice. That being so, in cases where a tenant would otherwise face a significant drop in income (albeit to a level that matches or exceeds supplementary benefit levels), the Housing Department intends to use special transitional arrangements to introduce the standard weekly rent over a longer period of time.

289. Phasing out the rent rebate scheme will also mean that the number of people in social housing who are eligible for supplementary benefit support would increase gradually. This is a more pragmatic and easily manageable approach, which means that the Social Security Department would be able to adjust its practices and its use of staff resources and space in order to better accommodate larger numbers of people claiming supplementary benefit

Becoming a benefit claimant

290. A rent rebate is a benefit by another name. Unlike supplementary benefit, it does not result in cash in hand. It is, however, a reduction in the amount charged to people based on their ability to pay and their need to meet other day-to-day living costs. Nonetheless, it is not seen as a benefit by the majority of rent rebate recipients and, when the Departments' joint Green Paper was published in June 2011, the majority of the issues raised by social housing tenants concerned the perceived indignity of 'becoming' a supplementary benefit claimant.
291. As discussed in paragraphs 159 and 160, supplementary benefit has never succeeded in shaking off the stigma attached to it by successive generations. The reasons why a household may not be fully self-supporting are many and varied, and do not – as many are quick to infer – imply idleness or unwillingness to work, however, some people are still reluctant to claim.
292. The Department considers that Income Support, including rent support, should be available to all islanders who need it. For some, this will carry work-focused requirements, which will not be applied to those who are not able nor expected to work. The Department hopes that this modernised system – which enables individuals to make adult choices about the quality and type of their accommodation; which better enables and empowers them to seek work and continue learning; and which does not penalise families for being, for whatever reason, too poor to fully meet the needs of their children, through an immovable benefit limitation – will reduce the stigma attached to becoming a benefit claimant.

INTEGRATING THE RENT REBATE SCHEME – BENEFITS, COST AND RESOURCE IMPLICATIONS

293. In 2010, expenditure on supplementary benefit was just under £17m, while the rent rebate scheme cost the Housing Department nearly £10m in income foregone. The cost to the Corporate Housing Programme Fund was offset by an £8m allocation from the States on recommendation of the Treasury and Resources Department. Had the Corporate Housing Programme not been able to absorb a £2m shortfall, the combined cost to General Revenue of the two schemes would have been £27m.
294. The Department expects that the integration of the rent rebate scheme with supplementary benefit will lead to a net increase in costs, by virtue of the fact that it is proposed that the overall benefit limitation will be replaced with Maximum Rent Allowances and that requirement rates will be increased. In particular, the eventual replacement of the benefit limitation will mean that people claiming benefits are able to receive the full amount of their calculated need. While this comes at a financial cost, however, the move must be seen as an important and positive development in social provision in Guernsey.
295. It is likely that the changes will mean that a further 787 social housing tenants, who have not formerly claimed supplementary benefit, begin to access support through a modernised scheme. The Department has calculated that it needs approximately 3 full-time equivalent posts to undertake the new work created for the supplementary benefit section as a direct result of the withdrawal of the rent rebate scheme.
296. The Housing Department has considered the staffing implications and accepts that when the rent rebate scheme closes there is the potential for 787 social housing tenants to become entitled to claim supplementary benefit for the first time, and for the workload of the supplementary benefit section to increase accordingly. At first glance it would appear that this increased workload could simply be met by redeploying the Housing Department staff responsible for administering the rent rebate scheme.
297. However, the processing of rent rebate applications is but one of a wide range of duties carried out by a team of six Tenancy Management Officers. As the job title suggests, Tenancy Management Officers' work is focused on ensuring that tenants abide by the terms and conditions of their tenancy agreements, and working with tenants to make the Department's estates pleasant places to live. The administration of the rent rebate scheme comes at the expense of being able to carry out more frequent home visits, work with Police to tackle antisocial behaviour more actively, and to pursue rent arrears (the prevalence of which has the potential to increase in the absence of the rent rebate scheme). Indeed, the heavy workload associated with processing rent rebates means Tenancy Management Officers are far more office-based than is ideal.

298. In light of the above, the Housing Department has said that its starting point is that it would wish to retain its existing complement of staff in the event of the closure of the rent rebate scheme, so that the Tenancy Management Officers can carry out their core duties more fully, albeit that it accepts this matter will require further discussion if the proposals contained in this report are agreed by the States. A detailed breakdown of the staffing and expenditure costs is set out in paragraphs 360 to 387.

PART 5

REQUIREMENT RATES AND MINIMUM INCOME STANDARDS

299. Until recently, the adequacy of the current supplementary benefit requirement rates, as well as of the income support provided by the rent rebate scheme, has not been known. Rates have not been based on any scientific evidence or calculation of need, but have been uprated each year in line with prices, from an arbitrary base figure whose relevance, if any, has been lost over time.
300. The proposals in Part 4 of this Report, seek to ensure that people in social housing and people in the private sector have much fairer and more equal access to welfare support. However, measures to ensure the fairness of welfare support have little meaning if that support is not ultimately adequate to meet people's most fundamental needs.
301. Moreover, proposals to increase the work requirements faced by people claiming benefit are, in principle, entirely reasonable – but begin to be seen as an unfair burden if heavy demands are placed on people in exchange for inadequate recompense. Without a measure of the adequacy of requirement rates, the risk is that the Department may require people to work full-time and more, in order to receive income support which is less than their real subsistence requirements.
302. In order to better understand the adequacy of requirement rates, the Social Security and Housing Departments, with the support of the Policy Council's Social Policy Group, commissioned a Minimum Income Standards study for Guernsey in 2011. Although the purpose of the study was to allow both Departments to assess the adequacy of current welfare provision, a Minimum Income Standard will also be useful in informing social policy across a wide range of issues, from minimum wages to pensions, and from healthcare to childcare provision.

Methodology of the Minimum Income Standard study

303. The central definition used by the study was: 'A minimum standard of living in Guernsey today includes, but is more than just, food, clothes and shelter. It is

about having what you need in order to have the opportunities and choices necessary to participate in society.’ The study required focus groups to agree on the minimum needs for households of each type – items, activities and accommodation, and the quality of each of these things – and worked backwards from those budgets to price real items in real shops, and put a figure on the cost of living at an agreed standard in Guernsey today.

304. The Minimum Income Standards methodology was developed by the Centre for Research in Social Policy (CRSP) at Loughborough University, supported by the Joseph Rowntree Foundation. Academics from CRSP structured and led the research in Guernsey, but the data used was thoroughly local. Officers at the Social Security and Housing Departments were responsible for pricing thousands of items at tens of different local retailers, enabling researchers to work out an accurate, local life-cost value for each item.
305. Eight focus groups, composed of seven to ten local people each, were selected randomly by telephone and recruited by certain characteristics in order to represent a cross-section of society. These people discussed and made decisions as to the items needed by different types of household, including working-age adults, adults with dependent children, and pensioners. Experts on heating and nutrition reviewed the budgets to ensure that they were healthy, but the decision-making process – on the type, quality and lifespan of each item – was entirely focus group-led, ensuring that the result of the study has been the income necessary to maintain a socially acceptable minimum standard of living in Guernsey.
306. The principles of Minimum Income Standard methodology are very relevant to the setting of supplementary benefit requirement rates. When requirement rates were first set in the UK in 1942, the justification was based on a crude household budget, which “singled out some items to be necessary, everyday items like a newspaper for example, but neglected others such as contraceptives or cosmetics.”⁶ The idea of setting household budgets has since been lost, but the Minimum Income Standards study returns to this principle, based on a scientifically and socially agreed budget of household essentials for a range of different household types.
307. As agreed by more than 40 focus groups in the United Kingdom, and 8 focus groups in Guernsey, a minimum socially acceptable standard of living should include all the essentials for survival – food, clothes and shelter – but should also have scope for encouraging human development, by taking account of physical and mental wellbeing. Opportunities for personal choice, responsible decision-making and participation in social and cultural life are therefore included. For example, a small budget is set aside for sport and leisure activities. Participants also felt that people on a minimum income should also be enabled to give gifts, and set aside a small sum for Christmas and birthday presents.

⁶ Deeming C, 2010. “Unfinished Business: Peter Townsend’s Project for Minimum Income Standards.” Personal Finance Research Centre, Bristol.

308. The Minimum Income Standard study for Guernsey has shown a clear difference between the budgets required to live in Guernsey and the United Kingdom. This difference is due to a combination of factors, for example, the difference in the price of goods, the difference in need - to enable households in Guernsey to achieve a minimum socially acceptable standard of living, and the difference in provision i.e. medical and dental expenses.
309. The difference between the UK and Guernsey budgets was identified to have a particular impact on pensioners, whose living expenses are 44% higher on island. A pensioner's budget is still slightly lower than that of a single working-age adult but, compared with pensioners in the UK, it shows that there is no real discount associated with retirement in Guernsey – meaning that people who may no longer have a regular, reasonable level of income from work are struggling to meet an equivalent level of need.

Review of Requirement Rates

310. The full detail of the Minimum Income Standard study, including the nature of the differences between Guernsey and the UK, are set out in the Report from the Centre for Research in Social Policy, which is appended to this report. The study looked at all aspects of household expenditure, from housing costs and healthcare to food, clothing and furniture. As such, there is not a direct correlation between the household budgets produced and the supplementary benefit requirement rates.
311. Several items included in the Minimum Income Standard budgets are provided to people claiming supplementary benefit through a variety of allowances. Rent is funded through a separate rent allowance; medical expenses are covered separately; a fuel allowance is available in the winter months, and the childcare costs of people who return to work are offset against their earnings.
312. However, even when these additional allowances are taken into account, at one extreme a single adult receiving supplementary benefit is £37.14 short of their minimum need and at the other, a couple with 4 children is at least £162.33 short of their minimum need, according to the Minimum Income Standard study. The size of this gap varies for people in different household compositions, but nowhere are the current requirement rates sufficient to meet minimum needs.
313. The Department considers that the Minimum Income Standard study methodology is robust, and that the Minimum Income Standard developed for Guernsey provides the correct basis against which to measure the adequacy of requirement rates. As such, the Department recommends that supplementary benefit requirement rates are increased, with reference to the Guernsey Minimum Income Standard, in two stages.

314. Stage one would see an increase in requirement rates as shown in table 5 (figures based on 2011 rates):-

Table 5:- Current and proposed supplementary benefit requirement rates

2011	Short-term rates (£)		Long-term rates (£)	
	Current (paid for first 6 months of claim)	Proposed (paid for first 12 months of claim)	Current (paid after 6 months)	Proposed (paid after 12 months)
Single adult	128.87	153.25	158.41	172.40
Couple	185.57	248.26	228.97	279.30
Non-householder couple	-	191.16	-	215.06
Non-householder (18+)	98.14	118.00	122.99	132.75
Non-householder (16-17)	66.71	118.00*	66.71	132.75*
Child (18+)	98.14	118.00	122.99	132.75
Child (16-17)	83.30	70.02	104.16	70.02
Child (12-15)	51.59	70.02	64.40	70.02
Child (5-11)	37.45	52.25	46.69	52.25
Child (0-4)	27.30	52.25	34.44	52.25

**16- and 17-year-olds would only receive benefit as independent claimants by exception, based on a set of criteria agreed by the Department and accepted by Education and HSSD.*

315. As part of the review of requirement rates, the Department intends to recommend the introduction of a new requirement rate (non-householder couple) which would apply in respect of couples who live with family or friends. In the current supplementary benefit, the requirement rate applicable in respect of couples who live with family or friends is either £185.57 or £228.97 per week (depending on whether short or long-term rates are being paid). This couple rate is intended to take into account the additional costs that people who are renting or are home owners, may have to pay. The Department believes that couples, who are living with family or friends, should be treated in the same way as single people, and that there should be a lower requirement rate to reflect their housing situation. The Department recommends the introduction of this new rate to bring couple non-householders in-line with single non-householders.
316. The Department believes that the element of social participation in the Minimum Income Standard budgets is vital in order to reduce social exclusion and enable people with all levels of income to achieve a minimum acceptable level of social and cultural participation. This part of the Minimum Income Standard budget includes, for example, allowances for extra curricular school activities, including school trips for sport or educational purposes, and amounts for celebrating birthdays and other special occasions as well as budgets for leisure and social activities. However, the Department recognises that, at a time when all people are

being obliged to make compromises in their household budgets, it would not be reasonable to recommend substantial increases in requirement rates on the grounds of social participation alone.

317. Therefore, the short-term requirement rates, introduced in stage one, have been set to ensure minimum needs are met but do not include an element of the Minimum Income Standard budgets for social participation. Similarly, the long-term requirement rates ensure that minimum needs are met but also include a figure for 'half' social participation. The underlying principle is that both long and short-term rates should guarantee minimum needs but the long-term rates should enable an element of social and cultural participation.
318. Requirement rates, introduced in stage two, would see short-term rates increased to include half social participation and long-term rates improved to the full social participation figures.
319. In recommending this approach the Department aspires to the requirement rates set out for stage two, but, only commits to achieving them in a period of sustained economic growth. The Department believes that this represents an adequate and achievable set of requirement rates in the first instance and that the aspirational rates would only be achieved in more robust economic circumstances.

Short versus long-term rates

320. At present, requirement rates apply at long-term levels to people who have been claiming supplementary benefit for six months or more, and at short-term levels to people who have been claiming for less than six months.
321. As part of the review of requirement rates, the Department intends to recommend that short-term rates should apply for twelve months rather than six. The Department believes that the short-term rates should be set at a level which protects the health and welfare of the people receiving it, although it might temporarily limit their chances of social inclusion. However, for people who have a work requirement, the period between the start of the supplementary benefit claim and the start of the long-term rate should be long enough to ensure that the promise of accessing those rates does not act as a disincentive to prepare for work or maximise earnings. The Department hopes that by increasing the length of time the short-term requirement rates are paid for, a person who is able and expected to work would not be encouraged to try and prolong their claim in order to receive the higher long-term benefit rates.

Welfare of children

322. While adults are, in general, more readily able to adjust to the difficulties of a temporary period of social exclusion, which could be the result of the short-term requirement rates, the effect on the welfare and happiness of children could be quite significant.

323. Any one year in a child's life is an important period, with significant developmental milestones and a level of access to horizon-broadening activities and trips, through school, which is much less readily available in later life. In addition, the possible negative effects of peer pressure and the need to conform on a child's wellbeing and self-esteem should not be underestimated.
324. Therefore, the Department recommends that children's requirement rates (short or long-term) should always include an element of social and cultural participation. Within stage one of the increase this would be set with reference to the half participation figure and stage two would include full participation.
325. The Department also believes that, primarily, there should just be two requirement rates for children, one for primary aged children and another for secondary aged children. The Department proposes that for children aged 0-10, families should receive £52.25 per week for each child, and for children aged 11-17 a higher weekly rate of £70.02 should be paid, which reflects the increased costs as children develop. If a child is still classed as dependent at age 18 (because they are still in full-time education) a rate equal to the non-householder allowance would be paid to parents (see table 5 in paragraph 314)

Uprating

326. If an appropriate benefit rate is agreed for 2012-13, it will be vital to ensure that it retains this value in future years. In order to do this, it is necessary to consider not just the rate, but the uprating policy.
327. As stated earlier, the Department considers that the methodology used to calculate the Minimum Income Standard is robust, and that it provides the correct basis against which to measure the adequacy of requirement rates. The UK Minimum Income Standard follows a several year cycle, in which it is uprated by RPI for a couple of years, repriced every two or three years, and budgets built up from scratch again every five years.
328. Since the proposed requirement rate values are proportions of the Minimum Income Standard budgets, they will lose their relative value unless they link with a regularly updated Minimum Income Standard for Guernsey. Therefore it should be noted that in the future, a Minimum Income Standard for Guernsey would need to be repeated on a regular five yearly basis.

MINIMUM INCOME STANDARDS – BENEFIT, COST AND RESOURCE IMPLICATIONS

329. The Minimum Income Standards study was carried out largely in-house by officers of the Social Security and Housing Departments. As such, the cost of outsourcing the academic research amounted to only £40,000, which was funded

from the Corporate Housing Programme with the support of the Treasury and Resources Department.

330. Increasing the supplementary benefit requirement rates will come at a financial cost. This must however be seen as an important and positive development in social provision in Guernsey. The Social Security Department believe that a properly functioning welfare system should provide all Islanders with an income sufficient to maintain an adequate standard of living. The States has a duty of care towards its residents. Provided that Islanders are demonstrably doing all they reasonably can to support themselves, any shortfall between household income and reasonable ongoing expenses should be met by the States. A detailed breakdown of the expenditure costs is set out in paragraphs 360 to 387.

PART 6

TACKLING FRAUD

331. The Department's active commitment to tackling supplementary benefit fraud will not diminish in any way through the modernisation of that benefit. Under the current and future Law, persons who misrepresent or fail to disclose any material fact, leading to an incorrect payment of benefit, will be subject to prosecution by the Department. In cases of prosecution, the penalty is decided by the Courts and any benefit obtained fraudulently is recovered as a civil debt.
332. It is, however, important to note that the vast majority of people claiming supplementary benefit are honest people, receiving financial assistance to which they are properly and legitimately entitled. In 2010, the Department's fraud investigators examined 220 cases in which there were allegations or suspicions of fraud, resulting in 41 claims being either closed or adjusted and leading to an estimated saving of £300,000. 41 claims in 2,300 amounted to only 1.78% of all supplementary benefit claims in payment at the end of 2010, and the saving of £0.3m, while significant, amounted to only 1.76% of the total cost of supplementary benefit that year. There was, however, doubtless a further, unquantifiable saving from the effect of the deterrent provided by fraud investigators.
333. The Department is very conscious of the potential opportunity for individuals to misrepresent or falsely declare their circumstances within a modernised scheme which is designed to be more flexible. However, this potential arises, not from increased dishonesty, but from the risk that individuals will not fully understand what is expected of them, at least at first. In order to mitigate this risk, the Department will:

- ensure that communication with customers is clear and precise at all times. This will enable people to understand their obligations clearly, and remind them of the ongoing requirement to report changes in circumstance, including changes in income;
 - ensure that the Department's Fraud Investigation section continues to provide a specialist, high-quality service, to detect and investigate cases of potential benefit fraud;
 - ensure that claims which show evidence of benefit fraud are referred to the Courts for prosecution. This will ensure that any public funds which have been paid in error are recovered by the Department.
334. The Department is preparing a streamlined internal procedure for the recovery of benefit debt, which is currently pursued on a separate basis by individual Sections. This will improve efficiency, consistency and transparency. Subject to States' approval, this Report will lead to other means-tested schemes, including the rent rebate schemes and potentially some education-related grants, being transferred to the new supplementary benefit scheme. That, in turn, will simplify and unify the means-testing process for State-funded support, which will make the system easier to understand by the person and reduce the scope for people to represent themselves in different ways to different Departments, however inadvertently.

TACKLING FRAUD – BENEFIT, COST AND RESOURCE IMPLICATIONS

335. The Department's investigation section has been in operation for many years. As explained in paragraph 332, in 2010 the Department received 220 allegations or suspicions of fraud. This equated to roughly 10% of the total number of supplementary benefit claims. The Department believes that once the rent rebate scheme is withdrawn and the requirement rates and benefit limitation are increased, many social housing tenants and other people in the community will become entitled to supplementary benefit for the first time. Assuming a similar number of allegations or suspicions of fraud are received in relation to these new claims, the Department has calculated that it will require two extra full time investigations officers. A detailed breakdown of the staffing and expenditure costs is set out in paragraphs 360 to 387.

PART 7

UPDATING SUPPLEMENTARY BENEFIT LEGISLATION

336. Supplementary benefit legislation was introduced in 1971 and has seldom, if ever, been subject to a thorough review. The proposals in this section of the Report seek to modernise the terminology of the Law, place a legal framework around current extra-statutory provisions, remove redundant provisions and references to defunct legislation, add new provisions as necessary and ensure that the Department is able to amend the Law with sufficient speed and flexibility to respond appropriately to developments in Guernsey's future welfare landscape.

337. The medical and paramedical expenses of people claiming supplementary benefit are currently paid under Section 6 of the Law, which enables the Department to make payments to meet exceptional needs. It is proposed that explicit provisions relating to the payment of medical and paramedical expenses, both during a claim and, in some cases, after its closure, as discussed in paragraphs 151 to 154, should be included in the legislation.

338. References to benefits which no longer exist, including 'widow's benefit, guardian's allowance, child special allowance', and to obsolete laws, including the 'Public Assistance Law' and the 1950 'Pensions Law' are to be removed. References to 'the Authority' are to be replaced with references to 'the Department'. Offensive terminology, such as references to 'handicapped' people, is to be removed or updated appropriately.

339. It is proposed to remove the provision for the Department to 'aid handicapped people to dispose of the result of their work' and to protect a person's 'moveable property' should that person be admitted to hospital or to a care home. These provisions are seldom, if ever, used and, in extraordinary circumstances, the Department could still use Section 6 of the Law to make a payment in respect of an exceptional need.

340. At present, people claiming supplementary benefit may choose to have any debts to the Department recovered by means of a deduction to their benefit. However, if they refuse, the Department has to pursue the debt as a civil debt. It is standard practice to recover debts from people receiving contributory benefits by means of a benefit deduction, provided that their resources are adequate to sustain that loss, and it is proposed that the same provision should apply to people receiving supplementary benefit.

341. The Department currently funds repatriation expenses, in exceptional cases, through the Public Assistance Law. It is proposed that this function should be transferred to the Supplementary Benefit Law, and that repatriation of living persons should be funded on recommendation of the Royal Court or the Home

Department, or in such other exceptional circumstances as the Administrator deems appropriate.

342. The Department also proposes to amend the 1971 Ordinance in order to remove the higher capital limit for people in care homes, which became obsolete with the introduction of the Long-term Care Insurance Scheme and that the resources of a couple, in which one partner is in long-term care, should be aggregated for supplementary benefit purposes.
343. It is also proposed that the earnings of any dependants who are of school age and still in full-time education should be disregarded for the purpose of the supplementary benefit calculation. The Department also recommends that supplementary benefit claims should be backdated for up to seven days if a person was prevented from making a claim the moment an urgent need arose, for reasons beyond their control – for example, if that need arose on a weekend or bank holiday, or if the person was incapacitated to the extent that he or she could not make contact with the Department.
344. This assortment of recommendations reflect a series of provisions that have become unnecessary and practices that have become commonplace since the introduction of supplementary benefit legislation in 1971. The changes bring the Law and Ordinance up to date for the early 21st century, but they risk becoming rapidly obsolete once again unless the mechanism for amending the law is changed. At present, it is only possible to amend the Law by Law, meaning that minor changes must wait for more significant ones in order to make the amendment worthwhile. As such, it is proposed that the Law should be able to be amended by Ordinance.
345. In an attempt to avoid citing excessive States propositions within this Report, States Members are asked to note that proposals relating to these legislative changes are covered by proposition 2. While paragraphs 336 to 345 provide a summary of the key legislative changes which are proposed they do not provide a comprehensive list. As such, a complete list of all legislative changes has been included in Appendix 3.

UPDATING LEGISLATION – BENEFIT, COST AND RESOURCE IMPLICATIONS

346. Given the scope of the changes set out in Parts 2 to 5 of this Report, it will be necessary to make substantial changes to supplementary benefit legislation in any case. It would therefore seem most appropriate and cost-effective to make these more minor changes at the same time.

PART 8

CONSULTATIONS

347. The Department has sought to engage with key stakeholders throughout Phase 1 of the Supplementary Benefit Review. A variety of communication strategies have been used to consult, gather ideas, present information, get feedback and encourage engagement.
348. The Department held initial consultation meetings and discussions with representatives of other States Departments, non-governmental organisations, charities, local landlords and business representatives.
349. The Department has worked closely with both officers and elected members of the Housing Department throughout, and their support and expertise have been vital in developing proposals to integrate the rent rebate scheme within a reformed supplementary benefit scheme, as well as providing a point of contact with social housing tenants.
350. The Department has met with representatives from other States Departments, non-governmental organisations and training providers to discuss work incentivisation proposals and consider options for developing a complete package of support within the scope of a modernised supplementary benefit scheme. The Department has also met and consulted with representatives from the Social Security Department in Jersey to learn of their experiences of introducing a system of Income Support in the Island.
351. Representatives of the Guernsey Disability Alliance, and other voluntary sector organisations, have also advised and informed our work incentivisation proposals and research into earnings disregards. The Education Department and Health and Social Services Department have provided invaluable assistance in developing these proposals.
352. Landlords, including representatives of the Guernsey Private Residential Landlords Association, were regularly consulted as proposals for the introduction of Maximum Rent Allowances were developed. This also enabled landlords to discuss related concerns, such as the scope for direct rent payments, with officers of the Department, which will inform the way the Department seeks to do business in future. The Department is grateful for their time and commitment, and is keen to continue working closely with landlords to improve communication and develop relevant policy in future.
353. Current supplementary benefit customers are, of course, major stakeholders in the Review, and the Department has sought to engage with them throughout. A three-week customer consultation took place in April 2011, in which customers entering the reception area at Edward T Wheadon House were asked to participate in a

survey. 43 (25%) of the 170 asked to participate did so, including people from a range of backgrounds, different genders and ages. The survey covered three key areas:

- Barriers to work and issues that prevented people increasing their hours
- The type of back-to-work support that is already useful, and ideas for further support
- Whether it would be fair to attach work-related conditions and obligations to benefit payments

354. Responses to the survey were broadly positive, and most customers said that one-on-one assistance and direct help with job-seeking were especially valuable. A sizeable majority of customers agreed that, in certain cases, benefit payments should be conditional on behaviour e.g. adequate jobseeking. Overall, customer feedback indicated that the work-focused proposals of the supplementary benefit review would be an improvement on current support.
355. In July 2011, the Green Paper presented another opportunity to consult customers. Both the Social Security and the Housing Departments wrote to all social housing tenants and supplementary benefit claimants, to summarise the Department's proposals for improving rent support, and committed to keeping all customers updated as proposals developed and further plans to change the system were introduced.
356. From the outset of the project, staff employed by the Social Security Department have been invited to contribute towards the supplementary benefit review and put forward their comments and suggestions. Often the people providing front-line services are ideally placed to understand the issues and practicalities of any change – and, ultimately, many staff will be involved in administering the modernised scheme in future – and some very interesting and valuable feedback has been received at all stages.
357. Dan Finn, Professor of Social Inclusion at the University of Portsmouth and Associate Director at the Centre for Economic and Social Inclusion, has offered expert advice and information on Work Incentivisation, including a presentation to members and officers of the Social Security Department, and officers of the Housing Department and Policy Council, on 'Reforming Benefits for People of Working Age: Lessons from Great Britain and other countries', in early 2010. Professor Jane Millar also gave a seminar on the introduction of tax credits during the research stages of this Report.
358. The dedicated work and expert knowledge of Dr Noel Smith and Abby Davis at the Centre for Research in Social Policy at Loughborough University have been invaluable in developing a Minimum Income Standards study for Guernsey and assisting in the preparation of a review of requirement rates.

359. The Department is very grateful to all of those who have engaged with and contributed to the review of supplementary benefit, through various means, and who have taken time to assist the Department in developing these proposals.

PART 9

SUMMARY OF BENEFITS, COST AND RESOURCE IMPLICATIONS

360. It is inevitable that improving the scope and adequacy of benefits in an out-dated and inadequate welfare system will come at a significant cost. Indeed, the higher the cost, the stronger the indication of a serious inadequacy in the current system. While these costs may be large they are unavoidable if the States are truly committed to social inclusion and ensuring that the poorest families in our community receive sufficient financial support.
361. It should be recognised that the proposals within this Report will have a major and positive impact on the lives of many low-income islanders who, subject to States approval, will receive benefit rates which are evidence based and determined according to minimum household needs. Replacing the overall benefit limitation with Maximum Rent Allowances will mean that people claiming benefits are able to receive the full amount of their calculated need - which will avoid households being forced into poverty or socially excluded.
362. In the 2009 Social Policy Plan, the estimated costs of pursuing high priority projects 'excluded any amount to be spent on reviewing the benefits system', because these were likely to be so significant that they would require a temporary step-change in the entire States' budgeting process.
363. The Treasury and Resources Department and the Social Security Department first met in February 2009 to plan for the modernisation of supplementary benefit. At that time, estimates from the Social Policy Group and the Treasury and Resources Department placed the cost of reforming the system between £5m and £9m (in 2009 terms). More recently, in a letter to the Department in March 2011, the Minister of the Treasury and Resources Department suggested that the modernisation could be funded '... by relaxing the objective within the Fiscal and Economic Plan of *a real terms freeze on aggregate revenue expenditure* to allow a one-off increase to specifically fund this matter.'
364. The costs arising from modernising the supplementary benefit system are very difficult to predict, as much depends on the behaviour of people who become entitled to claim benefit, and those who begin to face more substantial work-related requirements. However, the Department is conscious of the need to provide the States with financial estimates in order to inform the decision-making.

365. Officers from the Social Security Department, Housing Department and the Policy and Research Unit have been working together, using a snapshot of income tax and benefits data, to model the effect of the various proposed changes. It is essential to stress that while the modelling exercise has been undertaken thoroughly, it is based on significant assumptions, and cannot be treated as a wholly accurate projection of cost.
366. To ensure that the financial modelling correctly assessed the possible impact these changes may have on different households, three separate data sets were created. The first data set examined the impact on existing supplementary benefit customers, the second data set modelled the impact on social housing tenants (not receiving supplementary benefit) and a third data set which examined the impact on the remainder of the community (households who were neither on supplementary benefit or living in social housing). These financial models portray a complicated financial picture and therefore the information has been summarised and presented in table 6 as a global financial cost for the States (from General-Revenue).
367. The actual combined cost to the States of the supplementary benefit and rent rebate schemes in 2010 was £27m. Expenditure on supplementary benefit was just under £17m, while the rent rebate scheme cost the Housing Department nearly £10m in income foregone. The results of the financial modelling exercise show that as a result of the proposals recommended in this Report, annual expenditure is likely to increase by between £8.34m and £19.89m.
368. The Social Security Department recognises that as a result of such a sudden increase in expenditure, some of the changes being proposed will need to be introduced over a phased period in order to ensure that the necessary funding is secured and the Department is equipped to handle the expected increase in claims.
369. The Department proposes transitional measures that include:-
- Replacing the supplementary benefit limitation with maximum rent allowances over a phased period;
 - Increasing requirement rates as outlined in Part 5 of this Report;
 - Phasing out the rent rebate scheme over a period of some years
370. Phasing in these changes will allow the Social Security Department to adjust its practices and its use of staff resources and space in order to better accommodate larger numbers of people claiming supplementary benefit.
371. Table 6 shows a summary of the anticipated financial costs of these proposals over a phased period of three years. The figures presented in table 6 show the predicted global cost to General-Revenue. A best and worst case scenario has been presented along with the expected increase in expenditure for the three data sets which were modelled (paragraph 366).

372. Although the financial projections are shown over a 3 year period, the phasing in could be over a longer period. There are concerns as to the number of individuals and families that might become newly entitled to benefit under the revised system. It should be noted that, if additional claim numbers, and consequently costs, increase faster than expected, the phasing can be stopped at the point reached and increased no further. The fact that the proposed new requirement rates and the lifting of the benefit limitation can both be progressed incrementally, offers this control.

Table 6:- Summary of proposals showing predicted cost to General-Revenue

	Current (2011) cost	Estimated cost Best case scenario			Estimated cost Worst case scenario		
		Year 1	Year 2	Year 3	Year 1	Year 2	Year 3
a) Current beneficiaries	£23.03m ⁷	£25.46m	£26.14m	£26.51m	£27.71m	£28.39m	£28.76m
b) New beneficiaries living in social housing	£4.88m ⁸	£5.67m	£6.46m	£7.25m	£5.67m	£6.46m	£7.25m
c) New beneficiaries living in the community	£0	£1.20m	£1.92m	£2.40m	£5.85m	£9.36m	£11.70m
d) Additional staffing / other costs	-	£1.13m	£797k	£772k	£1.13m	£797k	£772k
Total cost (a+b+c+d)	£27.92m	£33.46m	£35.31m	£36.93m	£40.36m	£45.00m	£48.48m
Additional cost of proposal in 2011 terms	-	£5.54m	£7.39m	£9.01m	£12.44m	£17.08m	£20.56m
Anticipated saving	-	N/A	N/A	(£665k)	N/A	N/A	(£665k)
Net cost of proposals in 2011 terms	-	£5.54m	£7.39m	£8.34m	£12.44m	£17.08m	£19.89m

373. The table is divided into the three main groups modelled and the additional expenditure that could be seen for each group:-

⁷ This includes £5.2m which is the cost (to the Housing Department) of the rent rebate scheme for people who currently receive supplementary benefit

⁸ This figure represents the cost (to the Housing Department) of the rent rebate scheme for people who are not currently claiming supplementary benefit

- a) summarises the additional cost anticipated for current supplementary benefit claimants;
- b) represents the additional cost anticipated for social housing tenants who are not currently eligible for supplementary benefit - but who will become eligible in the future, and
- c) shows the additional costs associated with new claims which could be expected from people living in the community who are not currently eligible for support from supplementary benefit.

The row labelled (d. additional staffing cost) shows the additional staffing and expenditure implications relating to the implementation of proposals for phase 1 of the modernisation process.

Summary of proposals

374. Table 6 shows these proposals being phased in over a three year period

Year 1 includes the following proposals:-

- to increase requirement rates based on the results of the minimum income standard
- to commence the phasing out of the rent rebate scheme
- to introduce maximum rent allowances
- to increase the benefit limitation

Year 2 includes the following proposals:-

- to increase the benefit limitation
- to continue phasing out the rent rebate scheme

Year 3 represents the Department's ultimate aim where all of the proposals have been introduced.

- the overall supplementary benefit limitation has been removed and is now replaced with maximum rent allowances
- the Housing Department's rent rebate scheme is assumed to have been closed down (although the phase-out period is yet to be determined)

375. The transitional costs for implementing these proposals over a phased period (Years 1 and 2) are linear estimates and do not take into account any measures which the Housing Department may make to the rent rebate scheme during the transition, which may, in practice, be given effect over a longer duration.

Cost of rent rebates

376. While the rent rebate scheme costs the Housing Department around £10.17m in income foregone (2011 terms), the cost to the Corporate Housing Programme Fund is offset by an £8m allocation from the States on the recommendation of the Treasury and Resources Department. The shortfall between the cost of the rent

rebate scheme and the grant received from General-Revenue is approximately £2.17m and is currently met through the Corporate Housing Programme Fund.

377. With the closure of the rent rebate scheme this General-Revenue grant will no longer need to be paid to the Housing Department, as they will instead be able to collect the full value of social housing rents.

Best and Worst Case scenarios

378. The Department recognises that in replacing the overall benefit limitation with Maximum Rent Allowances there is a risk that some less socially-minded landlords may take advantage of the Maximum Rent Allowances to increase their rent prices. If a change in landlord behaviour was seen it would increase expenditure on rent allowances and would have no positive impact on the incomes of people receiving supplementary benefit. The Department has considered various options to mitigate against this risk (these have been outlined in paragraphs 389 to 394).
379. This change in landlord behaviour has been presented as a worst case scenario. In practice the Department expects additional expenditure to fall somewhere between the best and worst case projections.
380. In addition to the increased cost of formula-led supplementary benefit, there will be additional staffing and expenditure implications relating to the implementation of phase 1 of the modernisation process. Some of the additional staffing posts required will be permanent in order to manage the new claims expected from social housing tenants, as the rent rebate scheme is withdrawn, and from members of the community who might, for the first time, qualify for an income top-up from supplementary benefit. Others will be required in order to develop and deliver the new work incentivisation services.
381. The Department proposes to appoint contract staff to some of the additional posts so that it can more easily adjust staff numbers downwards once it has taken advantage of any efficiency savings that are derived from the new way of working under the modernised scheme. There is also a need to recruit temporary staff to assist with the initial phase of the transition to the modernised scheme and to budget for I.T. system changes, desktop applications etc. A summary of these staffing and expenditure costs are set out in table 7 below.

Table 7:- Summary of staffing and expenditure costs

Summary of Staffing and Expenditure Costs					
	Number of Posts	Six Months Prior to Year One	Year One	Year Two	Year Three
Salary Costs					
New Roles	6.25		258,523	258,523	258,523
Increase of existing roles	10.91		433,950	433,950	433,950
Contract Staff	2		75,250	75,250	75,250
Transition Staff	5	86,591	173,181		
Other Costs		82,000	30,000	30,000	5,000
Total	24.16	£168,591	£970,904	£797,723	£772,723

The additional staffing costs include 20.60% 'on-costs' – for employers social insurance contributions and employers pension contributions etc.

382. The expected financial benefits of these proposals are outlined in table 8. These costings do not take into account other outside factors which may affect the number of people entitled to claim benefit i.e. high unemployment. A central assumption with regard to phase one of the modernisation of the supplementary benefit scheme is that all other things are equal i.e. Guernsey does not feel the impact of the Global economic downturn, no new major unemployment issues take place and that there are job opportunities available.

Table 8:- Expected financial benefits following this review

Expected Financial Benefits to be Realised Per Annum after Year Three		
Work Incentivisation	Assumption	Expected Saving
By activating working age people already in receipt of benefit into work through work incentivisation initiatives, the Department anticipates the Island will benefit from an increased income tax take and contributions to social insurance income.	<ul style="list-style-type: none"> Based on the final year figure for 2010, total supplementary benefit expenditure was £17m. In July 2011, there were approximately 900 working age people receiving supplementary benefit. In addition there were 270 working age partners. Out of these approximately 350 were already working resulting in a total number of approximately 820. 	£600,000 (plus increased income tax and social insurance contributions)

Expected Financial Benefits to be Realised Per Annum after Year Three		
	<ul style="list-style-type: none"> In 2010 terms, 820 supplementary benefit claims will have cost approximately £6m. A 10% reduction in expenditure as a result of the new work focused approach to supplementary benefit would be £600,000 per annum. 	
Young People in Education	Assumption	Expected Saving
Improved education outcomes could lead to a reduction in number or duration of benefit claims by some young people, and proportionate reduction in expenditure. Claims from under 18s only allowed by exception.	<ul style="list-style-type: none"> In July 2011, there were 38 people aged 16 or 17 claiming supplementary benefit. The total cost of these claims was roughly £2,500 per week or £130,000 per annum. A 15% reduction in claims from 16 and 17 years olds would be approximately £19,500 per annum. 	£19,500

Expected Financial Benefits to be Realised Per Annum after Year Three		
New Ways of Working	Assumption	Expected Saving
Phase 1 of the modernisation of the supplementary benefit scheme presents opportunities to introduce new working practices which the Department expects to lead to efficiency savings.	<ul style="list-style-type: none"> Based on the final year figure for 2010, total supplementary benefit expenditure of administration was £1.80m. A 1% saving on existing supplementary benefit administrative expenditure would be approximately £20,000 per annum. A 5% saving on the new staffing costs associated with phase 1 of the modernisation process would be approximately £25,000 per annum. 	£45,000
	Total formula-led	£619,500
	Total capped admin budget	£45,000
	Total	£664,500

383. Based on these overall financial projections which include:-

- assessing the impact of these proposals on existing supplementary benefit claimants
- the anticipated new claims seen by people in social housing
- the anticipated new claims arising from the rest of the community
- the number of additional staff needed to adequately resource the new supplementary benefit scheme; and
- offsetting the expected financial savings

384. The Department believes that the final net cost of these proposals is likely to be in the region of between £8.34m and £19.89 per annum (based on 2011 figures).

385. The Department acknowledges the current Fiscal and Economic Policy objective of a real term freeze on aggregate States Revenue expenditure.

386. The start date of the implementation of the proposals contained in this Report is not specified at this stage. The Department is seeking States approval for the changes to the supplementary benefits system, on the understanding that the

Department will, following such approval, engage in discussion with the Treasury and Resources Department as to the possible sources of funding. Such discussions, in addition to including new sources of funding, will also investigate whether there is scope to reduce or target any of the current universal benefits that are financed wholly or partly from General Revenue.

387. Subject to the States approving the policy change proposals contained in this Report, the Department will, following the appropriate discussions with the Treasury and Resources Department, return to the States with proposals for the sources of funding and the proposed start date of implementation.

PART 10

SUMMARY OF RISKS AND SUCCESS CRITERIA

RISKS

388. In developing the recommendations and proposals set out in this Report, the Department has also considered and identified a number of potential risks which could, if not handled correctly, have unintended consequences and results. Therefore a number of actions have also been developed which will attempt to mitigate against these risks.

Maximum Rent Allowances

389. As described in paragraphs 230 to 248, the Department is keen to change the manner in which it pays rent allowances and proposes to introduce a system of Maximum Rent Allowances. Maximum Rent Allowances would make the system of rent support more transparent, and would enable people claiming benefit to make informed choices about the accommodation they occupy.
390. The Department recognises that with this change in policy there is a risk that some less socially-minded landlords may take advantage of the Maximum Rent Allowances to increase their rent prices. If a change in landlord behaviour was seen it would increase expenditure on rent allowances and would have no positive impact on the incomes of people receiving supplementary benefit.
391. Acknowledging this risk, the Department will ensure that Maximum Rent Allowances remain as upper limits rather than fixed amounts given to all people within a specified tenancy group. The actual allowance paid would never exceed the rent of the property occupied, and the Department would only pay a rent allowance equal to the Maximum Rent Allowance if the quality of the accommodation, as inspected by Social Security staff, justified the rent being charged and had not been unreasonably inflated.

392. The Department's Visiting Officers will continue to carry out informal rent assessments, and the Department will closely monitor the value of the rent allowances being paid, in order to ensure that introduction of this policy, which is designed to be transparent and to assist those on low incomes, is not subject to abuse.
393. The introduction of Maximum Rent Allowances is designed to be responsive to the needs of different households and will enable people to exercise more choice and discretion in choosing appropriate accommodation. However, the Department is also keen to ensure that people who do need to move have good cause for doing so. The Department does not want to pay higher rent allowances to people who choose to move to more expensive accommodation if they do not have a genuine need to do so. Therefore, the Department intends to strengthen its policy and will require tenants who are considering a move, to give advance notice of a move and have a justifiable reason for needing to move.
394. To mitigate further against potential fraud or the thoughtless use of money, the Department also recommends that supplementary benefit legislation is amended to make it an offence to use a rent allowance for any purpose other than the payment of rent.

Supplementary benefit limitation

395. As described in paragraphs 224 to 248, the Department intends to replace the supplementary benefit limitation with Maximum Rent Allowances, enabling households to receive, through the supplementary benefit requirement rates, the full value of their calculated benefit. While this is in line with the Department's objectives to ensure that benefit levels are sufficient to provide reasonable accommodation as well as a level of funds for day-to-day living to avoid social exclusion, there is a risk that this change in policy may encourage people on benefit to raise larger families.
396. The Department has given careful consideration to mitigating against this risk by introducing a benefit limitation linked to the number of children in a family. However, evidence shows that the number of large families receiving supplementary benefit support is such a small number that large families can hardly be considered to be commonplace.
397. Furthermore, the Department believes that a priority of the States should always be to safeguard the welfare of children and avoid child poverty. Impoverishing children and discouraging family formation is likely to increase the likelihood of social exclusion and strengthen inter-generational cycles of benefit dependency.
398. On this basis the Department does not recommend replacing the current benefit limitation with one linked to the number of children in a family. It is however, committed to closely monitoring the effect that this change in policy may have in

respect of the number of larger families receiving supplementary benefit in the future.

Longer claim durations before people enter work

- 399. Through this report the Department is bringing proposals to increase the supplementary benefit requirement rates with reference to the Guernsey Minimum Income Standard.
- 400. While the Department is totally committed to ensuring that people who are on a low-income and receiving benefit have a sufficient income, it does not want to create a situation where people who are able and expected to work, prefer to remain on benefit instead of entering employment.
- 401. The Department hopes that by increasing the length of time the short-term requirement rates are paid for, a person who is able and expected to work would not be encouraged to try and prolong their claim in order to receive the higher long-term benefit rates. This along with an increased focus on work and individual responsibility will also ensure that people are committed to improving their circumstances and maximising their individual earning potential.

Increase in costs and resources

- 402. As can be seen from the cost and resource implications summary in paragraphs 360 to 387, proposed changes to the supplementary benefit scheme will as expected, increase costs – both in terms of benefit expenditure and the necessary staff resources needed to support people into employment.
- 403. The Department expects that the integration of the rent rebate scheme with supplementary benefit will lead to a net increase in costs, by virtue of the fact that it is proposed that the overall benefit limitation will be replaced with Maximum Rent Allowances and that requirement rates will be increased. In particular, the eventual replacement of the benefit limitation will mean that people claiming benefits are able to receive the full amount of their calculated need. While this comes at a financial cost, however, the move must be seen as an important and positive development in social provision in Guernsey.
- 404. The Department plans to mitigate against a sudden increase in costs by introducing some of these changes over a phased period. This will ensure that the necessary funding is in place and will allow the Department to steadily absorb and deal with the anticipated rise in claims.

SUCCESS CRITERIA

405. In addition to identifying potential risks, the Department has also established a set of criteria which will measure the success of the new supplementary benefit scheme.
406. The Department recognises that following the implementation of the new supplementary benefit scheme it will need to be able to demonstrate that the additional expenditure and staff resources have been wisely invested and are having a positive impact on the delivery of a better and more effective supplementary benefit system.
407. A significant proportion of this review has focused on correcting some of the unfairness and inequalities which are present within the current system. The other essential part has concentrated on the effectiveness of the system as a tool to enhance people's work-readiness and individual responsibility.
408. As described in the summary of cost and resource implications (paragraphs 360 to 387) the changes being proposed will come at a cost, in terms of expenditure, staff resources and time. However, these changes will also have a major and positive impact on the lives of people on a low-income.
409. The following table (table 9) identifies some of the indicators which will be used to directly measure the impact of the supplementary benefit review. These measures are relatively easy to evaluate and can be monitored on a repeated and ongoing basis.
410. These measures can be compared to the review itself, they can be taken at regular intervals and are likely to involve concrete evidence (quantities, values, proportions, and durations).

Table 9:- Indicators which can be used to measure the impact of the supplementary benefit review

Direct Results	
Enabling people to engage with society and the community; maximising sustainable employment	
Indicator	Means that
More supplementary benefit claims which include earnings	More people are receiving supplementary benefit as 'in-work' top-ups
Fewer large fluctuations in the value of earnings	More people are in sustainable employment, not moving in and out of work
Shorter claim durations before people with a work requirement find employment	Work focused meetings, action plans and work rehabilitation is being effective

Direct Results	
Enabling people to engage with society and the community; maximising sustainable employment	
Indicator	Means that
Shorter claim durations before parents (caring for children over the age of 7) find work	More parents are finding and taking suitable work opportunities
More use of the childcare offset	More people with children are successfully moving into work
Higher numbers of back-to-work bonuses and recruitment grants paid	Long-term unemployed moving back into employment and employers are being encourage to take on long-term claimants
A greater proportion of the 16- and 17-year olds receiving supplementary benefit are staying in full-time education or entering work	Vulnerable young people who are claiming supplementary benefit by exception are encouraged to stay in education (to upskill and mature) or find work – not just remain unemployed

411. Other areas relating to indirect results and social consequences may be more difficult to measure. Social changes may not be a direct consequence of the supplementary benefit review itself and other factors may need to be taken into account. A full and complete measure of social change may require broad social studies which are not easily repeatable, but would help to demonstrate the impact this reform has had on the lives Islanders.

Table 10:- Indirect social indicators which can be used to measure the impact of the supplementary benefit review

Social Consequences	
Reducing poverty and social exclusion	
Indicator	Means that
Fewer people living on less than a socially acceptable minimum income (MIS)	Relative poverty in the island has been reduced and society has become more inclusive for people on low incomes
Fewer indicators of social exclusion or deprivation	
Less [depth of] relative poverty	

412. In order to obtain the true impact of the supplementary benefit review these indicators will be need to be measured at different intervals before, during and after implementation.

PART 11

RECOMMENDATIONS

413. The Department recommends the States:

1. to resolve that the Supplementary Benefit (Guernsey) Law, 1971 and associated items of supplementary benefit legislation are amended in order to:
 - a) enable the Department to define, by regulation, when a person is, or shall be deemed to be, 'capable of work' on either a full-time or a part-time basis;

(paragraphs 93 to 96)
 - b) make entitlement to supplementary benefit subject to such conditions and sanctions as the Administrator may reasonably determine in order to ensure that any person deemed 'capable of work' is obliged, if so directed by the Administrator:

(paragraphs 103 to 119)

 - ii. to engage with work or work-related activities;
 - iii. to attend work-focused meetings held by the Department;
 - iv. to attend a mandatory work or training placement;
 - c) enable the Department to define by Regulation persons and categories of persons who are, or shall be deemed to be, 'incapable of work', by reason of age, ill-health, impairment or caring responsibilities;

(paragraph 95)
 - d) classify parents whose youngest dependent child is aged seven or older as a jobseeker (that is to say a person who is actively seeking employment);

(paragraphs 120 to 127)

- e) enable the Administrator, at his discretion, to:
 - i. fund reasonable short-term childcare costs in order to facilitate occupational training or work rehabilitation for parents claiming supplementary benefit;
(paragraphs 147 to 150)
 - ii. extend entitlement to medical cover for up to six months if a supplementary benefit claim is terminated by reason of the claimant entering or increasing employment;
(paragraphs 151 to 154)
 - f) set the minimum age of entitlement to supplementary benefit as eighteen years, and after the completion of full-time education subject to such exceptions as the Department may by regulation specify;
(paragraphs 163 to 174)
 - g) enable payment of supplementary benefit to enable a person who is estranged from his family or leaving care, without financial support, to continue in full-time education;
(paragraphs 175 to 177)
 - h) replace the supplementary benefit limitation for persons resident in the community with maximum rent allowances linked to household size over a phased period;
(paragraph 224 to 238)
 - i) make it a criminal offence to use a rent allowance for any purpose other than for the payment of rent;
(paragraphs 238 and 394)
 - j) amend the definition of a dependant to include persons under the age of 18 who have left full-time education but are not gainfully employed;
(paragraphs 193 to 196)
- 2. to resolve that the 1971 Law and associated supplementary benefit legislation be amended to give greater clarity to certain existing provisions, add new provisions and remove redundant provisions, as set out in Appendix 3 of this Report and as may be necessary, supplementary or incidental thereto;
(paragraphs 336 to 345 and appendix 3)
 - 3. to resolve that requirement rates should be increased with reference to the Minimum Income Standard for Guernsey as defined in Part 5 of this Report;
(paragraphs 299 to 328)

4. to resolve that the Social Insurance (Guernsey) Law, 1978 and associated items of social insurance legislation be amended in order to enable the Department by resolution to pay grants from the Guernsey Insurance Fund to third sector organisations who engage with insured persons or employers to facilitate work rehabilitation or a return to work;
(paragraphs 109 to 111)
5. to direct the Housing Department to report to the States as soon as possible with proposals for the phasing-out of the rent rebate scheme;
(paragraphs 283 to 289)
6. to note the Education Department's support (in principle) for integrating the Educational Maintenance Grant and Clothing Grant with the new supplementary benefit scheme;
(paragraphs 197 to 199)
7. to note the Department's intention to re-name supplementary benefit 'Income Support';
(paragraphs 159 to 160)
8. to direct the Treasury and Resources Department to approve the additional staffing resources necessary to implement the proposals contained in this report;
(paragraphs 360 to 387)
9. to direct the Social Security Department, in consultation with the Treasury and Resources Department, to report back to the States, no later than September 2013, with proposals for the sources of funding necessary to give effect to the proposals contained in this report;
(paragraphs 360 to 387)
10. in the event that proposals for the sources of funding necessary to give effect to the proposals contained in this report are approved by the States, to direct the preparation of legislation necessary to give effect to the above recommendations.

Yours faithfully

M H Dorey, Minister
A H Brouard, Deputy Minister
S J Ogier
A R Le Lièvre
M W Collins

APPENDIX 1

A MINIMUM INCOME STANDARD FOR GUERNSEY

CRSP 618

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August 2011

1 INTRODUCTION AND KEY FINDINGS

The purpose of this research was to provide a Minimum Income Standard for Guernsey. The project was commissioned by the Department of Social Security and the Housing Department, and it was undertaken in 2011 by the Centre for Research in Social Policy (CRSP), Loughborough University.

The Minimum Income Standard (MIS) for Guernsey is based on what groups of members of the public think people need for a minimum, socially acceptable standard of living. The research found that the amount required to meet the Guernsey MIS, excluding rent and childcare was:

- £231 for a single working age adult without children
- £523 for a couple with two children
- £313 for a lone parent with one child
- £334 for a pensioner couple.

To put these findings in context it is noted that budgets required by different household types to meet the Guernsey MIS are typically between 20 and 30 per cent higher than in the UK for working age households, but over 40 per cent higher for pensioners. The biggest driver of these differences is higher prices in Guernsey, but they are also influenced by additional needs identified by the Guernsey research, as well as the fact that households pay for some things in Guernsey that they do not pay for in the UK. Key areas of difference between the Guernsey and UK MIS include:

- Retailers – there is a smaller range of low cost shops in Guernsey;
- Medical costs – in effect, costs for the National Health Service in the UK are deducted from taxes and do not appear in net MIS figures; in Guernsey, most medical costs are charged directly at point of service;
- Domestic fuel – the main UK MIS budgets include the costs of mains gas, whereas groups in Guernsey specified that costs should be based on electric storage heating. In Guernsey this represents a cheaper form of

heating than gas, but it still costs more than a similar level of heating would in the UK

- Transport – the main UK MIS includes costs for public transport and holiday travel within the UK; in Guernsey, groups included a second-hand car and some off-island travel. This creates a particularly wide gap for pensioners, who in the UK MIS have very low transport costs because they use their free bus passes to meet the majority of their transport needs, with a modest amount of money for the occasional taxi.

2 THE MINIMUM INCOME STANDARD APPROACH

What is MIS?

The Minimum Income Standard is a measure of income adequacy. It is the amount that people need in order to reach a minimum, socially acceptable standard of living, based on what members of the public think and taking into account expert evidence on issues such as nutrition and home energy consumption. It is calculated by specifying baskets of goods and services required by different types of household in order to meet these needs and to participate in society.

The first MIS was launched in the UK in 2008, followed by an ongoing programme of research. For further detail about this programme and the MIS UK budgets, see www.minimumincomestandard.org.

How was the Guernsey MIS constructed?

A sequence of groups were convened for detailed negotiations about what items and services a family would have to be able to afford in order to achieve an acceptable living standard.

The participants were put in the position of 'budgeting committee' and charged with deciding what hypothetical, case study households required to meet this

standard. Groups of Guernsey parents considered the needs of households with dependent children, pensioners discussed pensioner households, and so forth. All MIS groups work to the same definition of a minimum standard.

A minimum standard of living in Guernsey⁹ today includes, but is more than just, food, clothes and shelter. It is about having what you need in order to have the opportunities and choices necessary to participate in society.

The 'minimum' is defined as being about more than survival alone. It covers needs, not wants, necessities, not luxuries. In identifying things that everyone should be able to afford, it does not attempt to specify extra requirements for particular individuals and groups, for example, those resulting from living in a remote location or having a disability. Not everybody having more than the minimum income can be guaranteed to achieve an acceptable living standard. However, someone falling below the minimum is unlikely to achieve such a standard.

The Guernsey research draws on the wider MIS programme. In essence, the Guernsey research involved facilitating groups of members of the public to:

- review all commodities and allowances required in the UK MIS, which had been set to provide a minimum socially acceptable standard of living for urban households;
- isolate which of these provisions (if any) would be inadequate or unnecessary for people living in Guernsey; and
- agree how these should be altered, replaced or added to, to provide the same standard of living for households in Guernsey.

In the UK, groups work with a definition that reads 'A minimum standard of living in the UK today...'

The Guernsey MIS groups

In the first phase of the research, three Guernsey groups (parents, working age adults without children and pensioners) reviewed the list of items and services on which the MIS UK budgets are based. In doing so, they identified which items were similarly necessary to meet the needs of Guernsey households, and which needed to be revised. For example, the groups agreed that there would be no difference between the UK and Guernsey in the type of living room furniture people required, but household resources would need to be revised to allow access to medical services on the island in the absence of a national health service. Groups considered variations in terms of both the types of items that needed to be included and of the retailers where these items would be purchased.

The second phase of the research also included three groups (of different individuals) who reviewed decisions made in the first phase and focused on those areas requiring revision. For these areas, groups engaged in detailed negotiation to determine exactly what was required to meet the needs of Guernsey households. The final phase included two groups: working age adults with and without children, and pensioners – again, all fresh participants. The final groups reviewed decisions made by previous groups and focused on final outstanding matters.

Each of the eight groups included between seven and ten participants, carefully recruited to include people from a range of backgrounds.

Costing the Guernsey MIS budgets

Following these groups, all items in the budgets were priced in Guernsey, using retailers specified by groups. This included both items revised by the groups and items unchanged from the UK MIS budgets, which were repriced on the island. Much of the repricing work was undertaken by members of the States of Guernsey's Social Security Department and Housing Department, working in close contact with the CRSP research team.

The States of Guernsey team provided further information on housing dimensions and types to the Energy Audit Company, the fuel experts who calculated the domestic fuel costs used in the budgets. The Guernsey team also provided various local information and average expenditure data to inform the construction of transport, holiday and contraception costs.

3 BUDGET AREAS

This section reports on the items and services the groups agreed were necessary for a minimum, socially acceptable living standard in Guernsey in 2011. For context, it highlights how budget areas differ between Guernsey and the UK. It also notes how costs were identified for different items and services.

Housing costs

The groups discussed the housing requirements of different household types. The budgets are based on households without children living in one or two bedroom flats, and households with children living in two or three bedroom houses. The Guernsey MIS budgets include rent based on actual States housing properties in St Peter Port and St Sampson. (In practice, housing costs vary very widely, and for this reason rent is presented separately in the budget figures given in the following sections).

The budgets include other housing-related costs based on the actual properties mentioned above:

- water rates and waste water charges, (comparable with UK water charges).
- parish rates (significantly cheaper than the UK Council Tax)
- contents insurance (cheaper in Guernsey than the UK).

The budgets also include an amount for routine household maintenance based on expenditure data of average spending by different household types in States housing.

Fuel

A number of different fuel types are used across the island for household heating and hot water. The groups explained that it was likely that the properties in St Peter Port and St Sampson would use electric storage heating. While the UK MIS is based on households using mains gas, this is less widespread on the island.

Using specifications (dimensions and insulation quality) for actual properties, the Energy Audit Company (a specialist energy consultancy) calculated costs for different household types for electricity for lighting, appliances and electric storage heating. Calculations for heating costs take into account the well-being of household members and the need to maintain the fabric of the buildings. It is important to note that the accommodation used in the fuel calculations was social housing located in Guernsey, and is of a different size and insulation level to that used in the MIS 2008 budgets in the UK.

While Guernsey has a milder climate than anywhere in mainland UK, meaning that less fuel is required in order to reach acceptable levels of heating, electricity prices in Guernsey are approximately 20% more than in the UK.

Food

The Guernsey groups considered weekly menus developed by groups in the UK MIS and checked by a nutritionist to ensure that they meet UK Department for Health guidelines for healthy eating. Typical meals in these menus include, for example, cereal and fruit juice for breakfast, sandwiches and fruit for lunch, and chicken casserole, rice and vegetable for an evening meal, with variation of these meals though the week. The Guernsey groups agreed that these menus applied equally well in Guernsey as the UK.

Food in the UK MIS is priced at Tesco's. The groups specified that food in the Guernsey MIS should be priced at the Co-Op. As a result of this, food and drink costs in the Guernsey MIS are, on average, 36 per cent more than the UK MIS.

Clothing and household goods

The Guernsey groups agreed that, generally, there is no reason why minimum needs would differ between Guernsey and the UK in terms of clothing or household goods (furniture, bedding, cooking utensils, cleaning products, appliances etc). There were a few specific exceptions to this rule.

- Tumble dryers: the UK groups said that laundry could be dried on washing lines or airers near radiators, and so a tumble dryer was not a minimum need. The Guernsey groups said that occasional use of a tumble dryer was necessary. It was impractical to dry clothes on electric storage heating units. Also, the lack of launderettes on the island meant that most households did not have access to dryers outside the home.
- Internet: in Guernsey, as in the UK, groups asserted that internet access had become necessary for a minimum, socially acceptable standard of living. The secondary school curriculum – and increasingly the primary school curriculum – relies on pupils using on-line material. For adults, the internet is important for accessing employment opportunities, educational courses, news and information, price comparison and low cost shopping, arranging travel, and social networking – including use of Skype and other devices for contacting family and others off the island for free. In the UK 2010 MIS, all working age households agreed internet access, but pensioner households felt that this had not yet become a minimum requirement. In contrast, Guernsey pensioners agreed that it was essential, particularly for accessing educational opportunities (University of the Third Age) and as an economical means for keeping in touch with family living away from the island.
- Local telephone call charges: these appear markedly cheaper on the island than in the UK.

Overall, however, the main difference here between the Guernsey and UK MIS is the range of retailers available on the island. Goods in the UK MIS are costed at a wide range of retailers which includes a number of low cost shops (e.g. Tesco, Primark, Argos, etc). The lack of a similar range of low cost retailers in Guernsey means that higher budgets are required for clothes and household goods. The fact that Value Added Tax is not applied to these goods, as is the case for many goods in the UK, offsets the additional Guernsey costs – but only to a limited degree, and the Guernsey budgets for this items total, on average, 36 per cent more than in the UK MIS.

Personal goods and services

The Guernsey groups consistently set budgets for hairdressing which were noticeable higher than in the UK MIS.

Medical services

The groups agreed that medical insurance was a requirement for a minimum, socially acceptable living standard on Guernsey. Groups considered building a household budget for healthcare, by estimating the number and type of services likely to be accessed over a period of time, as a potentially cheaper option to insurance. However, groups highlighted that the risk with a fixed budget like this is that individuals may be inhibited from accessing care when they needed it, for example, if the household healthcare budget had run out or in order to economise to meet other expenses. Good access to healthcare was seen as an essential need, both to address immediate health concerns and as a preventative measure for long term health.

The groups specified the provision of medical insurance through a Friendly Society, including ambulance cover and contributions towards dental costs. Basic insurance schemes were agreed for children and working age adults, with enhanced schemes provided for pensioners. Taking account of the contribution paid under these schemes, the Guernsey MIS budgets include the rest of the

costs for dental treatment. They also include provision for prescriptions, contraception and optician charges.

As expected, medical costs are much higher in the Guernsey budgets than in the UK MIS, where the National Health Service provides free primary and secondary healthcare, free prescriptions, dentistry and optical care for children, subsidised dentistry for adults, and free contraception through family planning services.

Social and cultural participation

The groups agreed allowances for recreation and social participation, based on a selection of activities tailored for different household types. The description of the nature and frequency of activities was very similar to that in the UK budgets, although there was a greater emphasis in the Guernsey budgets on eating out for working age households without children. These groups suggested that adults in the UK may have access to a greater range of activities, whereas in Guernsey social life is largely focused on dining out with friends. However, their decision to allocate more for eating out and less for other kinds of social activity did not have a significant effect on the budget overall compared to the UK MIS.

The parents groups included allowances for extra curricular school activities, including school trips and sponsored events. Two differences between the Guernsey and UK budgets are of interest here. First, music lessons can be provided without charge in Guernsey schools, although instruments may need to be provided by pupils; in the UK, the costs of both lessons and instruments need to be met by families. Secondly, the groups identified that an additional cost for Guernsey families is that for paying for secondary school aged children to participate in school trips off the island, for sports or educational purposes. While the groups felt it was not necessary for children to take part in all such trips, they would be disadvantaged and feel excluded if they could not take part in any.

The groups agreed that Guernsey residents required, as a minimum, a one week holiday off the island, for example, to the UK. In addition, budgets for pensioners and working age adults without children include a weekend to a neighbouring island. Groups talked of the closeness of the Guernsey community and the benefit of occasional respite from it. They also talked of times when it may be necessary to travel off the island at short notice, such as to attend a funeral or urgent family business or accompany a relative travelling to the UK for specialist healthcare. Rather than adding separate budgets to meet the costs of such trips, groups agreed that they would be covered by budgets allowed for holidays.

In terms of cultural participation, the budgets include amounts for celebrating Christmas and for birthday presents for friends and family.

Taking these decisions into account, budgets for social and cultural participation in Guernsey are 45 per cent more for pensioners, 6 per cent more for working age adults , but approximately the same for families with children compared with the UK MIS.

Transport

The groups were generally positive about the potential benefits of public transport over car use on the island, on environmental grounds as well as in terms of traffic congestion. However, after much consideration, it was decided that for most on the island, the local bus service was unlikely to meet their minimum needs. It was perceived that dependence on the bus service would limit employment opportunities. Parents felt that they would be unable to manage and coordinate childcare, employment and other responsibilities if they had to rely on buses. Groups suggested that because bus services stop running in the evenings, and they do so earlier in the winter than summer, it could be difficult to attend evening activities and that this could represent a form of social exclusion.

For these reasons, the groups rejected the model of provision in the UK MIS in which transport needs are met by buses, with occasional taxi use. In terms of the latter, the groups asserted that number of taxi trips required by Guernsey households to maintain a minimum standard would be too expensive to be acceptable.

An important context when considering the difference in provision deemed acceptable in Guernsey and the UK is that the costs of running a car are less in Guernsey. Unlike the UK, there is neither a separate vehicle excise duty nor comparable requirement for a 'MOT' test on the island, and petrol prices are significantly lower. Groups also suggested that few people on the island did not have cars and that there were 'more cars on the island than they were people'. The relative low cost of driving and the cultural expectation of car ownership are likely to have at least some bearing on the groups' decision making.

The groups decided that as a minimum all households required one, second hand economy car – and they specified the age, make, model and size of vehicle required by different household types. In addition, an allowance for bus use was provided for secondary school aged children, and for the 'second' adult in households with two working age adults.

The transport budgets are based on figures provided by local Guernsey businesses for the vehicles, annual servicing, and motoring insurance. Petrol costs are based on average expenditure data for different household types on the island. The budgets include costs for child seats. Bus fares are based on use of the Ormer card.

Unsurprisingly, the inclusion of cars in the Guernsey budgets means that transport costs are significantly more than in the main UK MIS. A better comparison here, however, is with findings from research carried out by CRSP

about minimum income standards in rural areas in the UK¹⁰, in which cars were included. This shows that, overall, Guernsey transport budgets are about 15 per cent less than for households living in villages in the UK.

Childcare

Childcare costs in the Guernsey budgets are based on average expenditure per child according to child's age, uprated to 2011 from the States of Guernsey Childcare Needs Survey 2009/10¹¹. As these are average figures, this will include both those whose childcare costs are considerably lower than the stated average, and those who are paying considerably more. It is important to highlight that the Guernsey and UK childcare rates are not comparable. The UK figures are based on an hourly rate per child, using a model of childcare required when the parent (in lone parent families) or both parents (in couple parent families) are in full time employment. This is significantly more than the level of childcare actually used by most families.

Because childcare costs are likely to vary for different families and for different childcare providers, these costs are presented separately in the figures shown below.

¹⁰ See 'A Minimum Income Standard for Rural Households':
http://www.minimumincomestandard.org/mis_rural_report.htm

¹¹ Childcare Needs Survey Report, IFF Research
http://www.gov.gg/ccm/cms-service/download/asset/?asset_id=13585537 Downloaded 24/08/2011

4 CONCLUSION

The budgets required by households to meet the minimum income standard for Guernsey, excluding rent and childcare, are higher than in the UK. For working age households both with and without children, the difference is, on average, 26 per cent. For pensioners, the difference is higher at 44 per cent.

There are three contributory factors that help to explain the differences between the UK and Guernsey MIS budgets:

- difference in price;
- difference in need, and
- difference in provision.

For many items it is a combination of two or more factors that can help to explain the overall effect.

Difference in price is the key factor affecting clothing, food and household goods. While the absence of Value Added Tax offsets some of these differences, the net result is that costs for these budget areas are higher for people in Guernsey than in the UK. Fuel is also affected by price. On the one hand, the climate in Guernsey is milder than in the UK, so less fuel is needed to achieve the same level of heating. However, because electricity prices are higher, the same amount of fuel costs more in Guernsey.

Difference in need is particularly apparent in the transport budgets, where people on Guernsey specified the need for each household to have a car, and also to be able to travel off the island at least once a year. The Guernsey MIS therefore includes the costs of owning and running a car, which are higher than for the corresponding amounts for public transport and taxi use in the UK MIS, and for travel off Guernsey. Other instances of difference in need are the

tumble dryers and home internet access for pensioners included by Guernsey groups.

Difference in provision is behind the large differences between UK and Guernsey budgets for personal care. In the UK, costs for National Health Service are deducted from taxes and do not appear in net MIS figures, in Guernsey, most medical costs are charged directly at point of service. Therefore, the Guernsey MIS includes costs for contraception for working age households, and medical insurance for all households. This, in addition to private dental costs, which are higher than the NHS-subsidised prices in the UK, means that Guernsey budgets are significantly higher for this component.

Detailed example budgets

This section presents Guernsey MIS budgets for four household types, broken down to show the different areas of household expenditure.

Single working age adult	£ per week
Food and drink	45.65
Clothing	12.96
Household goods and services	21.49
Personal goods and services	9.00
Medical services	11.81
Transport	44.99
Social and cultural participation	58.62
Heating, lighting etc.	16.71
Water rates and waste water charges	6.22
Parish rates	0.96
Contents insurance and household repairs	2.37
Total, excluding rent and childcare	230.78
Rent	133.00
Childcare	0.00
Total including rent and childcare	363.78

Couple parents with two children, preschool and primary school aged	£ per week
Food and drink	143.50
Clothing	40.31
Household goods and services	42.64
Personal goods and services	33.77
Medical services	36.53
Transport	64.06
Social and cultural participation	114.52
Heating, lighting etc.	27.33
Water rates and waste water charges	8.54
Parish rates	2.65
Contents insurance and household repairs	9.03
Total, excluding rent and childcare	522.88
Rent	220.56
Childcare	158.32
Total including rent and childcare	901.76

Lone parent with toddler	£ per week
Food and drink	67.43
Clothing	25.38
Household goods and services	30.55
Personal goods and services	24.32
Medical services	17.50
Transport	52.47
Social and cultural participation	61.07
Heating, lighting etc.	23.63
Water rates and waste water charges	7.33
Parish rates	1.36
Contents insurance and household repairs	1.81
Total, excluding rent and childcare	312.85
Rent	186.32
Childcare	89.43
Total including rent and childcare	588.60

Couple pensioners	£ per week
Food and drink	86.93
Clothing	14.74
Household goods and services	24.98
Personal goods and services	27.45
Medical services	26.71
Transport	39.00
Social and cultural participation	79.86
Heating, lighting etc.	20.15
Water rates and waste water charges	7.22
Parish rates	1.53
Contents insurance and household repairs	5.21
Total, excluding rent and childcare	333.78
Rent	168.27
Childcare	0.00
Total including rent and childcare	502.05

Budget summaries

This section presents Guernsey MIS budget totals for eleven household types.

Household type	£ per week			
	Total budget	Rent	Childcare	Budget excluding rent and childcare
Single pensioner	356.17	133.00	0.00	223.17
Couple pensioner	502.06	168.27	0.00	333.79
Single working age adult without children	363.79	133.00	0.00	230.79
Couple working age adult without children	542.16	168.27	0.00	373.89
Couple + toddler	686.51	186.32	89.43	410.76
Couple + preschool + primary school child	901.77	220.56	158.32	522.89
Couple + preschool + primary + secondary school child	1026.66	220.56	158.32	647.78
Couple + toddler + preschool + primary + secondary school child	1177.47	220.56	240.66	716.25
Lone parent + toddler	588.62	186.32	89.43	312.86
Lone parent + preschool + primary school child	793.13	220.56	158.32	414.25
Lone parent + preschool + primary + secondary school child	923.48	220.56	158.32	544.60

Acknowledgements

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We would like to thank Emilie Yerby, Amanda Robilliard, Helen Walton and their colleagues from the Social Security Department, the Housing Department and the Policy and Research Unit, for their untiring assistance with pricing and sourcing information, and in particular Catherine Peet for her invaluable support and contribution to the project.

Thanks are also due to Bill Wilkinson of the Energy Audit Company for his work on the household energy budgets, Karen Kellard and BMG Research for the recruitment of participants, and Nicola Selby and Sharon Walker at CRSP for their dedication and support.

APPENDIX 2**CURRENT WORK-RELATED INITIATIVES**

Initiative	Description
Work trial	Chance to demonstrate capability to an employer where a real job is on offer. (Benefit remains in payment).
Work experience	Extended work experience with learning goals. (Benefit remains in payment).
Gradual return to work	Phased return to work following long-term sickness. (Some benefit remains in payment).
Kick start	One to one training with trades' people aimed at young people at risk of long-term unemployment. (CEPS wage paid).
Basic skills training	Help with basic I.T., reading and number skills. (Benefit remains in payment).
Short-term training	Help for the long-term unemployed or those requiring retraining following illness. (Benefit remains in payment).
Back to work bonus	One-off lump sum payable following a return to work and claim closure in cases of long-term unemployment and long-term sickness.
Job start expenses	Help with some of the costs associated with starting work, such as tools, boots, clothing etc.
GOALS	Motivational course aimed at tackling barriers to employment by improving self-esteem and developing a positive mental attitude. (Benefit remains in payment).
Community & Environmental Projects Scheme (CEPS)	Paid work and training opportunities for people who are not working due to unemployment or long-term illness. (CEPS wage paid).
Recruitment grant	Staged payments to an employer to recognise the extra training and support required when recruiting someone who has been long-term unemployed or long-term sick.
The "Get into ..." range of training courses	Short courses aimed at unemployed young people to help identify their skills aptitude. Type of course often dictated by vacancy market and feedback from employers on particular trades. (Benefit remains in payment).
Food and Retail Skills Shop	Promoting work opportunities within the food and retail sectors and provision of advice, support and training.

APPENDIX 3**UPDATING SUPPLEMENTARY BENEFIT LEGISLATION****Table 1 – Proposals to amend The Supplementary Benefit (Guernsey) Law, 1971 (“the Law”)**

Ref. No.	Section of Law	Issue	Proposal
1	Section 2	<p>Classifications</p> <p>In order to qualify for supplementary benefit, a person has to be ordinarily resident in Guernsey and fall under one of ten classifications (see appendix 3a). Under the proposed new Income Support model, classifications will no longer be necessary as financial assistance will be available to anyone who meets other eligibility criteria (e.g. age, residency, work requirements) whose resources are insufficient to meet their needs.</p> <p>If the classifications are dispensed with, it will still be necessary to have a set of basic eligibility tests covering age, residency, income and perhaps work requirements for some or all adult members of the household.</p> <p>Age</p> <p>The Department proposes that the minimum age of entitlement to supplementary benefit should be 18 years old, except by exception. It is proposed that an additional requirement should be that claimants have left</p>	<p>A. To delete the ten classifications and replace them with a more general test of eligibility, covering age, residency, work requirements and income.</p> <p>B. To include an enabling provision within the revised Law, allowing the States to prescribe residency conditions by Ordinance.</p> <p>C. To include a clear presumption of work within the Law which focuses on those people who are expected to work.</p>

Ref. No.	Section of Law	Issue	Proposal
		<p>full time education. This is to ensure that young people who turn 18 during year 13 (i.e. during their final year of A-level or NVQ courses) cannot claim supplementary benefit by virtue simply of being 18 years old. Of course, if a young person aged 18 or over, or indeed under, meets the necessary criteria to be treated as an exception, to this general rule, supplementary benefit may be payable to them while they remain in full time education.</p> <p>Residency</p> <p>At present, a person can qualify for supplementary benefit if they are 'ordinarily resident in Guernsey'. In practice this means that a person can immediately qualify for supplementary benefit upon arrival and registration in Guernsey.</p> <p>A precedent exists for a residency test under the Long-term Care Insurance (Guernsey) Law, 2002.</p> <p>The Department believes there is merit in further investigating residency conditions in relation to entitlement to supplementary benefit and as such proposes that an enabling provision be made within the revised Law, allowing the States to prescribe residency conditions by Ordinance.</p>	

Ref. No.	Section of Law	Issue	Proposal
		<p>Work requirements</p> <p>The Department expects all adult members of a household to engage in full time remunerative work, unless they are exempt from so doing.</p>	
2	Sections 2(1)(a), 10, 11 and 28	<p>Use of the term “handicapped person”</p> <p>The wording of classification A “a handicapped person” is no longer in general use and is offensive. This term is also used in Section 10 of the Law – “Welfare arrangements for handicapped persons” and Section 11 – “Voluntary organisation for welfare of handicapped persons”.</p> <p>Section 28(1) of the Law defines a handicapped person as someone “<i>who is blind, deaf or dumb and any other person who... is substantially and permanently handicapped by illness, injury or congenital deformity.</i>”</p> <p>The Department proposes using the definition of ‘disabled’ as used in the UK Disability Discrimination Act, 1995, i.e. ‘Someone who has a physical or mental impairment that has a substantial and long term adverse effect on his or her ability to carry out normal day to day activities’.</p>	<p>A. To, substitute the word “handicapped” with a more acceptable term e.g. “a disabled person” or “a person with a physical or mental disability” in Sections 2(1)(a), 10, 11 and 28 of the Law.</p>

Ref. No.	Section of Law	Issue	Proposal
3	Section 6(1)	<p>Medical and paramedical expenses</p> <p>At present, the Department covers medical and paramedical costs for beneficiaries under Section 6(1) of the Law. This Section allows the Department to “<i>make a grant in money by way of a single payment to meet an exceptional need to a person to whom this Law applies whose resources are insufficient to meet his requirements...</i>”</p> <p>It could be argued that medical expenses such as a doctor’s appointment, a prescription medicine or an optician’s appointment are not strictly ‘exceptional needs’. Given the level of expenditure in this respect (£1.75m in total in 2010, £1.2m of which was for doctors consultations alone) and given that the Department intends to continue funding the medical and paramedical expenses of beneficiaries on a pay-as-you-go basis, it is proposed that explicit provisions relating to the payment of medical and paramedical expenses are made within the Law.</p> <p>In some circumstances, the Department may wish to continue covering the medical and paramedical expenses of people who no longer qualify for supplementary benefit by virtue of entering employment or increasing their earnings, for a period of six months, to ease the</p>	<p>A. To include explicit provisions relating to the payment of medical and paramedical expenses for claimants.</p> <p>B. To include an enabling provision within the Law to enable the Department to prescribe conditions of entitlement to assistance with medical and paramedical expenses (e.g. capital limits, maximum amounts payable, etc) by Regulation.</p> <p>C. To include a provision within the Law to allow the Department to pay the medical and paramedical expenses of persons who do not qualify for supplementary benefit, for such duration and subject to such conditions as the Department may prescribe by Regulation.</p>

Ref. No.	Section of Law	Issue	Proposal
		transition period.	
4	Section 9	<p>Prevention of duplication of payments</p> <p>This provision under Section 9 of the Law allows the Department to reimburse General Revenue from the Guernsey Insurance Fund in cases where supplementary benefit claimants, who are also entitled to other insurance-based benefits (unemployment, sickness, invalidity, maternity, industrial injury, industrial disablement, widow's benefit, guardian's allowance, child's special allowance or old age pension), receive more benefit than they were entitled to, by virtue of the fact that the amount of supplementary benefit payable was determined before the claimant received their insurance-based benefit.</p> <p>In addition, widow's benefit has been replaced with bereavement allowance and guardian's allowance and child's special allowance no longer exist.</p>	<p>A. To replace 'widow's benefit' with 'bereavement allowance' and to delete the reference to 'guardians allowance' and 'child special allowance' in Section 9(1) of the Law.</p> <p>B. To amend Section 9(1) of the Law so that it refers to 'all insurance-based benefits' rather than listing each benefit separately.</p>
5	Section 10	<p>Welfare arrangements for "handicapped" persons</p> <p>Section 10(1) provides the Department with the power to make arrangements for promoting the welfare of "handicapped persons". Subsection (2) lists the following arrangements which may be made by the</p>	<p>A. To delete sub-paragraph (c) of Section 10(2) and to amend sub-paragraph (d) with the wording, 'for providing disabled persons with equipment, aids and appliances, as required'.</p>

Ref. No.	Section of Law	Issue	Proposal
		<p>Department, although such arrangements are not limited to those listed:</p> <p><i>“(a) for enabling handicapped persons to receive instruction in their homes or elsewhere in methods of overcoming their disabilities,</i></p> <p><i>(b) for finding suitable work for handicapped persons,</i></p> <p><i>(c) for aiding handicapped persons to dispose of the result of their work,</i></p> <p><i>(d) for providing handicapped persons with medical or surgical assistance and medical or surgical requisites necessary to relieve or remove their disability.”</i></p> <p>(a), (b) and (d) remain relevant.</p> <p>Under (c), it is assumed that this means that the Department may assist a disabled person to sell a product or service. The Department does not, in practice, assist disabled persons in this way so this provision should be deleted.</p> <p>The type of assistance provided by the Department under (d) could be made more clear by rewording this provision as follows:</p> <p><i>“(d) for providing disabled persons with equipment, aids</i></p>	

Ref. No.	Section of Law	Issue	Proposal
		<i>and appliances, as required.”</i>	
6	Section 12	<p>Protection of claimants’ belongings</p> <p>Where a claimant is admitted to hospital or to a nursing home or is temporarily living in other accommodation and it appears to the Department that there is danger of loss, or damage to, any moveable property by reason of his temporary or permanent inability to protect or deal with the property, Section 12 of the Law places an obligation on the Department to provide temporary protection of claimants’ movable property. This would typically involve paying for the property to be removed and put into storage.</p> <p>Section 12 of the Law includes various powers which have not been used for over a decade, if ever: the Department or their appointee <i>‘shall have power at all reasonable times to enter [the claimant’s recently vacated place of residence] and... deal with any moveable property in any way which is reasonably necessary to prevent or mitigate loss thereof or damage thereto.’</i> Furthermore, anyone <i>‘who obstructs the exercise of such power’</i> is liable, on conviction, to a fine.</p> <p>Any expenses incurred by the Department can be recovered from the claimant through their supplementary</p>	<p>A. To repeal Section 12 of the Law, thereby removing the obligation of the Department to protect claimants’ belongings and to rely on Section 6 of the Law for protection of belongings in exceptional cases.</p>

Ref. No.	Section of Law	Issue	Proposal
		<p>benefit claim or, if needs be, as a civil debt.</p> <p>The Department proposes to divest itself of the powers given under Section 12 of the Law. In an emergency, the Department could legitimately pay for claimants' belongings to be placed in storage using the provisions of Section 6 ('Special Payments').</p>	
7	Section 20	<p>Duplication of assistance from Public Assistance Authority</p> <p>It is an offence, under Section 20 of the Law, for a person to obtain, or attempt to apply for or obtain, assistance under the Public Assistance Law, 1937 without disclosing that he is receiving supplementary benefit, or for any person to obtain, or attempt to apply for or obtain, supplementary benefit without disclosing that he is receiving assistance under the Public Assistance Law.</p> <p>In 2006, Article VIII of the Public Assistance Law, 1937, concerning Parochial Outdoor Assistance, was repealed by the Public Assistance (Amendment) Law, 2006.</p>	A. To repeal Section 20 of the Law.
8	Section 21	<p>Duplication with Pensions Law</p> <p>Section 21 provides that when "<i>calculating the means of a person for the purposes of the Pensions Laws in so far as they continue to have effect, no account shall be taken</i></p>	A. To repeal Section 21 of the Law

Ref. No.	Section of Law	Issue	Proposal
		<p><i>of a supplementary benefit.”</i></p> <p>“The Pensions Laws” means the Old Age and Blindness Pensions (Guernsey) Laws, 1950 and 1951. These Laws were repealed in 1955 and then replaced by the Supplementary Benefit Law in 1971 therefore Section 21 of the Law is now redundant.</p>	
9	Section 22	<p>Recovery of debts</p> <p>The Department may recover debts which arise as a result of misrepresentation or non-disclosure, whether fraudulently or otherwise, as civil debts. This requires the Department to take the debtor to court and obtain a court order. This is time consuming and costly. The Department’s preferred debt recovery procedure is to make a small weekly deduction from the person’s benefit, but this currently requires the person’s consent which is not always forthcoming.</p> <p>Under Section 39(A)(4) of the Social Insurance (Guernsey) Law, 1978, as amended, <i>“the cost of any arrangement or grant made under or by virtue of that section (regarding work rehabilitation) shall, in cases of fraud, misrepresentation or other wilful misconduct by the beneficiary of any such arrangement or grant, be recoverable from the beneficiary –</i></p>	<p>A. To amend Section 22 of the Law to allow debts to be recoverable from the beneficiary -</p> <p>(a) as a civil debt, or</p> <p>(b) by way of deduction from any benefit payable under or by virtue of -</p> <p>(i) the Supplementary Benefit Law, or</p> <p>(ii) any other Law, under or by virtue of which, a benefit or payment, administered by the Department is made or available.</p>

Ref. No.	Section of Law	Issue	Proposal
		<p><i>(a) as a civil debt, or</i></p> <p><i>(b) by way of deduction from any benefit payable under or by virtue of –</i></p> <p><i>(i) the Social Insurance Law, or</i></p> <p><i>(ii) any other Law, under or by virtue of which, a benefit or payment, administered by the Department is made or available.”</i></p> <p>The inclusion of a similar provision in the Supplementary Benefit Law would help to ensure the recovery of debts which arise as a result of misrepresentation or non-disclosure, whether fraudulently or otherwise.</p>	

Ref. No.	Section of Law	Issue	Proposal
10		<p>Repatriation</p> <p>On rare occasions, there is a need to pay for the repatriation of UK or foreign nationals who do not have the means to return home. Currently, in cases where it is considered to be in the best interests of the individual and the States of Guernsey, repatriation is funded by the Social Security Department under the Public Assistance Law, 1937.</p>	<p>A. To include a new provision in the Law allowing the Department to fund the repatriation of living persons to whom the Law would otherwise not apply, and also to those to whom the Law would apply, subject to:</p> <ul style="list-style-type: none"> (a) the Administrator receiving a recommendation from the Courts or the Home Department that the person should be repatriated, or in such other cases as the Administrator may determine; and (b) the person being able to demonstrate to the Administrator's satisfaction that they lack the necessary resources to fund their own journey home.
11		<p>Power to amend the Law by Ordinance</p> <p>At present, the Supplementary Benefit Law can only be amended by Law, which can be a protracted process. The Social Insurance (Guernsey) Law, 1978 was amended in 2007 to include a provision allowing the States to amend Parts I, II, V or VI of the Law by Ordinance. If a similar provision were included in the revised Law, this would make it a little easier to amend</p>	<p>A. To include a new provision in the Law allowing the States to amend the Law by Ordinance.</p>

Ref. No.	Section of Law	Issue	Proposal
		the Law in future.	
12	Section 28	<p>Reference to “the Authority”</p> <p>The Law and the Ordinance make numerous references to “<i>the Authority</i>” which is defined in Section 28 as “<i>the Guernsey Social Security Authority</i>”. Following the Review of the Machinery of Government in 2004, when the Authority was renamed the Social Security Department, these references need to be updated.</p>	<p>A. To replace all references to “the Authority” with “the Department” and define “the Department” as “the Social Security Department”.</p>

Table 2 – Proposals to amend The Supplementary Benefit (Implementation) (Guernsey) Ordinance, 1971 (“the Ordinance”)

Ref No.	Section of Ordinance	Issue	Proposal
i.	Section 2(1)	<p>Aggregation of resources of couples who are not living in the same household by reason of the admission of one member of the couple into long-term care</p> <p>Section 2(1) requires that where a husband and wife or two persons cohabiting as husband and wife, are members of the same household, their requirements and resources shall be aggregated.</p> <p>Where a member of a couple moves into residential or nursing care, they are treated as separate households and their resources and requirements are separately assessed for the purposes of calculating their individual entitlements to supplementary benefit. Depending on how the couple have organised their financial affairs, this can result in the person residing in long-term care or the person residing in the community being entitled to supplementary benefit, despite the spouse being relatively well off. The Department does not believe that financial responsibility for a person’s spouse should cease when one member of a couple moves into residential or nursing care.</p>	<p>A. To include a provision within the Ordinance to allow the Administrator to take into account the resources of the person’s spouse (or partner where two persons had been cohabiting as husband and wife), in cases where a couple are no longer members of the same household by reason of the admission of one member of the couple into long-term care, when determining those persons’ entitlement to supplementary benefit, where it is considered just and equitable to do so.</p>
ii.	Section 5	<p>Backdating supplementary benefit claims</p> <p>Section 5 of the Ordinance states that applications must be made in writing and that ‘a person <i>shall be treated as</i></p>	<p>A. To add a provision to the Ordinance to give the Administrator the discretionary power to backdate a supplementary</p>

Ref No.	Section of Ordinance	Issue	Proposal
		<p><i>having made an application on the date on which the application is received by the Administrator...</i></p> <p>This can cause problems when there is a delay in taking a claim (e.g. when the need for benefit arises over the weekend or on a bank holiday). At present, unavoidable or legitimate delays are essentially ignored and the application is treated as if it was made when the claimant first made contact with the Department. In other words, the claim is backdated.</p> <p>The Department proposes that the Administrator should have explicit discretionary powers to backdate a supplementary benefit claim for up to one week. Backdated payments would be rare, and, if a late application was made for reasons other than resource limitations, a backdated payment would depend on staff being satisfied that the claimant had good reason for not calling into the Social Security office.</p>	<p>benefit claim by up to seven days if the claimant has been delayed in applying for a legitimate reason.</p>
iii.	Section 6	<p>Use of rent allowance</p> <p>When calculating the amount of supplementary benefit payable, the 'requirement rates' of the claimant and his dependents are added together and a rent allowance, equivalent to the amount of rent payable or a lesser amount if considered reasonable by the Administrator having regard to the circumstances of the claimant and</p>	<p>A. To include a duty on claimants to use the rent allowance element of their benefit payment for the purpose of paying their rent/mortgage interest; and to make it an offence not to do so.</p>

Ref No.	Section of Ordinance	Issue	Proposal
		<p>the nature and standard of the accommodation concerned, is added to this. If the claimant has a mortgage, the rent allowance is equivalent to the interest element of the mortgage.</p> <p>Supplementary Benefit legislation does not currently require claimants to use the rent allowance element of their benefit to pay their rent/mortgage interest. This means that the Department currently has no recourse against the claimant if they chose not to pay their rent. This is something that landlords find difficult to understand and that management and staff find difficult to justify.</p> <p>Section 5(2) of the Law allows the Department to pay the whole or part of a person's supplementary benefit to some other person than the applicant where it appears that it is necessary for protecting the interests of an applicant. This section is used to enable the Department to pay rent direct to a claimant's landlord where it is considered to be in the claimant's best interests. However, in some cases landlords do not make the Department aware that their tenant has failed to pay their rent until large rent arrears have built up, at which point the Administrator either stops the claimant's rent allowance or arrangements are made to pay their rent direct to the landlord. In many cases, the landlord may be seeking to evict or may have already evicted the</p>	

Ref No.	Section of Ordinance	Issue	Proposal
		<p>claimant before the Department finds out that the claimant has failed to pay their rent.</p> <p>This situation is unsatisfactory for claimants, who can build up large rent arrears that they have little chance of paying back and/or face eviction, for landlords, who are owed large sums of money that they are unlikely to recover, and for the Department (and by extension the taxpayer) which is essentially defrauded (although not in legal terms, as noted above).</p>	
iv.	Section 15	<p>Accompanying appellants at appeal hearings</p> <p>Section 15 sets out the procedures to be followed at appeal hearings. Sub-paragraph (1) states:</p> <p><i>“The Registrar shall be present at all sittings of the tribunal and the appellant, who in the case of a woman may be accompanied by another person, and the Administrator shall be entitled to be present during the hearing;”</i></p> <p>This provision discriminates against men, as only female appellants may be accompanied by another person. It also assumes that no man would require the support or assistance of another person at their appeal hearing which clearly is ridiculous.</p> <p>Sub-paragraph (1) also appears to be inconsistent with</p>	<p>A. To delete “in the case of a woman” in Section 15(1) enabling all appellants may be accompanied by another person at appeal hearings, irrespective of their gender.</p>

Ref No.	Section of Ordinance	Issue	Proposal
		<p>sub-paragraph (2) which entitles the appellant “...to be heard at the hearing either personally or through a member of his family, an advocate of the Court or, with the consent of the tribunal, any other person.”</p> <p>The Department considers it reasonable for all appellants to have the right to be accompanied at appeal hearings.</p>	
v.	Section 23	<p>Sanctions for non-compliance</p> <p>Section 23 of the Ordinance relates to non-compliance and states that:</p> <p><i>‘Where an applicant refuses or neglects without reasonable cause to comply with... this Ordinance, the Administrator may suspend the payment of a supplementary benefit to that applicant during the continuance of such refusal or neglect...’</i></p> <p>It is a necessary provision designed to make the payment or determination of benefit conditional on the claimant either providing proof of his means or reporting in a timely fashion changes in his circumstances. But the existing all-or-nothing approach, whereby the only response to a single parent who refuses to fill out her annual review form (for example) is to suspend all of her benefit, can be problematic. If the refusal to comply is down to one half of a couple, or a single parent, it is difficult to punish the spouse or dependants by stopping</p>	<p>A. To legislate to allow the Administrator to <u>reduce</u> the amount of supplementary benefit payable in situations where a claimant refuses to comply with instructions.</p>

Ref No.	Section of Ordinance	Issue	Proposal
		<p>benefit entirely.</p> <p>The provision needs to remain, and claimants who persistently refuse to cooperate will ultimately lose their benefit whether they have dependants or not, but a slight amendment – the addition of the words ‘<i>or reduce</i>’ – would allow staff to apply ‘gentler’ sanctions earlier on, thereby taking steps to tackle the problem the moment it arises.</p>	
vi.	Section 24(A)	<p>Sanctions for jobseekers</p> <p>When the Department created a new classification for jobseekers, in 2005, it copied a piece of unemployment benefit legislation across to the Supplementary Benefit Law. Under the provisions of Section 24(A), the Administrator can reduce the amount of supplementary benefit payable, or suspend it for up to 10 weeks, if a jobseeker has been sacked as a result of his own misconduct; left work voluntarily and without good cause; failed to apply for a suitable vacancy; turned down work or training; or failed to carry out instructions intended to help him find work.</p> <p>These provisions do not apply to any other classification. As the proposed new benefit, Income Support, will place a greater emphasis on work and job-seeking activity, these provisions should apply to all claimants who ‘are</p>	<p>A. To legislate to give the Administrator the discretionary power to reduce or suspend benefit to any claimant who is ‘able and expected to work’, if that claimant, without good cause, gives up work, is sacked, refuses training or otherwise acts in such a way as to reduce his chances of improving his financial situation.</p>

Ref No.	Section of Ordinance	Issue	Proposal
		able and expected to work'.	

Ref No.	Section of Ordinance	Issue	Proposal
vii.	First Schedule, para. 1(a)(ii)	<p>Capital threshold for claimants residing in a residential home, a nursing home or the Guernsey Cheshire Home</p> <p>Before the Long-term Care Insurance Scheme was introduced in 2002, it was far more common for private care home residents to rely on supplementary benefit for help with their care home fees. The Department recognised that private fees were very high and that the regular supplementary benefit rates would be inadequate, and so introduced special 'care home benefit limitations' and a second capital threshold (£40,000 compared to the standard £20,000) to apply to claimants who reside 'in a residential home, a nursing home or the Guernsey Cheshire Home'.</p> <p>The capital threshold is often regarded as a cut-off point beyond which claimants are no longer eligible to claim; but in this context it is better to look at it as an <u>entry point</u> into the scheme.</p> <p>The introduction of the Long Term Care Insurance Scheme reduced the number of supplementary benefit claimants in care homes overnight. Today, there is not one single claimant in residential or nursing care who does not qualify for a long-term care grant and who has savings in excess of £20,000. Therefore the £40,000 threshold is, arguably, an irrelevance, and should be removed.</p>	<p>A. To remove the £40,000 capital threshold so that the £20,000 community threshold applies to all claimants.</p>

Ref No.	Section of Ordinance	Issue	Proposal
viii.	First Schedule, para. 5(2)(b)	<p>Requirement rates for long-term jobseekers</p> <p>In September 2007, following consideration of the Department's uprating report, the States agreed that people who receive supplementary benefit as a jobseeker, should remain at short-term rates of benefit after six months, unless the circumstances of a particular jobseeker are such that the Administrator considers it just and equitable for the individual to receive benefit at the long-term rate. This policy was introduced with effect from 11 January 2008.</p> <p>As the proposed new, Income Support benefit, will place a greater emphasis on work and job-seeking activity, these provisions should apply to all claimants who 'are able and expected to work', if a system of short and long term benefit rates is retained.</p> <p>Sanctions will be applied to those who do not meet their job-seeking requirements.</p>	A. To apply the proposed short-term and long-term requirement rates to all claimants regardless of their classification.
ix.	First Schedule, para. 11	<p>Children's earnings</p> <p>The supplementary benefit means-test is predicated on notions of collective requirements and collective resources. Section 4 of the Law states that:</p> <p><i>"Where it appears to the Administrator that an application for a supplementary benefit is providing for</i></p>	A. To disregard children's earnings by adding <i>'the weekly earnings of any person who would be treated as a child for the purposes of the Family Allowances (Guernsey) Law, 1950'</i> to the list, in paragraph 11 of the First Schedule, of resources wholly disregarded.

Ref No.	Section of Ordinance	Issue	Proposal
		<p><i>the requirements of some other person being a member of the same household, the Administrator shall...in determining the need for and the amount of a supplementary benefit take into account the aggregate requirements and aggregate resources of the applicant and the said other person.</i></p> <p><i>Where in determining the amount of a supplementary benefit to be paid to an applicant therefore the requirements of another person are taken into account, that other person is in this Law referred to as a dependant of the applicant.”</i></p> <p>Section 2 of the Schedule to the Ordinance continues:</p> <p><i>“Where a person has to provide for the requirements of another person who is a member of the same household, his requirements shall be taken to include the requirements of that other person, and in that case their resources shall be aggregated.”</i></p> <p>For supplementary benefit purposes, a dependant is a partner who lives in the same household as the claimant, or a child who lives in the same household <u>and is of pre-school age or still at school.</u></p> <p>Following the letter of the Law would mean valuing children’s earnings when determining the amount of supplementary benefit due. The situation does not often</p>	

Ref No.	Section of Ordinance	Issue	Proposal
		<p>arise, perhaps because it is rare for the school-age children of supplementary benefit families to work, perhaps because the claim process does not place enough emphasis on declaring children's earnings.</p> <p>The Department believes that valuing children's earnings is unfair because by doing so one is expecting the child to help support his family.</p> <p>Children's earnings are, in the context of this recommendation, distinct from children's capital. It is rare (but not unheard of) for the children of supplementary benefit claimants to have savings of several thousand pounds which, when aggregated with the parents' savings, cross the £3,000 or £5,000 thresholds and lead to a loss of medical cover and, ultimately, invoke the notional income formula.</p> <p>Capital should continue to be aggregated. Otherwise, it would be possible for parents to move savings into their children's accounts and put them beyond the reach of the means-test.</p> <p>Paragraph 11 of the First Schedule of the Ordinance sets out the types of income that are wholly disregarded for the purposes of determining a claimant's household resources. The Department proposes adding a provision to this paragraph to ensure that children's earnings are</p>	

Ref No.	Section of Ordinance	Issue	Proposal
		disregarded.	
x.	First Schedule, para. 17(1)(a)	<p>Disregard of £10 a week of other income</p> <p>Paragraph 17 of the First Schedule provides that £10 per week of 'other income' shall be disregarded for the purposes of calculating a claimant's income. Sub-paragraph (1) lists five exceptions to this rule where the full amount of income from these sources should be taken into account. The first on the list is:</p> <p>“(a) any weekly benefit, other than industrial disablement benefit, payable under the Social Insurance (Guernsey) Law, 1964;”</p> <p>The Social Insurance (Guernsey) Law, 1964 was replaced after the Supplementary Benefit legislation was introduced by the Social Insurance (Guernsey) Law, 1978. This reference, therefore, needs to be updated.</p>	A. To delete “1964” and replace with “1978” in paragraph 17(1)(a).

APPENDIX 3A**Extract from the Supplementary Benefit (Guernsey) Law, 1971, as amended**

“Persons to whom the Law applies.

2. (1) This Law shall apply to a person who is ordinarily resident in Guernsey and is –

- (a) a handicapped person
- (b) a person who has attained school-leaving age and who is incapacitated by illness or injury,
- (c) a person who has attained pensionable age,
- (d) a person over school-leaving age who is incapable of supporting himself and is likely to remain so incapable for a prolonged period,
- (e) a person who has attained school-leaving age and who is wholly or partly maintaining a child, being a member of the same household, other than a person who is living with his spouse or cohabitee,
- (f) a woman who is pregnant and in respect of whom it is certified, in such manner as the Administrator may determine, that it is expected that she will be confined within a period of 12 weeks from the date of any application for a supplementary benefit, other than such a woman who is living with her husband or cohabitee,
- (g) a person who has attained school-leaving age, and who is wholly or partly maintaining a child, being a member of the same household, during such time as that person is temporarily not living with his spouse or cohabiting with his cohabitee by reason of that spouse's or cohabitee's detention in legal custody,
- (h) a person who has ceased employment to care for a child, being a member of the same household, as a result of the incapacity of his spouse or cohabitee,
- (i) a person who has ceased employment in order to care for a member of the same household, being –
 - (i) his spouse or cohabitee,
 - (ii) his son or daughter, or
 - (iii) his parent,
 as a result of the incapacity of that spouse or cohabitee, son or daughter or parent,
- (j) a person who is actively seeking employment.

(2) For the purposes of subsection (1) –

"child" means a person –

- (a) who would be treated as a child for the purposes of the Family Allowances (Guernsey) Law, 1950, and
- (b) who is under 12 years of age.

"cohabitee" means a person who is living with a person to whom he is not married, in a relationship which is, or is deemed by the Administrator to be, equivalent to the relationship of husband and wife and irrespective of whether or not the person is of the same or the opposite sex,

"Guernsey" has the same meaning as it does for the purposes of the Law, as the Law has effect in the Island of Alderney under the Alderney (Application of Legislation) (Supplementary Benefit) Ordinance, 1971, as amended, and

"pensionable age" has the same meaning as the expression has for the purposes of the Social Insurance (Guernsey) Law, 1978, as amended.”

ANNEX 1 – LEGISLATION

1. THE NEED FOR LEGISLATION

This Report proposes fundamental changes to supplementary benefit provision, which will greatly enhance the work-focused elements of the benefit, and will enable the transfer of social housing tenants, currently receiving a rent rebate, to a single system of rent and income support for islanders with low incomes. The Report also contains proposals for more minor amendments to existing legislation, to bring that legislation up to date and set clear legal parameters for current extra-statutory provision.

Without an appropriate legal framework to support the changes proposed in this Report, the Department will be unable to develop supplementary benefit in a way which responds to people's needs, improves people's ability and motivation to work, and ensures that the needs of all people are met in a fair and equitable way.

2. FUNDING IMPLICATIONS

The costs associated with the Supplementary Benefit Review will be significant, as the removal of the benefit limitation will enable some families on low incomes, which had previously been excluded, to claim some amount of supplementary benefit; and as requirement rates are increased to meet minimum needs. Controls – in the form of maximum rent allowances tailored to household composition, and of regular work-focused meetings, appropriate work requirements and sanctions – will, however, ensure that these costs are, in all cases, the result of removing injustices in the current system, and are not excessive or open to exploitation.

Extensive financial modelling involving officers of the Social Security Department, Housing Department and the Policy and Research Unit has been undertaken, and the costs associated with reforming the supplementary benefit scheme have been outlined in paragraphs 360 and 387 of this Report.

3. RISKS/BENEFITS ASSOCIATED WITH ENACTMENT/NON-ENACTMENT

Without a legal framework, it will not be possible to make significant changes to the way supplementary benefit currently operates. Over time, this will move the island's welfare system closer to a crisis point, as people who require supplementary benefit assistance will not access the necessary encouragement and support to enter work and move towards personal independence; while islanders whose needs are currently left unmet by an arbitrary benefit limitation, and requirement rates which are set without reference to a calculation of minimum needs.

The costs of introducing a system which improves the adequacy of benefits, while ensuring that work-focused services and sanctions encourage people to maximise their earnings and reduce their total dependence on benefits, are significant. However, they must be viewed as a trade-off against the costs of allowing an outdated system, which demotivates and stigmatises people on low incomes, jeopardises the welfare of children in large families and inhibits the educational prospects of those who cannot stay in the family home, to continue indefinitely.

4. ESTIMATED DRAFTING TIME

The legislative changes needed for this Review are substantial and wide-ranging. It is therefore anticipated that the time needed to draft appropriate legislation will be considerable.

ANNEX 2 – GOVERNANCE

1. FOCUSING ON THE ORGANISATION’S PURPOSE AND ON OUTCOMES FOR CITIZENS AND USERS

The Social Security Department exists to provide social insurance benefits and social assistance, health and care funding to ensure the well-being of all islanders and the alleviation of poverty. By developing a supplementary benefit system which focuses on personal independence through work, enhancing child welfare and promoting parental responsibility, and ensuring a fair and unified system of income and rent support for all islanders, the Department is seeking to develop benefits and services which will safeguard the minimum needs and promote the personal autonomy of all people.

2. PERFORMING EFFECTIVELY IN CLEARLY DEFINED FUNCTIONS

Improving the rent and income support provided through supplementary benefit, and withdrawing the rent rebate scheme, will result in the Department becoming the sole provider of financial assistance to people on low incomes, to meet their accommodation and daily living needs. This is clearly in line with the Department’s mandate, and will enable the Housing Department to focus more fully on pure housing policy.

The development of work-related requirements and action plans coordinated by case managers positions the Department as a service provider in the field of adult development and training. Conscious that this risks an overlap with the work of the Education Department, representatives of that Department have been involved in consultation during the preparation of this Report, and the Social Security Department will seek to work closely with Education on an ongoing basis to access or deliver the best services to meet the diverse needs of people claiming benefit.

3. PROMOTING GOOD VALUES FOR THE WHOLE ORGANISATION AND DEMONSTRATING THE VALUES OF GOOD GOVERNANCE THROUGH BEHAVIOUR

The Review places the values of justice, dignity and personal responsibility at the heart of the supplementary benefit system. These values, which are reflected in the States’ Social Policy Plan, are thought by the Department to be essential in creating an inclusive island community, and it seeks to consider them in every development of the welfare system – in the form of both social insurance and social assistance – in Guernsey.

4. TAKING INFORMED, TRANSPARENT DECISIONS AND MANAGING RISK

The proposals in this Review were developed in light of expert advice, best practice in other jurisdictions and current experience of the effectiveness or inadequacy of the benefit system.

The Policy and Research Unit assisted the Department in an analysis of Income Tax and benefit data, which has enabled some cost estimates to be included in this Report. The cost estimates are approximate at best – being based on a range of assumptions – and the actual changes in the cost of supplementary benefit are dependent, to some extent, on the behaviour of people who could be eligible to claim it. However, the Department considered it important to include its best possible estimates, in order that the States might understand the full potential impact of these changes.

The Department has also been conscious, throughout, that it is necessary to construct a system with natural controls against excessive cost. As such, it has proposed a focus on work which will require people to maximise their earning capacity and minimise their total dependence on supplementary benefit; as well as a series of Maximum Rent Allowances – which are tailored more appropriately to household needs, but limit expenditure on accommodation to reasonable levels in all cases.

These controls should be a reliable form of mitigating risk and limiting costs. The Department will also continue with other methods of reducing cost and risk, by tackling benefit fraud and using Visiting Officer assessments to challenge unduly high rents.

5. DEVELOPING THE CAPACITY OF THE GOVERNING BODY TO BE EFFECTIVE

The production of this report and the proposals for change has dominated the agenda of the Social Security Department throughout the 2008 to 2012 term of the States. The reform of the supplementary benefit system has been the Department's top priority throughout. There has been a huge learning experience in this area of social policy, which has undoubtedly developed the capacity of the Department as a governing body.

6. ENGAGING STAKEHOLDERS AND MAKING ACCOUNTABILITY REAL

The Review of Supplementary Benefit has been a major undertaking, which required close work with other States Departments – in particular, the Housing, Health and Social Services and Education Departments – and with outside agencies in the private sector and third sector. It has also involved ongoing consultation with key stakeholders in the form of staff and, most importantly, of people currently receiving welfare support, either as supplementary benefit claimants or social housing tenants.

- (NB This report contains proposals which have far reaching consequences for the fiscal position of Guernsey and its economy. The States are currently running a structural deficit which is planned to be eliminated over the medium term through a combination of expenditure restraint, economic growth and targeted indirect taxation increases to comply with the States' Fiscal and Economic Plan and Fiscal Framework.

The Treasury and Resources Department supports the principles contained in this report and specifically the merging of the Rent Rebate and Supplementary Benefit schemes. While the Social Policy aims of protecting the most vulnerable in our society are to be commended, additional annual expenditure in the order of £8m to £20m as laid out in this report is not, in the opinion of the Treasury and Resources Department, financially prudent in the current climate. It is vital that Social Policy developments fit within the fiscal framework agreed by the States.

The Treasury & Resources Department does not believe that the Social Security Department should be charged with identifying a source of funding or that the States should be signing up to the proposed changes before an appropriate and sustainable source of funding has been agreed. The Department believes that this could only be considered once the outcome of the Corporate Tax review is known. Even then detailed economic modelling will need to be undertaken to understand the true impact of these changes in both fiscal and economic terms. Such material expenditure might, for example, necessitate the introduction of new taxes, such as a GST which would have consequences for the wider community and for the very individuals which this Report aims to help.

Therefore the Department will not be supporting this report at this stage. Before this project can progress the Department believes that the Corporate Tax Review needs to be completed and a funding envelope identified for any such large scale policies. In addition, the Department believes that the Income Support proposals must be prioritised against other significant forthcoming policy initiatives and not considered in isolation.)

- (NB While supporting the objectives of modernising the benefits system, acknowledging that there has been much good work behind the SSD's current proposals, and recognising that this work does seek to progress important aspects of the States approved Social Policy Plan, the Policy

Council, by a substantial majority, must strongly advise the States not to approve the present report, and its proposals.

This advice is given not only on fiscal and economic policy grounds, but also on social policy grounds (see comments of the Chairman, Social Policy Group in appended letter below). The report, if approved and implemented, would result in additional annual costs of anything from £8.34 million to £19.89 million. Not only is this a very large additional financial burden to pass to the new States, with no identified manner of funding, but it is very likely to compromise the new Assembly's ability to consider their priorities right across the full spectrum of States services for the majority, if not all, of its term.

The Policy Council is concerned that a States report is being submitted for debate with the band of potential costs being so wide (£8.34 million to £19.89 million). To put the scale of the potential spend in context, the States financial deficit in 2011 is estimated to be in the region of £27 million, while the States-approved Financial Transformation Programme is committed to reducing States expenditure by £31 million within its five years time span.

However meritorious the principles of the proposals being brought forward, and few would argue against the need to make the benefits system fairer with greater targeting of available resources at those in most need, it cannot be effective, responsible corporate governance to submit proposals for major revenue cost without identifying how such changes are to be funded sustainably. Without such work having been undertaken the States are being asked to commit to huge costs that have only been broadly defined within large tolerances, without knowing what the consequences could be.

For example, the Social Security Department has confirmed verbally that it might be possible to switch off (or target) family allowance, so that the majority of the sum currently used to fund this benefit can be re-allocated to fund the proposals. There may also be scope in some other non-means tested benefits to do likewise to help fund the modernisation package. However, depending on the costs, it may also be necessary to introduce some new taxes (perhaps GST) in order to find the additional £8.34 million to £19.89 million needed to fund the proposals. All of this remains unknown at present because the necessary work has not been done.

In any event, the current proposals are not in accord with the States-approved Fiscal & Economic Plan, which seeks to contain States expenditure as a critical part of achieving a return to the fiscal balance. This has been a top priority for the present States, and remains a serious

challenge for the next Assembly, especially given the increasing uncertainties concerning global and national economies heading into 2012.

The reality is that an important piece of work is being submitted in haste to the final meeting of this States Assembly, with only one half of the work having been completed. When the Policy Council first considered this report at its meeting on 19 December 2011, it advised the Social Security Department to withdraw its report, and to complete the work both in narrowing down the order of cost much more tightly and in working with the Treasury & Resources Department, and other involved Departments (especially Housing), to establish how any additional funding required could be found sustainably. This advice echoed that given by the Social Policy Group, which had met the previous week to consider the draft report. The letter dated 16 December from the Chairman, Social Policy Group to the Minister, SSD is reproduced below, but the final paragraphs are particularly salient:-

“This is a complex matter that will affect other Departments and benefits and time has not been allowed for full consideration of the proposals using different scenarios or consideration of the effects of the longer term demographic forecast.

I believe it would not be in the interests of any of us involved with social policy for the States to again consider this matter without fully addressing the points raised in the July resolutions or stating where funding for any additional expenditure would come from. The Social Policy Group has therefore suggested that consideration of this matter is deferred until such time as that further information can be provided.” (Deputy Hunter Adam, Chairman, Social Policy Group).

The Commerce & Employment Department has also expressed serious reservations over the SSD report, including:-

“...the Commerce and Employment Board’s concern that a document of this importance and size was not received until the morning of 08 December which provided minimal time for review and due consideration of the content. In addition, although there has been some liaison at officer level, it is understood that a first draft of the Report was discussed at the Social Policy Group only as recently as 09 December. Given the substantial issues of cost and affordability that arise from the proposals, my Board expressed its dissatisfaction that this document appears not to have been presented to the Fiscal and Economic Policy Group.....

In further regard to the issue of funding, as an overarching position my Board would be extremely concerned if it were to be raised in a way that impacted upon business such that the Island became a less attractive place in which to live and do business. It goes without saying that a community with a weakening economy finds itself even less able to fund adequate social services.”(Deputy Carla McNulty Bauer, Minister, C&E).

Unfortunately, in view of the scale and complexity of the proposals, and the timing of the submission of the report, it has not yet been possible to learn the reactions of the Housing Department or HSSD, but these will no doubt be forthcoming within the next few weeks.

The Policy Council feels that it is also important for States Members to bear in mind that irrespective of the current SSD proposals to modernise the benefits system, there is the ongoing challenge of meeting ever-rising social security costs which arise from the Island’s worsening demographics as the post war “Baby Boomers” reach retirement age and their pensions and other social benefits are paid for by a reducing work force.

The Policy Council is extremely disappointed that the Social Security Department has, despite the advice given from several bodies, decided to press ahead and submit the report for debate at the very last Meeting of the present States. While it may argue that it revised its report so that the proposals would not be implemented before it has completed work in liaison with T&R (and others), the reality is that it is asking the States to commit to a very large additional annual expenditure (£8.34 to £19.89 million), without narrowing the order of cost to anything like an acceptable tolerance range, or even more importantly identifying where the necessary additional funding may be found.

This will tie the hands of the incoming States, and is very likely to severely compromise their ability to prioritise service developments across the full range of government activities. This cannot be good corporate governance. It is already known that there will be other major service developments coming forward in the next States term, for example The Older People’s, Strategy and the HSSD 20:20 Vision. However, such work may well be wholly academic if there is no (or inadequate) resource to make available to such initiatives because the previous States, at their final meeting, took decisions which raise expectations in the community and tie the new States’ hands.

Finally, the Policy Council is now required to consider compliance with the six principles of good corporate governance in relation to all States reports submitted by Departments for inclusion in the Billet d’état. The above

comments in relation to the timing of this major report, and the lack of effective consultation with the Policy Council and key Departments represents an example of poor compliance by the SSD in relation to some of the principles of good corporate governance.

Given the above, the Policy Council, by a significant majority, strongly recommends the States to reject the SSD report and its proposals.

Appended letter from the Chairman, Social Policy Group:

Deputy Mark Dorey
Minister
Social Security Department
Edward T. Wheadon House
Le Truchot
St Peter Port
GY1 3WH

16 December 2011

Dear

Modernisation of the Supplementary Benefit Scheme – Phase 1

Following the special meeting of the Social Policy Group on the 15th December 2011, at which the Group considered the Social Security's States Report on the Modernisation of the Supplementary Benefit Scheme, the Group agreed by a majority to recommend Social Security delay the submission of this report to the States.

The information provided by the States Economist indicated that, through further iterations of the modelling, the confidence intervals for the costs of new beneficiaries living in the community might be reduced enabling a better estimate of this figure to be provided.

Whilst it is appreciated a great deal of time has been spent by the Social Security Department on going through the figures this has left an unreasonably small amount of time for the final modelling to be undertaken and for a complete robust set of figures to be provided. For such a major social policy change there needs to be as much detailed discussion as possible with all Departments concerned to take forward the States resolutions following consideration of the Green paper in July 2011.

The Social Policy Group were supportive of the principles for reform, as was the States in the July debate. However, to now progress this further, additional work on the detailed proposals, including the financial implications with costed transitional and final proposals and work on where

such an increase in expenditure may come from, needs to be undertaken. This information is not currently contained in the States report that has been submitted and there has not been time to consider the effects of the larger increase tabled at the meeting on 15th December on other areas of expenditure or income generation and subsequent effects on fiscal and economic policy.

This is a complex matter that will affect other Departments and benefits and time has not been allowed for full consideration of the proposals using different scenarios or consideration of the effects of the longer term demographic forecast.

I believe it would not be in the interests of any of us involved with social policy for the States to again consider this matter without fully addressing the points raised in the July resolutions or stating where funding for any additional expenditure would come from. The Social Policy Group has therefore suggested that consideration of this matter is deferred until such time as that further information can be provided.

Yours sincerely

Hunter Adam
Chairman
Social Policy Group)

The States are asked to decide:-

VI.- Whether, after consideration of the Report dated 21st December 2011, of the Social Security Department, they are of the opinion:-

1. That the Supplementary Benefit (Guernsey) Law, 1971 and associated items of supplementary benefit legislation shall be amended in order to:
 - (a) enable the Department to define, by regulation, when a person is, or shall be deemed to be, 'capable of work' on either a full-time or a part-time basis;
 - (b) make entitlement to supplementary benefit subject to such conditions and sanctions as the Administrator may reasonably determine in order to ensure that any person deemed 'capable of work' is obliged, if so directed by the Administrator:
 - i. to engage with work or work-related activities;
 - ii. to attend work-focused meetings held by the Department;
 - iii. to attend a mandatory work or training placement;

- (c) enable the Department to define by Regulation persons and categories of persons who are, or shall be deemed to be, 'incapable of work', by reason of age, ill-health, impairment or caring responsibilities;
 - (d) classify parents whose youngest dependent child is aged seven or older as a jobseeker (that is to say a person who is actively seeking employment;
 - (e) enable the Administrator, at his discretion, to:
 - i. fund reasonable short-term childcare costs in order to facilitate occupational training or work rehabilitation for parents claiming supplementary benefit;
 - ii. extend entitlement to medical cover for up to six months if a supplementary benefit claim is terminated by reason of the claimant entering or increasing employment;
 - (f) set the minimum age of entitlement to supplementary benefit as eighteen years, and after the completion of full-time education subject to such exceptions as the Department may by regulation specify;
 - (g) enable payment of supplementary benefit to enable a person who is estranged from his family or leaving care, without financial support, to continue in full-time education;
 - (h) replace the supplementary benefit limitation for persons resident in the community with maximum rent allowances linked to household size over a phased period;
 - (i) make it a criminal offence to use a rent allowance for any purpose other than for the payment of rent;
 - (j) amend the definition of a dependant to include persons under the age of 18 who have left full-time education but are not gainfully employed.
2. To resolve that the 1971 Law and associated supplementary benefit legislation be amended to give greater clarity to certain existing provisions, add new provisions and remove redundant provisions, as set out in Appendix 3 of this Report and as may be necessary, supplementary or incidental thereto.
 3. To resolve that requirement rates should be increased with reference to the Minimum Income Standard for Guernsey as defined in Part 5 of this Report.
 4. To resolve that the Social Insurance (Guernsey) Law, 1978 and associated items of social insurance legislation be amended in order to enable the Department by

resolution to pay grants from the Guernsey Insurance Fund to third sector organisations who engage with insured persons or employers to facilitate work rehabilitation or a return to work.

5. To direct the Housing Department to report to the States as soon as possible with proposals for the phasing-out of the rent rebate scheme.
6. To note the Education Department's support (in principle) for integrating the Educational Maintenance Grant and Clothing Grant with the new supplementary benefit scheme.
7. To note the Department's intention to re-name supplementary benefit 'Income Support'.
8. To direct the Treasury and Resources Department to approve the additional staffing resources necessary to implement the proposals contained in this report.
9. To direct the Social Security Department, in consultation with the Treasury and Resources Department, to report back to the States, no later than September 2013, with proposals for the sources of funding necessary to give effect to the proposals contained in this report.
10. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

EDUCATION DEPARTMENT

THE FUTURE AFFORDABILITY OF HIGHER EDUCATION

The Chief Minister
Policy Council
Sir Charles Frossard House
St Peter Port

20th December 2011

Dear Sir

1. Executive Summary

- 1.1 In November 2007 after consideration of the Report: Grants and Loans for Students Attending Courses of Higher and Further Education Off-Island, dated 30th August 2007 (Article XI of Billet d'État XXII of 2007) the States agreed to approve the principle of a new scheme of student contributions to fees, the implementation of student loans at some future point and

“to direct the Treasury and Resources Department to take account of the costs of the new scheme for funding Guernsey and Alderney students attending courses of further and higher education outside the Bailiwick when recommending to the States, Cash Limits for the Education Department – Higher and Advanced Education for 2009 and subsequent years, subject to a maximum Cash Limit of £7 million at 2006 values, maintained in real terms”.

The resolution is reproduced in full in Annex 1.

- 1.2 Subsequent to these resolutions, the States in September 2008, after consideration of the Requête, dated 23rd June, 2008, signed by Deputy M J Fallaize and twenty-two other Members of the States, agreed to review and revise the original propositions to the following effect:
- i. That the system of States financial assistance towards the tuition and maintenance costs of students attending courses of higher and further education off-island shall continue as at present until the end of the academic year commencing in September 2011.
 - ii. To approve the additional funds required for the Education Department's total revenue budget in order that the ring-fenced Higher Education Budget be increased annually in line with demand until the end of the academic year commencing in September 2011.

- iii. To direct the Education Department to review the existing scheme and report back on it to the States in 2011, or sooner if there is significant change in the funds needed for the existing scheme.
 - iv. To rescind Resolution 3 on Article XI of Billet d'État XXII of 2007.
- 1.3 (Resolution 3 was to approve the principle of a new scheme of student contributions to tuition fees.)
- 1.4 The Department, through this States' Report, is now reporting on its review of the scheme as required by the resolutions approved under the Requête, and contained in paragraph (iii) thereof.
- 1.5 The review has highlighted that there will be financial implications arising from the UK decision to increase tuition fees for home students from 2012. However, the financial consequences of these changes have been cushioned somewhat by the majority of the universities agreeing to the arrangements made through Universities UK for island students to be charged the same as home students and other matters explained in the main body of the Report. This has been a major issue for parents and students for many years. For the majority of students attending university in England fees will quite transparently be no greater than those levied for a home student.
- 1.6 The full effect of the new fee arrangements will take several years to mature. In the academic year 2012 only students entering university for the first time (roughly one third) will be affected by these. Therefore, any variation in cost will only have a limited impact on the 2012 financial year. From September 2013, this will increase to about two-thirds of our students and by September 2014 the majority of students will be subject to the new fee arrangements.
- 1.7 At maturity, in 2015, the full year effect of the changes is likely to be in the region of £637,000 per annum more than current commitments. The financial increase is expected to be £70,618 in 2012 and £283,041 in 2013 and these increases are containable within current cash limits if the limit is maintained in real terms.
- 1.8 The Education Department is requesting through this Report that the States of Deliberation note the implications of these changes for the Higher Education Budget and that the Department intends to return to the States in 2013, or sooner if circumstances dictate, to agree a budget for Higher Education from 2014 onwards.
- 1.9 The Higher Education budget has stayed at the same cash level, £6.5m, since 2006. Had the Budget been maintained in real terms at RPIX the figure would now be £7.67 million. However, the estimate for States' revenue expenditure for Higher Education Awards in 2012 is £6.2 million. This is based on current student numbers, parental assessments and the distribution of students across the fee bands remaining largely the same as now. Based on these assumptions, the current cash limit of £6.5 million if it is maintained in real terms is sufficient to

subsume the additional costs expected to arise in 2012 and 2013. There is no proposal to increase parental contributions for students entering university in 2012 beyond the normal inflationary elements. For students entering university in 2013, there will need to be a review of the current contribution rates to ensure that the costs remain within cash limit. For 2014 and subsequent years the department intends to return to the States in 2013 with a further review and recommendations for Higher Education funding.

2. Historical Background

- 2.1 Since 1991 an agreement has existed between the Channel Islands authorities and Isle of Man, and the UK Government that the fees for island students would not exceed the cost of providing for home students on similar courses. The fees island students 'pay' reflect both the student contribution paid by a student in England and the UK Government subsidy paid to Higher Education institutions. The student contribution since its introduction in England in 2006 has only ever reflected part of the cost of a university course. However, much of this is set to change with the new funding arrangements coming into force in England from September 2012.
- 2.2 The maximum parental contribution in 1991/92 was £2,500. In today's terms this equates to £4,726 using RPI as the inflator.

3. The New Funding Regime for Higher Education in England

- 3.1 In September 2012 it is intended that universities will increase fees for home students from the current level of £3,375 to a possible maximum of £9,000 per annum for new students. This will not affect students who commenced their courses prior to 2012. The majority of universities have indicated they will charge the maximum fee of £9,000, although as time has gone on an increasing number have applied to change their fee arrangements by charging slightly less. Universities in Scotland, Wales and Northern Ireland will also be able to raise their fees from 2012, but their home students will not be affected.

4. The Current Fee Rates for Islands' Students

- 4.1 The inter-insular authorities currently pay the majority of their fees across four fee bands. The current rates are as follows:

Band A	£21,938 (clinical years in medicine, dentistry etc.)
Band B	£ 9,867 (science and engineering courses etc.)
Band C	£ 7,768 (fieldwork/laboratory based courses etc.)
Band D	£ 6,194 (classroom based courses etc.)

- 4.2 These fee rates increase each year. The amount of the increase is normally about the level of UK inflation, but in 2010/11 there was a small decrease in fees charged to the islands as a result of reduced Government funding for Higher Education Institutions. This reduction was passed on to the Islands under the

current agreement stipulating that the Islands should pay no more or less than the actual cost of the course. The tuition fee rates for Guernsey/Jersey/Isle of Man students for the last five years are shown in Annex 2.

- 4.3 The issue in determining the fees payable from September 2012 (and therefore costs) in respect of island students was whether universities would:
- i. agree to continue charging island students on a recovery basis only i.e. charging only the economic cost of providing the course;
 - ii. agree to charge the same as for a student from England i.e. up to £9,000 irrespective of course or institution;
 - iii. agree places for island students from September 2012 only on the basis of overseas fees;
 - iv. agree on the basis of a combination of fees: charging for lower bands at £9,000 and higher bands at fees levels above £9,000.
- 4.4 The three islands negotiate fees periodically with Universities UK. The arrangements, which then apply, cover students from the three islands. In previous years, Universities UK has agreed a methodology with the islands' authorities to calculate the fee bands based on the cost of providing the course. This year, however, Universities UK advised the islands that it might not be able to continue this role because of advice it had received from its lawyers on Competition Law in the UK. This held up negotiations for a time while the matter was investigated. The matter was successfully resolved and Universities UK is continuing its role as an intermediary between the islands and UK institutions.
- 4.5 The islands through Universities UK have proposed to all UK institutions that islands' students enrolling on programmes of study in September 2012 should be charged the same fee as a student from England on the same course. However, there will need to be some exceptions to this where courses attract additional government grant. This is in keeping with the long established principle of universities accepting students from the Crown Dependency Islands (Jersey, Guernsey and the Isle of Man) and receiving no more and no less than they would receive for a home student following an identical programme of study. Students currently attending university would, under the same proposals, continue to be funded by the Department for the duration of their course and pay fees under the existing arrangements, uplifted annually to allow for UK inflation.

5. Student Awards

- 5.1 The Education Department makes two types of award for full-time students attending university: an award based on parental contribution or an independent student award, (where no financial contribution is made by the student after the first year of study. Students qualify for an independent award, inter alia, only

after 3 years' full-time employment and are therefore expected to make an initial contribution to their costs in the first year). The award covers two main elements: tuition fees and a maintenance allowance, which is for living expenses.

- 5.2 From 2010/11 the Education Department has assessed parental contributions on the basis of household income (as a result of the outcome of the Policy Council Report on matrimonial causes and biological fathers' contributions for further and higher education). Allowances are given against gross parental income and the parental contribution is subsequently assessed on the balance of income. This is termed residual income. The parental contribution is calculated at the rate of £1 for every £4 of residual income.
- 5.3 The detail behind these calculations and the scheme are contained in the Department's publication: "Guide to Higher Education Awards 2011 available on the Department's website www.education.gg/unifunding
- 5.4 Typically, a parent assessed at a full contribution will pay a maximum contribution to fees of £6,094 and will have to meet maintenance costs. The combined costs per annum are estimated to be £14,000 to £15,000 or £45,000 for a three-year degree. The cost to the States may vary from as little as £100 per year for a fee-subsidy only student on a Band D course, to more than £33,000 for a student receiving full support and studying medicine in the clinical years of study.
- 5.5 In 2010/11, which is the most recently completed academic year, there were 825 registered students. 305 students received full support for their tuition fees. (However, most of these would have contributed towards their maintenance costs with only 96 students receiving a full fees and maintenance award). The number of parents paying the maximum parental contribution was 352, leaving 168 parents partially funding their children's tuition fees as well as maintenance costs.
- 5.6 The total paid by parents to tuition fees was £2,733,083 in 2010/11, the most recent year for which these figures are available.
- 5.7 Worked examples of parental assessments are provided in Annex 3 of the Report.
- 5.8 Further details on current fees and allowances can be found in the Department's "Schedule of Fees and Allowances" document, available from the Department upon request or on the Department's website: www.education.gg/unifunding

6. Financial Implications

- 6.1 The estimated cost of fees for the 2010/2011 academic year, including both parental and States contributions, based on 825 students is about £7.1 million. These rates are based on current fee rates. The implication of the changes to be introduced from September 2012 based on current enrolments would be a

potential increase of £637,000 over and above existing costs, once all the changes are fully embedded. The cost schedule is as follows:

Course Band	Numbers 2010/11	Cost 2010/11	Projected 2012/13
A	29	£682,167	£551,000
B	123	£1,295,067	£1,107,000
C	357	£2,951,676	£3,213,000
D	281	£1,847,294	£2,529,000
Undefined	35	£301,525	£315,000
Total	825	£7,077,729	£7,715,000

- 6.2 The impact of the changes is gradual as existing students leave and incoming students on the new arrangements take their place.
- 6.3 The new fee arrangements will not come into place until September 2012 and will only therefore effect the last 4 months of the financial year. There is a gradual increase in costs as students subject to previous funding arrangements graduate and new students arrive on the new arrangements. The impact in the 2012 financial year is therefore limited: the increased cost in 2012 over the academic year is likely to be in the region of £212,000, but only a third of this falls in the financial year. In 2013, 2014 and 2015 there are further additional costs.

Increases to tuition fees from 2012/13 Academic and Financial Years

Academic Year	Increase	Financial Year	Increase
		2012	£70,618
2012/13	£212,402		
		2013	£283,041
2013/14	£420,599		
		2014	£496,036
2014/15	£637,271		
		2015	£637,271

- 6.4 In 2012 the consequences for the Department's HE Budget are minimal. The anticipated increase in costs will not require a change in the sum currently allocated. In 2013 the current cash figure of £6.5 million will need to be increased by inflation to reflect fee and cost of living increases.

- 6.5 The Department has managed this budget very effectively by introducing changes where and when necessary to keep within a cash limit which has remained at the same level since 2006. The Education Department has not had to approach the States for further funds in the intervening period through careful financial management of the Scheme through the introduction of various policy initiatives, including a higher level of compliance regarding income, capital and eligibility; changes in the way capital is assessed, with further changes to be introduced from September 2012; and, successful fee negotiations and a small drop in student numbers which is forecast to continue.
- 6.6 The Department believes that if the cost profile is borne out over the next two years:
- the current budget will be sufficient to meet the costs of Guernsey students attending universities in 2012
 - the Higher Education Budget from 2013 onwards should have an inflationary element added to it, to accommodate students attending university from 2013 onwards
 - The Department will need to report back to the States in 2013 with proposals on how the costs of Higher Education will be met from 2014 onwards.
- 6.7 The review has highlighted that there will be financial implications arising from the UK decision to increase tuition fees for home students from 2012.
- 6.8 The financial consequences of these changes have been reduced, however, due to several factors:
- i. The negotiations undertaken by the three islands - Guernsey, Jersey and Isle of Man - which led to an agreement made through Universities UK for islands' students. These arrangements will result in the majority of institutions assessing island students as home students and not as overseas students with overseas fee rates.
 - ii. The financial consequences have also been lessened by universities who initially indicated they would be charging the maximum level of fee of £9,000, subsequently applying to change these arrangements and revise their fees downwards. The Islands will be charged the lower rate in these instances.
 - iii. The fact that the post-18 cohorts feeding through in the next few years are smaller than is currently the case. This should lead to less take-up of university places if overall demand stays the same. There may also be a fall in university applications by students being put-off by increased costs and being driven by a desire to find work in a weakening economy.

7. Good Governance

This States Report complies with the core Principles of Good Governance as outlined in Billet d'État IV 2011, with particular reference to the applicability of:

Core Principle 1 *“focusing on the organisation’s purpose and on outcomes for citizens and service users”*

Core Principle 4 *“taking informed, transparent decisions and managing risk”*

Core Principle 6 *“engaging stakeholders and making accountability real”*

8. Recommendations

The States are asked:-

- i. to note the content of the Report and that the Education Department will not be seeking additional funding for higher education in 2012;
- ii. to direct the Treasury and Resources Department to take into account the funding implications detailed in this report when recommending the 2013 Cash Limit for Education- Higher and Advanced Education; and
- iii. to note that the Education Department will return to the States in 2013 with proposals on higher education funding from 2014 onwards and in particular to report on the level of budget required thereafter.

Deputy C. A. Steere,
Minister

Other members of the Education Board are:

Deputy A. Spruce
Deputy Dr. D. de G. de Lisle
Deputy R. W. Sillars
Deputy J. M. Tasker

ANNEX 1

IN THE STATES OF THE ISLAND OF GUERNSEY ON THE 2nd NOVEMBER, 2007

The States further resolved as follows concerning Billet d'État No XXII dated 12th October 2007

EDUCATION DEPARTMENT

GRANTS AND LOANS FOR STUDENTS ATTENDING COURSES OF HIGHER AND FURTHER EDUCATION OFF-ISLAND

XI After consideration of the Report dated 30th August, 2007, of the Education Department:-

1. TO NEGATIVE THE PROPOSITION to approve the additional funds for
The Education Department's total Revenue budget, to permit the ring-fenced Higher Education Budget to be increased in line with demand.
2. (1) To approve the introduction of the necessary enabling legislation to permit the implementation of student loans at some point in the future by amending the Education (Guernsey) Law, 1970.
(2) To direct the preparation of such legislation as may be necessary to give effect to their above decision.
3. (1) To approve the principle of a new scheme of student contributions to tuition fees.
(2) To approve the establishment of a student loans scheme, as set out in that Report, but subject to paragraph 10, with the expectation that the maximum loan value will not increase in real terms for a minimum of five years.
(3) To note the Education Department's view that up to an additional £0.5 million per annum may be required in the future.
(4) To direct the Treasury and Resources department to take account of the costs of the new scheme for funding Guernsey and Alderney students attending courses of further and higher education outside the Bailiwick when recommending to the States, Cash Limits for the Education Department – Higher and Advanced Education for 2009 and subsequent years, subject to a maximum Cash Limit of £7 million at 2006 values, maintained in real terms.
(5) To approve the formation of a Guernsey Student Loans Company (GSLC) as a special purpose company to administer student loans as explained in that Report.
(6) That the Directors of the Company shall be recommended by the Board of the Education Department, shall include representatives of the Treasury and Resources Department, and that the Directors of the GSLC are approved by the Treasury and resources Department.
(7) That the Education Department introduce regulations by Statutory Instrument for a student loans scheme in accordance with that Report.
(8) That student loan interest shall be subject to tax relief in Guernsey and this shall continue beyond the 2008 tax changes.
(9) That the Education Department be directed to report back to the States on the operation of the student loans scheme not later than five years after implementation in

2009 of the loans system.

(10) That the requirement for student funding (Student Loans) shall be for a maximum of 4 years' study in any event.

4. With reference to paragraphs 4.12 and 4.13 of the report, to direct the Policy Council to report to the States by no later than July 2008, with proposals, including (if necessary or expedient) proposals to amend the Matrimonial Causes legislation and / or Education legislation, to ensure that separated or divorced parents should contribute towards the costs of their biological children's further and higher education.

ANNEX 2**TUITION FEES**

Cost	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
A	£22,707	£23,332	£23,479	£23,523	£21,938
B	£10,138	£10,419	£10,498	£10,529	£9,867
C	£7,952	£8,174	£8,240	£8,268	£7,768
D	£6,313	£6,490	£6,547	£6,574	£6,194

Tuition fees are determined by the type of study a student undertakes.

Band A courses are the clinical years for doctors, dentists and vets where the student develops his or her skills in a hospital or practice.

Band B courses are typically science or engineering based where the student spends the majority of the time in a laboratory or workshop.

Band C courses are those where a student has some elements of the course delivered in a laboratory or field work setting.

Band D courses are those where the teaching is delivered in a classroom setting

Undefined courses do not fit within any of the above bands. These are generally specialist courses within the NHS such as midwifery, physiotherapy and nursing courses. The fees vary.

STUDENT NUMBERS

No of Students	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
Undefined	57	44	50	35	83
A	21	23	27	29	30
B	160	136	137	123	122
C	432	461	384	357	350
D	244	223	274	281	226
Total	914	887	872	825	811

ANNEX 3

Examples of Assessments

The operation of the scheme in 2011/12 can be illustrated by examples of three assessments for students attending a science degree course. The course requirements are as follows:

Maintenance Allowance	£5,848	
Travel (Brighton)	£423	
Total	£6,271	£6,271
Tuition Fees		<u>£9,867</u>
Total		£16,138

Student A's parents have a residual income of £9,000, which produces a parental contribution of £2,250. His requirements will be met as follows:

Parental Contribution towards maintenance & travel:		£2,250
States Grant: Maintenance & travel	£4,021	
Tuition Fees	£9,867	
		<u>£13,888</u>
Total		£16,138

Student B's parents have a residual income of £26,000, which produces a parental contribution of £6,500. His requirements will be met as follows:

Parental Contribution:		
Maintenance & travel		£6,271
Tuition Fees		<u>£ 229</u>
		£6,500
States grant towards tuition Fees		£9,638
Total		£16,138

Student C's parents have a residual income of £52,000 which produces a parental contribution of £13,000. His requirements will be met as follows:

Parental Contribution:		
Maintenance & travel		£6,271
Tuition Fees (Maximum Contribution)		<u>£6,094</u>
		£12,365
States fee subsidy towards tuition fees		£3,773
Total		£16,138

(NB The Treasury and Resources Department supports this States Report and considers that the interim funding arrangement proposed by the Education Department is acceptable. Therefore, the 2013 Budget Report will include a recommended 2013 Cash Limit for the Education Department – Higher and Advanced Education maintained, in real terms, at the 2012 level.

The Education Department should be commended for the robust approach it has taken to contain expenditure on Higher Education grants within a Cash Limit which has remained at the same level of £6.5million since 2006.

However, in the longer-term, it is considered that the burden of the increased tuition fees should not fall solely on the States and should be partially met by parents, possibly by increasing or removing the maximum parental contribution to fees. The Department welcomes the Education Department's intention to return to the States with proposals on higher education funding from 2014 onwards.)

(NB The Policy Council supports the proposals contained in this report.)

The States are asked to decide:-

VII.- Whether, after consideration of the Report dated 20th December 2011, of the Education Department, they are of the opinion:-

1. To note the content of that Report and that the Education Department will not be seeking additional funding for higher education in 2012.
2. To direct the Treasury and Resources Department to take into account the funding implications detailed in this report when recommending the 2013 Cash Limit for Education- Higher and Advanced Education.
3. To note that the Education Department will return to the States in 2013 with proposals on higher education funding from 2014 onwards and in particular to report on the level of budget required thereafter.

TREASURY AND RESOURCES DEPARTMENT
INVESTIGATION INTO ESTABLISHING A LAND REGISTRY IN GUERNSEY

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port
Guernsey
GY1 1FH

21st December 2011

Dear Sir

1. Executive Summary

The Land Registry Project Board has met on a monthly basis since December 2008 to review the options and implications for introducing a Land Registry in Guernsey and has now completed its report which is attached at Appendix A.

The report has identified clear issues in regard to the current processes involved in conveying property which, it has been established:

- Can be time consuming and costly for sellers and purchasers alike;
- Does not make best use of available technologies and modern practices;
- Requires repeated investigation of the same documents each time a property is conveyed;
- Does not necessarily provide certainty of boundaries;
- Is not easily understandable to sellers and purchasers.

The Department, being mindful of the principles of good governance, believes that the introduction of a Land Registry provides an opportunity to address not only the problems faced by the current system of property conveyance, but also to take a holistic view and consolidate property laws with other ongoing law reforms.

The Department considers that the introduction of a Land Registry would provide the opportunity to introduce a system of property conveyance that is accountable and efficiently delivered and one which is in the best interests of those members of the public who wish to buy and sell property.

The enclosed Report into the Establishment of a Land Registry in Guernsey (“the report”) provides the basis on which a Land Registry could be introduced. The report endorses an incremental approach, which would allow the States to work hand-in-hand with the key stakeholder groups, to

not only ensure that the right model to suit Guernsey is introduced, but also to ensure that the issues identified with the current system of conveyance are addressed.

The report includes estimated income and expenditure models, based in the main on historical conveyance records maintained by the Greffe, an assessment of the likely resource requirements to run a Land Registry and two fee charging examples. Having noted the content of the enclosed report, it is proposed that should the States agree in principle to the introduction of a Land Registry in Guernsey, the Department would undertake to prepare a comprehensive business case and report back to the States within 15 months with firm proposals to introduce a Land Registry in Guernsey.

2. Background

At the June 2007 meeting, the States approved the introduction of a new system of property measurement and categorisation for taxation purposes. The Tax on Real Property system, introduced in January 2008, greatly improved the quality of property data held by the Department; specifically in regard to built structures.

The Department identified a second phase of work to develop the Cadastre Register of Property to improve the accuracy of land records in Guernsey and Herm and at its meeting in September 2009¹, the States endorsed the Department's intention to conduct a review of the options for introducing a Land Registry in Guernsey and directed the Department to report back in due course with proposals for a Land Registry.

The subsequent review focussed on:

- Consultation with stakeholders;
- Establishing communication links with stakeholders;
- Research into suitable Land Registry models;
- Identifying legislative requirements;
- Identifying costs and benefits associated with different models;
- Finance and resourcing the project;
- Implementation options and timescales.

3. Drivers for change

The review adopted the following drivers for change:

- To achieve greater simplicity in transacting property

Whilst there is inevitably going to be a view that 'if it isn't broken, no need to fix it', the consultation exercise has shown that change, to varying degrees, would be welcomed and a number of consultees specifically mentioned that the current system is likely to become unsuitable going forward. The consultation process has indicated that there is an element of confusion when it comes to understanding how property is transacted and this is an ideal

¹ *Billet D'Etat XXIV 2009*

opportunity to examine and attempt to address those issues. Working on the principle that additional complexity more often than not means more cost, then simplicity is a critical factor in any decision to replace the current processes with a Land Registry.

- To, wherever possible, reduce the cost of property transactions

The Department appreciates that to establish the true extent of a property (especially land boundaries and rights and liabilities attaching to a property) takes time and a good deal of effort. However, the review identified that a particular objective should be to reduce the duplication of work in conveyancers having to check the same documents every time the property is transferred. Reducing the duplication will make the process more efficient and reduce cost. Such objective must, however, be consistent with ensuring that a valid title is being acquired by the purchaser and that any changes to the property or the rights and liabilities attaching to it have been properly investigated. It seems apparent therefore that in the vast majority of cases the amount of work on transactions involving a property once it has been registered ought to be able to be transacted and registered at a lower cost.

- To provide clear title

This is one of the key findings of the consultation exercise thus far, as there appears to be little understanding by the general public of, firstly, who guarantees title and, secondly, whether the current position is acceptable. A clearly defined guarantee of title provided by the States will be of course a significant statement of intent and support of the conveyance process but brings with it a level of responsibility and liability. **Nevertheless, the Department considers that a guarantee of title given by the States is to be welcomed but will of course require a robust approach in the examination of applications for registration and those professionals involved in the conveyancing process will be expected to have thoroughly investigated and supplied all the necessary underlying documents before a property will be accepted for registration by the Land Registry.**

4. Building a Financial Model

The (example) model detailed in the enclosed report assumes that a level of funding, for example in the form of a loan, would be required to establish and cover the initial operating costs of the Land Registry. The enclosed report includes details of estimated income and expenditure, utilising in the main property conveyances recorded at the Greffe between 2003 and 2008, with the assumption that property conveyances would be running at approximately 2,000 per year (excluding leases).

Although a wide range of fee models have been explored, example fees have been calculated on the basis of two flat rate first registration fee options of £300 and £200 per transaction, with subsequent transactions, once entered in the Land Registry, attracting an additional 0.25% fee based on the value of the transaction (plus the flat rate fee). Whilst data is held on the various types of property conveyed between 2003 and 2008, the example model has, at this stage, adopted the same fee structure for each property type. The impact of various fee structures on the cost of conveying a property would be examined in detail as part of the preparation of a comprehensive business case.

The Department believes that many of the building blocks of a Land Registry are already in place. Expenditure detailed in the enclosed report has been estimated based on the introduction of a single entity to take responsibility for the Land Registry and for those services currently provided by the Cadastre Office and Guernsey Digimap Services. Whilst the estimates detailed in the enclosed report would be subject to further verification and analysis, including a review of existing staffing structures and services, as part of the preparation of a comprehensive business case, early indications are that the new Land Registry would initially require in the region of an additional seven, mainly legal and survey, staff.

Appendix 3 of the enclosed report includes, for illustrative purposes, simple loan repayment models based on the fee options detailed above and the additional operating costs over and above what is currently funded, showing just a few examples of the range of (loan) repayment periods. The level of income from fees other than from property conveyances is based on existing revenue streams, although additional income streams and funding options would be explored in greater detail as part of the preparation of a comprehensive business case.

The Department is mindful of the need not to place an additional financial burden on property purchasers and sellers, however as highlighted in the enclosed report, whilst indications are that the financial impact, and therefore the viability, of the Land Registry would be dependent on the extent of the work required outside of the Land Registry and therefore the cost of this work, it is anticipated that an efficiently run Land Registry should facilitate a reduction in the cost of conveying property in Guernsey.

The costs of establishing a Land Registry are not, of course, insignificant; however the Department believes that the issues identified during the review are sufficiently important to warrant further investigation, to include the preparation of a comprehensive business case, which would in turn place considerable emphasis on, firstly, the cost of conveying property in Guernsey and, secondly, the ability of the Land Registry to be self sufficient as quickly as possible.

5. Principles of Good Governance

In preparing this Report, the Department has been mindful of the States Resolution to adopt the six core principles of good governance as defined by the UK Independent Commission on Good Governance in Public Services (Billet d'Etat IV of 2011). The Department believes that the proposals in this Report comply with those principles.

6. Proposals to form a Land Registry in Guernsey

The Department is not critical of the current system of conveying property; indeed as highlighted in the enclosed report, there are some unique features of the current system that seem to work well. However, the Department is of the firm opinion that the current system of conveying property in Guernsey requires overhauling, but is acutely aware of the myriad of issues involved; many of which are highlighted in the enclosed report.

A Land Registry in Guernsey will not be established overnight and would require the support of both the public and private sectors, therefore the Department proposes an incremental approach, building

on the good practices currently in place and utilising modern technologies, with the aim of delivering on the key drivers for change identified earlier in this report. If endorsed by the States, the next phase of the project would be to undertake a comprehensive business case review and to bring forward firm proposals for the introduction of a Land Registry in Guernsey.

The preparation of a comprehensive business case is expected to take up to 15 months to complete.

7. Recommendations

The Treasury and Resources Department therefore recommends the States:

- i. To note the content and findings of the enclosed Report into the Establishment of a Land Registry in Guernsey.
- ii. To direct the Department to undertake a comprehensive business case review and to report back to the States within 15 months with detailed proposals to introduce a Land Registry in Guernsey.

Yours faithfully

CNK Parkinson
Minister

Deputy J Honeybill (Deputy Minister)
Deputy R Domaille
Deputy A Langlois
Deputy S Langlois



LAND REGISTRY PROJECT BOARD

Report into the Establishment of a Land Registry in Guernsey

Date: December 2011

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1. Introduction – A Land Registry in Guernsey

1.1 Composition of the Project Board

The Project Board established by the Treasury and Resources Department to report on the establishment of a Land Registry in Guernsey is comprised of the following persons:

Jack Honeybill – States Deputy and Chairman of the Project Board
 Shane Langlois – States Deputy
 Reg Avery – Treasury and Resources, Project Board Co-ordinator
 Dave Wakeford – Treasury and Resources, Mapping
 Jane Wonnacott – Director of Information and Communications Technology
 Ken Tough - HM Greffier (until July 2011) Jon Torode HM Greffier (from Jul 2011)
 Sarah Kelly - Alderney Land Registrar
 Peter Harris – Data Protection Commissioner (retired as Commissioner September 2011)
 Robert Titterington - Law Officers (Legislation)
 Martin Thornton - Law Officers (Commercial)
 Simon Howitt - Advocate and Co-opted member

Martin Streeting acts as Project Board Secretary and minute taker.

The Project Board meets monthly. www.landregistry.gov.gg has been reserved as the Land Registry website and this is in the course of being established for access to information concerning the Project.

1.2 The Current System of Land Records and Conveyancing

The ownership and transfer of land in Guernsey is firmly grounded in the feudal system and the customary law of Normandy. Conveyances were until relatively recently drafted in French. A detailed knowledge of Guernsey law of inheritance and succession is needed to appreciate the issues arising in relation to land.

It is therefore still the preserve of lawyers. It remains necessary to understand the difference between ‘realty’ and ‘personalty’, doctrines which themselves derived out of the development of different remedies available to the owners of realty and personalty.

Guernsey avoided the major consolidation which occurred in England in 1925 with the passing of the Law of Property Act and the Land Registration Act. Whilst conveyances and certain other documents relating to land are registered at the Greffe the process of conveyancing is in ‘unregistered’ form and has characteristics unique and special to Guernsey.

1.3 Role of Greffe

The Greffe is the principal registry relating to land ownership on the Island and keeps copies of all conveyancing documents and bonds. It is an important source of material to conveyancers who will search the records as part of the conveyancing process.

1.4 The Cadastre

The Cadastre also keeps records of every property primarily in relation to its obligation of collection of the tax on real property. The Cadastre records can be searched digitally by the use of the digital map, including printing out aerial photographs and other plans of the parcels. Ownership and transaction details of property and other information can be obtained from the Cadastre. These land parcels are not however definitive and are used only for indexing purposes.

It is easy to appreciate that one clear advantage of a Guernsey Land Registry would be to bring together this valuable information into a single searchable system, supplemented by:

- the records of the utility companies in relation to the route of services to a property,
- the Environment Department (for planning and building regulation issues) and
- the Guernsey Registry for company records.

Since it will be a digital system there would be nothing to prevent other information such as photographs and surveys also being stored by way of a source of additional information, noted as being current as at an identified date and able to be searched to bring further certainty into establishing land ownership.

1.5 The Current System of Conveyancing

As will be noted on the Section headed *The Consultation Process* there may be a difference in perception between practitioners and the purchasers of conveyancing services as to how good the present system of conveyancing is and whether it represents value for money. It should be remembered that the most significant element of the cost of buying a property is document duty payable by way of tax to the States which has nothing to do with the Advocates providing the services. Further there is no doubt that Guernsey advocates conducting conveyancing and their clerks and support staff are extremely professional, thorough and helpful in the way that they operate.

However there are perceived weaknesses in the *system* which a Land Registry might alleviate.

- (a) *Clarity of title.* There is little doubt that the average conveyancing document is fairly impenetrable to anyone other than a trained lawyer. Boundaries may be described by reference to features that can move – such as a hedge or fence posts. It is necessary for the conveyancer to search back through a number of documents to establish title, a process which is then repeated when the property is sold the next time. This adds to that lack of clarity and delay in the process.
- (b) *Uncertainty of boundaries.* The traditional practice has been to describe a boundary within the body of the conveyance rather than refer to a plan. As mentioned in (a) this can lead to difficulties if that boundary feature has disappeared or changed. Plans, when used, are often lacking precision and poor in quality simply because of a lack of access to a good base plan, and this leads to a cautious approach being taken in referring to plans ‘by way of

identification only' which indicates that they cannot be relied on to establish the actual boundary.

- (c) *Duplication of work, perceived inefficiency, protracted time and cost.* As is evident from above, this leads to the suspicion that there is a significant duplication of the work, which supports the level of the fixed legal costs to be paid and creates delay to the process.

1.6 Competition

Currently there is no competition law in Guernsey. It is generally expected that this will not always be the case. If so the fixed scale charged by Advocates for conveyancing will come under pressure to be abolished and firms will be able to charge a fee that is proportionate to the amount of work being done. That might in some cases be more than the present amount and in others less. It is an objective of the introduction of a Land Registry that the process of conveyancing including searching against the title and effecting the transfer of land is simplified and made more transparent, with the result that this should lead to a fairer and more competitive system of charging. However it must be understood that a Land Registry may well not remove the need for an experienced Advocate to advise purchasers and lenders on the many technical legal issues that arise out of the ownership and transfer of land. The possibility of costs savings is not, by itself, justification for the introduction of a Land Registry.

1.7 Summary of Benefits

The Project Board has accordingly identified two key objectives for the introduction of a Guernsey Land Registry:

- (i) to simplify conveyancing over time and provide enhanced and more readily enforceable guarantees by the implementation of a Land Registry;
- (ii) to improve Guernsey Property Law.

Specifically, benefits include:

- Simplifying the Conveyancing process, which it is considered will lead to savings in time and cost of the transfer of a property, aiding not just home owners but also businesses;
- Bringing more certainty into the investigation of title issues including, greater clarity in matters affecting title, boundaries and interests in the land;
- Building upon data and mapping technology;
- In time providing a potential net financial benefit to the States from the operation of the Land Registry and the provision of ancillary services.

The introduction of a Land Registry is not however designed to remove the need for an Advocate to be involved in the conveyancing process. Wherever finance is used to aid a purchase the lender will wish to have their interests protected through the use of an Advocate.

However and particularly with regard to the more straight forward properties, the process should become more transparent and easier to understand for the house buyer and seller.

Nevertheless the Land Registry will not be a panacea and even though the *process* will be simplified, the *legal issues* underpinning the transfer of property remains a complex and specialist area in which the expertise of properly qualified and experienced property conveyancers will be needed. Property transfers will often involve issues not just of land law, (itself a complex area) but trusts, matrimonial law, inheritance, insolvency, company law and contracts. These issues are explored more fully in the Section headed *The Proposed System of Land Registration*.

1.8 The Consultation Process

Consultation has taken place with key stakeholders and in general terms the proposed introduction of a Land Registry has received wide support. However concern was expressed at the size of the task. The benefits outlined above are generally understood.

The basis of the analysis by the Project Board focused on three key stakeholder groups, with observations requested on both the current system of conveyancing, and how this may be affected by the introduction of a new system of land registration for the island.

The consultation process assumed that the property owner and the purchaser should be the most important stakeholders within the current and any future systems of property conveyancing.

Specific feedback from the consultation process included a desire that the Registry should provide certainty of title and certainty of the property boundaries, as understood at the time of registration and should also speed up the conveyancing registration process. The provision of an accurate plan will in the opinion of the Project Board undoubtedly assist in enabling allegations of boundary irregularities to be investigated and addressed with greater certainty and move some way towards meeting this expectation.

The analysis and the conclusions from the consultation process are set out in Appendix 2. It is clearly understood by the Project Board that the consultation process has revealed only '*perceptions*' of the current system which the Project Board has sought to test and evaluate. Nevertheless the results are useful in gauging whether there is an appetite for change, and it was noticeable that the responses were remarkably consistent.

It is the case that there may however be an unrealistic expectation that boundary and title problems will evaporate. This is of course not so. What will happen however is that over time the boundaries of a property will be plotted onto the Land Registry plan, and the plan will become definitive of what has been *registered*. It will not however prevent allegations of encroachments or claims of wrong plans being submitted with applications, or deal with the movement of a boundary over the passage of time and these disputes will still occur. The Project Board has given specific attention to this in the context of the nature of the guarantee of title to be given and this matter is addressed in the section headed *The Title Guarantee, Rectification and Fixed or General Boundaries* with proposals unique to Guernsey which are designed to mitigate, and assist in resolving, problems.

1.9 'If it ain't broke don't fix it'?

One of the points made during the consultation process particularly by professionals operating in the property markets, was that the system of conveyancing in Guernsey worked

well and there were no obvious problems that required to be fixed. It is probably true that there are no greater problems with property transfers in Guernsey than in any other jurisdiction. There are some interesting and unique features of property conveyancing in the Island that seem to work well. It is not the view of the Project Board that a Land Registry should be introduced because there is anything fundamentally wrong with the current process, other than that the system can be simplified with an expected reduction in the cost.

These two factors, simplification and cost, do of course have significant implications for people wishing to buy property, and there are advantages in the process being made more transparent. It may be that there is a real difference in perception as to how successful the current system of property conveyancing is between those who are providing the services and the purchasers of those services.

The Project Board do not feel that it is appropriate to import a system wholesale from England and Wales, Scotland, the Isle of Man, Alderney or elsewhere, although lessons from those jurisdictions will be incorporated into the design. Rather it would seek to build on the best conveyancing practice in the Island and design a system which takes advantage of new technology including electronic communications, utilises the data that is now available from the Cadastre, the States Environment Department (for planning and building regulation data), the Digital Map and the utility companies, with the objective that the Land Registry is the best, up to date and most appropriate system for Guernsey, whilst retaining a distinctive Guernsey flavour.

2. The Proposed System of Land Registration

2.1 Transactions covered by Registration

It is envisaged that the following transactions will be covered by a requirement to register and for which a charge will be made:

- Sales and purchases of the whole of the property comprised in a title;
- Sales and purchases of part of a property in a title;
- Voluntary registration of the whole of land in a land parcel;
- Vesting of property following the death of a registered proprietor into the names of the beneficiaries;
- The grant of a lease or a sub lease for a term of 3 years or more; the surrender or assignment of a lease or sub lease of a term of 3 years or more; the position of tenancies or leases for less than 3 years is considered in the section *Overriding Interests*.
- Registration or discharge or transfer of security against a property;
- Registration of the death of a joint owner of the property;
- Registration of an Order of Court in relation to a matrimonial interest by a spouse or civil partner of rights of enjoyment or habitation in the property (but who is not a legal owner);
- Registration of an Order of Court in relation to saisie, winding up or similar insolvency proceedings;
- Registration of a notice of an interest in the proceeds of sale of a property on behalf of the Legal Aid Administrator;
- Registration of a right, servitude, wayleave or covenant against a property;

- Voluntary disposal of property or part of a property by a legal owner by way of gift or at less than full value;
- Agreements for the exchange of freehold properties or a freehold for a leasehold interest, whether with or without equality monies being paid;
- Registration of a cautionary notice by a person who is not shown as a legal owner but who claims an interest in the property arising under a contract².

2.2 Other services provided by the Land Registry

The following ancillary services may also be provided for which a charge will be payable:

- Download and or receive paper copy of register and or Land Registry plan;
- Download and or receive paper copy of any document registered against the title;
- Search against the register and operation of a priority application period;
- Registration of change of name (deed polls, or marriage certificate) applications on register;

The allocation to practitioners of an electronic dealing room facility for conveyancing process and an allocation of a password and secure facilities, with an ability to pay fees by credit card or by way of an account might also be made subject to the payment of an annual registration fee by practitioners.

2.3 Implementation of the Registration of Land

The question of how the registration of land should be implemented is extremely important, since that has a direct implication for the Land Registry resources required at the outset of the project and subsequently as the system settles down.

2.4 Pre-registration prior to a transaction?

The Project Board reviewed whether it should be a requirement that, from a given date, only registered property may be transacted. This would mean that an owner would need to register a property prior to any transaction on that property (such as a conveyance or registration of a bond) being completed. The perceived benefits behind this proposal was that a buyer would have greater confidence that the seller had good title, that any boundary issues had been dealt with prior to a property being offered for sale and that the work of the Registry would be simplified as all transactions (except for first registration) would always take place as a registered title.

However this proposal was rejected as being impracticable and would lead to duplication of costs and uncertainty.

- (a) A Seller might well take the view that following pre-registration, he has done everything necessary to sell, only to be faced by a different opinion and other issues being raised by the Purchaser's advocate. This will lead to delay in the sale, incur additional costs and may add to a sense of frustration on the part of the seller or the

² It is accepted that it is open to doubt as to whether an 'interest in property' can arise under a contract unless it is such to create a charge or *hypothec* over the property. The Project Board are aware of the danger of allowing English law concepts to creep into Guernsey land law, but equally there may be opportunities for additional protection to be given to persons with a legitimate right which arises as an additional benefit under the registration system.

buyer in that something that should or should not have been done before sale was now being raised at a time that is more critical to the parties, particularly where there is a chain of transactions each dependent on the other.

- (b) It will be necessary for the Purchaser's Advocate to fully investigate the title in any event on a purchase and to require a Seller to have to do this before sale will amount to a duplication of effort, more costs and may cause a delay in the sale of properties.
- (c) Such a proposal may lead to a significant number of applications being received on the launch of the Land Registry, which is likely to require substantial additional staff resources to cope with the demand as well as dealing with usual transaction applications.

2.5 Parish by Parish or Transaction Type?

A second issue in the transition to a Land Registration system will be how to control, if this was thought necessary, by reason of the resources available, the number of applications received during the early establishment of the Registry. Initially it might be necessary to limit applications for registration to applications within a particular parish or parishes with dates announced for the requirement for registration for each parish or group of parishes. This geographical approach was adopted by the Land Registry in England and Wales. An alternative would be to limit the type of application that is required to be registered, for example by deferring until a later date the requirement to register leasehold interests.

2.6 Staffing Resources

The experience of the Land Registry in England and Wales is that an experienced qualified Land Registry lawyer can handle 20 applications dealing with the whole of the land in a title (in other words an application against an existing registered title) **or** 3 to 4 new title applications (first registrations, dispositionary first leases or transfers of part) per day. In the Project Board's view this seemed to be remarkably optimistic. The Board's assessment is shown in the Section *Estimating the financial impact*.

In reality it also depends on other factors too – the complexity of the application(s) and the experience of the person concerned. In Guernsey there are approximately 2000 conveyancing transactions per year (excluding leases). It is thought likely that between 3 and 4 legally qualified staff in addition to clerical and other staff will be required in addition to the Land Registrar, simply to process the current volume of transactions alone. There are of course other duties within the Land Registry to be processed (outlined in the section headed *How the Land Registry will approach Registration*) which produce additional fee income and staff will also be expected to deal with queries raised by members of the public and their advocates.

2.7 The Impact of registration of leases and other interests

It is impossible to quantify at this stage what the impact of the registration of leases would be on the Land Registry resources needed.

Further detailed analysis is required but assuming that these figures can be accurately assessed, the Project Board's preferred solution is to implement the system by accepting applications initially for those transactions dealing with the freehold, both for value (where

money or other value passes) and not for value (gifts or inheritance), and to add leasehold registration (other than noting any leases subsisting at the time of registration on the register) as a secondary phase at a later date.

Registration of notices bonds and similar will initially only be accepted where the land affected by those matters has either been registered or is being registered simultaneously.

There will therefore be a transition period which may continue for a number of years, in which a dual system of registered and non registered form of property ownership operates in Guernsey. It is envisaged at a later date to introduce leases and then finally require all further titles to be made subject to compulsory registration to complete the registration of all land and interests in the Island. It is proposed that these dates be set by Ordinance.

2.8 When is registration required?

The Law will make it compulsory from a given date to register the title to the land following a disposition (sale, gift or inheritance) and whether the registration transaction covers the whole or any part of the land.

Accordingly there will be a legal requirement for property to be registered by way of first registration following a sale or other transfer and then upon any subsequent transfer or devolution of the title or interest. A failure to register will mean that the purchaser or other person acquiring the property will not have good title to that property (or in the case of lenders have an enforceable bond) until it has been registered. A failure to register the property will not, by itself, be a criminal offence.

That means of course that there are good reasons why a person will wish to register his or her property promptly after purchase. Until the land has been registered the Purchaser will have nothing that he can sell and will run the risk that other interests may be registered against his property whether created by the seller or by third parties (such as under an Order of Court) before or after the date of sale. Prompt registration will also reduce significantly the opportunities for fraud.

Lending institutions will also not have their bond 'perfected' until registration which would mean they could not enforce their rights against the property. As part of their instructions to their own Advocates it is likely that in practice they will require that the title of the purchaser to the property and the bond is registered and an Advocate may well be negligent if they failed to do so.

To manage these issues therefore, there will need to be a system of registration priority allocated to a purchaser and /or a lender wishing to take a bond.

- (a) A purchaser will wish to be satisfied that he is aware of all interests and details registered in relation to the title to the property before parting with the purchase price. It remains open (as now) for a seller to create an interest at any time for example by borrowing money and securing that loan against the title by way of a bond before that transaction is completed. Another example might be a seller who is subject to matrimonial proceedings and whose spouse (not being registered as a joint owner of the property) obtains an Order of the Court against the property to secure his or her interest. A seller may become insolvent and rights in favour of

his creditors may arise against his property. Those rights may well be protected by registering an Order of Court against the property. Accordingly a purchaser could find himself subject to interests registered against the property after the date when he last searched the Register.

- (b) A purchaser will therefore wish to ensure that following his agreement to purchase the property no adverse entries can be registered before his own application for a transfer has been completed (and therefore defeat the interests of that lender, spouse or creditor).
- (c) It is proposed therefore that the system will offer protection to a buyer or lender by attaching a priority date to a search which will effectively prevent any dealing with the title, during that priority period, so as to enable the transaction protected by that priority search to be lodged for registration at the Land Registry.
- (d) If the application is not lodged within the priority period (and that priority has not been extended) then the application will rank behind any other transaction which has subsequently been lodged or itself protected by a priority period. If that later transaction is registered before the purchaser's application, the purchaser would find his property encumbered by those rights, which he may not himself have created, but which would then have to be dealt with.
- (e) There will be a real incentive therefore for a purchaser to ensure that his application is registered promptly after he has completed his purchase of the property and within his priority period.

2.9 Voluntary Registration

It is proposed that an opportunity is given for landowners to voluntarily register their property at any time should they choose to do so. This will aid the transition of land on the Island from being unregistered to registered title.

As will be seen at the Section headed *Timescales and Implementation* it is suggested that there will be a shadow Land Registry operating for a period of some months prior to going live. This will give the staff an opportunity to ensure that processes and systems are in place and running efficiently and a period in which any problems with the technology can be dealt with. It is proposed that during this time there could be undertaken voluntary registration of some of the States or Crown Property by which the systems and processes are tested and refined.

2.10. Undivided Shares and Beneficial Ownership

Guernsey Law does not specifically recognise the concept of beneficial ownership as is the case in other jurisdictions such as England and Wales. However properties are often held in 'undivided shares' between several owners. Since the Land Registry will be a register of the proprietors of the land it will be necessary for the register to contain the details of all the owners of the undivided shares. It is proposed (unlike in England and Wales and in registries elsewhere) to permit the registration of all the owners however many that may be.

There is a significant implication for the inheritance of property on the death of a registered proprietor and in particular the current practice of ‘le mort saisit le vif’ by which death automatically vests ownership of the deceased’s property in the heirs of the deceased.

The Land Registry will require an application for registration and evidence of devolution of title in order to ensure that the title records are up to date. The current practice of simply registering a will is not able to be relied on by the Land Registry as sufficient evidence to demonstrate title. It should be noted that the current practice of registration of a will is made without prejudice to the rights of others. There may for instance therefore be a risk of a subsequent will having been made, unknown to the persons registering the will, leaving the property to charity or another person. It is therefore possible that the use of a statutory declaration, or a declaration of truth or perhaps a formal system of requiring a Court Order proving the will or letters of administration in an intestacy may be required to support a formal transfer from the next of kin or personal representatives of the deceased into the name of the beneficiaries. This of course will require a change in the law.

Straight forward beneficial interests such as an interest under a trust, share ownership of a company will not however be registerable and the Land Registry will not be interested in those matters, only the ownership of the legal title. However there may be some cases identified above where an interest in the property might be registered against the title for example in matrimonial or legal aid cases following an Order of the Court or where contract conditions have been signed with a long completion date.

The current avoidance of document duty by reason of the change in ownership of a Company owning property as opposed to being by formal conveyance is a separate issue from the Land Registry proposals and is being addressed separately. The Land Registry proposals do not change or impact any consideration of how this current duty avoidance loophole can be closed if it is thought to be appropriate to do so.

2.11 Customary Law Issues

Guernsey land law is derived from its customary laws. The Land Registry will need to record that the property is subject to customary rights, if that is the case, even if these cannot be precisely defined. If a pre-registration title deed makes the property subject to customary rights and interests or similar wording to that effect, then it will be necessary to record on the charges or interests register a note to that effect. This will place a buyer on notice and at the risk of the exercise of those customary rights by those with the benefit of them. In reality if such an entry were made, it is likely that a buyer might wish to consider how to mitigate the effect of those rights if possible or whether it is appropriate to insure against them.

2.12 Privacy Impact Assessment

As this project proposal has the potential to affect the privacy of individuals as a result of the details of personal information that may be placed in the public domain and the ease of access to such information, the Project Board decided to undertake an initial Privacy Impact Assessment (PIA).

The PIA concluded that in formulating its recommendations to the States for the further development of this system, the Project Team would need to consider:

- Precisely what personally identifiable information would be stored within the land register;
- What restrictions and safeguards there would be on access to this information;
- In what way the proposed system would change the status quo;
- The advantages and disadvantages of the proposal from the point of view of privacy;
- The impact on existing legislation, in particular the requirement for the Cadastre to maintain a Register of Property.

Whilst it may be an important principle that anybody should normally be able to find out the ownership of all property, the amount of information that is publically available would need to be carefully considered both from the standpoints of privacy and security. This is particularly relevant if additional information about indirect property ownership, which is not currently public, would normally be made public as a result of the introduction of this system.

Whilst anonymous access may be permissible for basic details, it may be felt prudent to insist that anyone requiring further details should identify themselves and show a legitimate interest.

Enquiry access to the system would need to be audited. Further details of the PIA are set out in Appendix 5.

2.13 The Title Guarantee, Rectification and Fixed or General Boundaries

The Project Board has given serious consideration as to what is meant by the title ‘guarantee’ proposed to be given by the Guernsey Land Registry to registered owners. It is evident that this expression can mean different things to different people. It is essential therefore at the planning stage to have a clear statement as to what is included within the guarantee particularly in relation to the certainty of boundaries and other matters being revealed in respect of the title after first registration. This understanding will need to be carried through in the primary legislation. Currently the Vendor gives a guarantee of title in the Conveyance to the Purchaser and that guarantee is underpinned by the requirement for Advocates to maintain professional indemnity insurance, if the Advocate for the Vendor or the Purchaser has been negligent.

2.14 The nature of the guarantee

In essence the Land Registry will guarantee title to registered estates and interests in land.

The guarantee will not extend to matters which affect the property that are not referred to in the register of title (see Section headed *overriding Interests*) such as public rights of way or compulsory purchase orders or leases for (say) less than three years which will not be required to be registered.

What the guarantee means in practice is that if somebody suffers a financial loss because of an error in the register of title, compensation may be available and payable by the Guernsey Land Registry.

It is possible to differentiate the extent of the guarantee being given in respect of a title and which will affect the ability of a person to claim compensation in the event that the register is

later rectified or is incapable of rectification. This does not have to be the same for every title. For example there might be three categories of title.

Registration with ‘guaranteed title’ might have the effect of guaranteeing that the title is vested in the registered owner together with all those rights then existing for the benefit of the property, subject only to the following interests affecting the property at the time of registration:

- interests which are registered in relation to the property (or being registered at the same time as the owner is being registered),
- unregistered interests such as public rights of way, compulsory purchase orders, leases of less than three years in length (and there may be other specific exceptions see the Section headed Overriding Interests³);
- interests that have been acquired by prescription (long use) of which the owner has or ought reasonably to have had notice; and
- where the registered owner is not entitled to the property (solely) for his own benefit the property is vested in him subject to the interests of the person for whose benefit he holds it.

Registration with a ‘qualified title’ might take the same effect as with guaranteed title, except that it will be further subject to the enforcement of any estate, right or interest simply noted on the register to be excepted from the effect of registration. This will be the case for a leasehold title⁴ where the freehold has not been registered or where there is some other identified title issue which prevents a guaranteed title being registered.

Registration with a ‘holding title’ might take the same effect as a guaranteed title subject to the right of any person to enforce any better estate, right or interest subsisting at the time of registration or then capable of arising. This is most likely to be the case where no title can be shown to the property by the claimed owner and would reserve the right of anyone who can show a better title to apply to be registered as owner. A time limit might be imposed for the true owner to lose their right to have the title registered and in which case the holding title would be upgraded to a guaranteed title on application made after that expiry date.

The nature of the title would be shown on the registered entries and may be different in relation to one part compared to other parts of the same property.

The issue of boundary certainty is dealt with separately later in this Section.

2.15 Indemnity and the guarantee

A person will under these proposals be entitled to be indemnified by the registrar if he suffers loss by reason of:

- a rectification of the register,

³ The thorny question of whether to introduce the concept of ‘Overriding Interests’ and in particular what the status of leases of less than three years in length should be has yet to be resolved. It has been assumed for practical purposes that some recognition will need to be given to such matters although they may not technically be an interest in land.

⁴ This will of course only arise once leaseholds become registerable in their own right and no transaction requiring registration of the freehold title has arisen before the grant of a lease.

- a mistake whose correction would involve rectification of the register which has been accepted by the Land Registrar (subject to the Appeal Process),
- a mistake in an official search of the register caused by the Land Registry,
- a mistake in an official document issued by the Land Registry,
- a mistake in a document kept by the registrar which is not an original and referred to in the register,
- the loss or destruction of a document lodged at the registry for inspection or safe custody.

An owner of registered land in a case where the register is rectified, and who is acting in good faith, following a forged disposition of the property, will be entitled to compensation against loss incurred in obtaining rectification of the register.

2.16 Recovery of indemnity by registrar

It is proposed that the Land Registry (or its insurers) will have the right to recover any monies paid under the indemnity in certain cases. These might include being able to recover in some or all of the following circumstances:

- (a) from any person who caused or substantially contributed to the loss by his fraud or other criminal activity, or
- (b) under any right of action (of any description) which the person who receives the compensation would have been entitled to enforce had the indemnity not been paid, and
- (c) where the register has been rectified, any right of action (of any description) which the person in whose favour the register has been rectified would have been entitled to enforce had it not been rectified (this may be different from (b)).

Cases under (b) and (c) might involve recovery from third parties where there is forgery or fraud, or where there has been a lack of care on the part of a professional adviser or an applicant.

2.17 Rectification

Rectification of the Land Register will include putting right any mistake whether mistakenly omitted or included in it. Rectification leading to the payment of compensation under (c) above will apply to an alteration of the register which involves both:

- the correction of a mistake, and
- prejudicially affects the title of a registered proprietor.

It is appreciated that rectification may impact on neighbours land, access rights, rights to services and potentially therefore has far reaching effects.

2.18 Fixed or General Boundaries

There is a difference in practice between the Land Registry in Scotland and that in England and Wales as to whether the Land Registry guarantees the position of the boundaries. Certainty of boundaries is of course one of the perceived benefits that emerged from the

consultation process. The use of the Digital Map technology does enable plotting of boundaries to an extraordinary degree of accuracy.

The Land Registry in England and Wales adopts the general boundaries approach. In other words it does not guarantee boundaries and Land Registry title plans show only boundaries which are not conclusive as to ownership. If landowners wish the title plan to be definitive, they must apply to the Land Registry for a determined boundary (under a procedure which is rarely used). This carves out boundary disputes from the ambit of the guarantee. In practice the Land Registrar will sit as arbitrator on those disputes.

Scotland has however adopted fixed boundaries so that a boundary recorded on the registry plan is definitive and any errors will fall to be dealt with under the guarantee. It is easy to see that the Scottish approach is more certain, but involves the transfer of risk from the owner of the land to the Land Registry.

The problem with a fixed boundary is that there is generally no way of establishing a fixed boundary unless there is agreement with the owners of the neighbouring land on each side of the property. In a close or terraced street this may not be a problem but in more rural areas, properties with boundaries onto land where the ownership is uncertain, or in larger properties the problems become more apparent.

The Project team proposes that a unique system of registration of boundaries be adopted with a view to bringing as much certainty as possible into the system without exposing the Land Registry to unnecessary risk. This adopts a three tier designation of the boundaries.

- (a) *Guaranteed*, which is where sufficient evidence has been produced to the Land Registry on first registration (such as a boundary agreement or other evidence from a neighbour or Court decision), to enable the Land Registry to accept that as a guaranteed boundary;
- (b) *Undesignated*, where the Land Registry is unable to accept on the evidence produced that the particular boundary line is agreed, but that there is no active dispute over that boundary. This designation can be upgraded to a guaranteed boundary either by the owner of the property or by the Land Registry of its own volition if evidence is later produced to enable the Land Registry to accept it as a guaranteed boundary or for example the adjoining property is registered with the common boundary in the same position.
- (c) *Disputed*, where either there is a dispute over the boundary position or the applicants are unable to trace the owner of the adjoining property so as to agree either a guaranteed or apply for it to be an undesignated boundary.

The benefit of this system is that over time it is hoped that boundaries will become guaranteed, and that the necessary due diligence by advocates in investigating title over a boundary will become less onerous.

Since it will be in an owner's interest to have guaranteed boundaries wherever possible (to enable the sale of his property to be less problematical there should be a commercial driver in this system to encourage owners to resolve boundaries wherever possible.

2.19 Plotting of Boundaries within the Land Registry

Given the proposals set out above the process of the plotting of boundaries in the Land Registry will need to be given careful consideration.

The first thing to note is that it will not be the role of Land Registry staff to resolve the boundaries or to establish proper title to them. The Registry exists to maintain a register not to resolve conveyancing issues. It will be the duty of the Land Registry to plot accurately the boundaries that are set out in the transfer lodged for registration. In examining applications for registration the Land Registry will need to be satisfied that what has been lodged for registration is free from error and accurate and therefore will raise requisitions where it is considered that those documents require clarification or an issue needs to be resolved. Until the Land Registry is itself satisfied on an application it will not complete the registration process. It is however the applicant (usually the Buyer) who will be expected

- to have established the boundaries of the property that he has purchased;
- to be satisfied that the Seller owns the property (including the boundaries that belong to the property); and
- that the positioning of those boundaries on the ground are accurately represented in his application.

Accordingly it will be a mandatory requirement that on the application for registration there will be included an accurate plan (which will over time be based on the Land Registry plan) showing clearly the boundaries of the properties to be registered, and that if there is any uncertainty as to the precise location on the ground or the plan it is expected that these will have been resolved by the Buyer with the Seller and any third party prior to the application being accepted for registration.

2.20 Requirement for Survey by Land Registry Staff before the title is accepted for Registration

Although the application will contain what is hoped will be an accurate plan, it is considered inevitable that it will be necessary on every application for first registration and on subsequent applications where a property is being divided or a boundary altered, that a survey will be necessary.

The Land Registry will therefore need a surveying capability, sufficient to meet the demand. Although the Digital Map will be able to provide the necessary overlays to plot titles to a high degree of accuracy, a ground survey will in the majority of cases be required to deal with those applications where the actual boundaries are obscured by features such as overhanging roofs, trees and the like.

2.21 Covenant for Title

This requirement for the application to be comprehensive and accurate will therefore lead to a major change in who gives the covenant for title in a conveyancing transaction.

(a) Statutory Covenant for Title

It is envisaged that under any proposed Land Registration Law (see below) there will be statutory covenants (warranties) for title given in any transaction which is for value, namely that:

- The Seller is the legal and beneficial owner of the Property being transferred and, unless expressly qualified in the documents of transfer, warrants good title to the property;
- The Seller is able to give an unqualified receipt for monies received in relation to the land being transferred; and
- Having made all reasonable enquiries, the Seller has disclosed all matters of which he is aware which affect or bind the land being transferred;
- Where the transaction is not for value qualified covenants will be given.

(b) Applicants (or his Advocates) Certificate of Title

When lodging the application for registration (whether on first registration or in any subsequent dealing with the title) the Advocate acting for the Applicant on first registration, and thereafter for subsequent dealings with registered land the applicant (if in person) or his Advocate will give a certificate of title (contained as part of the application form) which certifies:

- They are acting in the transactions in relation to the application being lodged;
- That they have carried out a proper and thorough investigation of title and have undertaken all searches which ought to be carried out in relation to the transaction and that they consider that the applicant will on completion of the transaction have a good title to the property;
- That the application contains all the documents and searches held by them in relation to the application;
- That the application discloses all encumbrances that currently affect the property or which are to be registered against the title;
- That they have inspected or caused to be inspected the boundaries or that an inspection of the boundaries was not considered by them to be necessary in relation to the application and that the transfer plan lodged with the application represents, to the best of their knowledge information and belief (having made all reasonable and prudent enquiries), an accurate representation of the boundaries of the property.

The Land Registry when accepting an application for registration will be relying on that certificate of title.

Criminal penalties will be imposed in the new Land Registry Law for knowingly falsifying information on a Land Registry title.

2.22 The Application Process

It is envisaged that an application for registration will be processed by Land Registry staff in 4 stages.

(a) Preliminary Assessment

A preliminary assessment that the application is technically correct, namely that all documents that are said to be enclosed are enclosed, the application and other documents properly completed signed and dated, the fee has been paid, and recording of when the application is formally logged in, relating to the application priority. This will lead to an electronic (or postal) acknowledgment being issued with a provisional estimate of how long the application is likely to take to process.

It is anticipated that this will be a clerical process not undertaken by legally qualified staff.

(b) Detailed Examination

A detailed examination of the application will then be carried out by legally qualified staff.

(c) Mapping and Surveying

At the same time the application will be referred to the surveying and mapping team.

Following stages 1 and 2 any requisitions will be sent to the applicant or their Advocate together with a date by which a reply is required. The reply date can be extended. A failure to comply with the timescale may ultimately lead to the application being cancelled and returned to the applicant. If the application is resubmitted a further fee will be payable.

(d) Completion of Registration

Once all requisitions have been completed and the examination completed the application will be completed, and registration effected, and at that point the document of registration will be issued to the applicant or his Advocates, and / or the lending institution (as the case may be).

2.23 The role of the Jurats and the Contract Court and the submission of applications

Careful consideration has been given to the valuable role currently undertaken by the Jurats and the Contract Court and the logistics of how the sale and purchase is completed, the application is lodged and document duty paid.

Currently neither Sellers nor Buyers sign the transfer document. They are required to attend at Contract Court to signify their consent to the conveyance. Whilst this may appear anachronistic, and somewhat out of context with the introduction of electronic conveyancing, nevertheless it may be thought that there are some valuable benefits in retaining the Tuesday and Thursday Contract Court and the role of the Jurats.

The drawbacks are obvious:

- In retaining the Court, consents to conveyancing transactions can only take place on Tuesdays or Thursdays, unless there were to be a Jurat roster established on other days, although it should be noted that the Royal Court is open five days a week for registration of conveyances and bonds and there has been no approach to the Royal Court to sit more frequently;
- Sellers and Buyers are required to attend at the Court on the day and at the time when they may well be in the middle of moving out or into the property; and
- Attendance at Court clearly adds to Advocates costs for both parties.

On the other hand the compression of a Court appearance to signify consent into two days each week and the reality of conveyancing ‘chains’ (where a buyer depends on his sale to part or wholly fund his purchase) negates the need for large bridging loans which is of significant benefit. Further one of the greatest risks in the conveyancing process are fraudulent transactions, and the buying and selling of property is now perceived in other jurisdictions to be a high risk area for fraud and / or money laundering. Streamlining the process by the use of electronic conveyancing will potentially lead to a greater risk of fraud. Whilst it is not claimed that the use of the Contract Court will eliminate fraudulent transactions altogether nevertheless in a small jurisdiction such as Guernsey the retention of this established process may be a useful safeguard and there is little evidence that fraudulent transactions have been an issue in Guernsey property transactions to date.

It may also enable the logistical completion of a transaction to be streamlined since if there were to be a facility at the Greffe for the lodging of the Land Registry application on the day of the Contract Court at the same time as payment of document duty there will be an opportunity for cutting out any delay or poor practice in the lodging of the Land Registry application.

Preliminary discussions have already taken place with the current HM Greffier concerning the existing staff carrying out duties in relation to the present system of conveyancing, the need for resources such as storage and office accommodation at the Royal Court particularly during the transition period. Further detailed discussions are planned during the preparation of a detailed business case.

2.24 Electronic Conveyancing

The introduction of a Land Registry enables an opportunity to take a fresh look at the conveyancing process and to offer facilities within the Land Registry systems under which electronic conveyancing may take place. This is of course not essential to the Land Registry proposals but any computer software to be used in the Land Registry could if necessary be configured to deal with electronic conveyancing processes at the outset.

2.25 The Contents of the Land Register

The Land Register for a particular property, and to which a specific title number will be allocated, is likely to be in three parts:

(a) Property Register

This describes the property. This part of the register will include all rights and benefits passing with the property, if necessary by a typed extract or by reference to a document included within the registered entries. It will identify the property by reference to the filed plan which may contain a number of different coloured parcels in complex cases. It will identify whether at the date of registration the property was registered as an open market dwelling or local market property with perhaps a link to the Housing Register. However its status as an open or local market dwelling would not fall within the title guarantee.

(b) Ownership register

This part contains the full names and address for service of the registered owners. There will also be noted the date(s) of the purchase and the amount(s) of the purchase price. The purchase price is included to mitigate mortgage fraud. The names of the previous owners will appear on the register, so as to give a record of previous transactions and provide details for money laundering checks or fraud.

(c) Charges Register

This part of the register will contain details of restrictive and other covenants and agreements which are a burden on the title, bonds, cautions against registration, matrimonial assets cautions, legal aid notices, notices registered, agreements in relation to the land, cross references to leases (registered under separate titles), notice of any of customary rights and obligations. The charges register is therefore a note of any entries that may in any way adversely affect the land, its use or its title.

2.26 The filed plan

The Land Registry plan will show the Property and will identify any specific matters referred to on the register. It will be to scale, contain a compass marking and will be prepared by the Land Registry not the applicant, although it will be based on the plan submitted with the application for registration.

The copy of the Land Registry entries which will be issued to applicants or their Advocates for use in the conveyancing process (or for another purpose) will also contain the date showing when the register was last compared against the Land Register, so as to identify the period following which it will be necessary to search to reveal any new entries.

3. The Composition of the Land Registry

3.1 The Land Registrar and Primary Duties

The Office of Land Registrar will be created by the Land Registration Law as a separate legal entity to the States (with a similar status to that of the Registrar of Companies) and capable of exercising powers to the extent permitted under the Law.

The Registrar will be primarily responsible for maintaining the Land Register and authorised to make certain decisions in relation to the Register and to act independently.

The Registrar will have the power to amend the Register in certain circumstances.

There will be a right of appeal against the decisions of the Registrar in certain circumstances (see below).

The Land Registrar will carry out a chief officer role in managing the Land Registry, its budgets and provide strategic direction as well as undertaking the statutory decision making role. Since the Registrar will be responsible for all departments and therefore accountable for all decision making, this function will exist in a quasi judicial or legal role and decisions of the Registrar will therefore be open to challenge or appeal on points of law.

3.2 The Deputy Land Registrar and Primary Duties

The Deputy Land Registrar will be the senior legal officer and will undertake register work within the Land Registry deputising for the Land Registrar when necessary.

3.3 Composition of Land Registry Staff and breakdown of duties

Overall the Registry will need to comprise of legal, administrative and mapping departments. The Law (together with Ordinances and any regulations made under the Law) will describe the detailed obligations and responsibilities in relation to each aspect of its operation.

- Legal Personnel

It is considered that in addition to the Deputy Land Registrar (Advocate /Solicitor/ Barrister level) it will be necessary to recruit two other legally qualified or experienced persons. It is considered that suitably experienced conveyancing clerks would be suitable to fill this role.

- Non legally qualified Administrative Assistants

Administrative clerks will be required to carry out the initial checking process, responding to requests for documents, and dealing with the registration of notices, death certificates, marriage certificates, data processing and the issue of land certificates and other documents and with enquiries and other requests from the members of the public. It is thought that in addition to a full time receptionist there will be a need for three (3) administrative clerks.

- Mapping and Survey

The mapping and surveying requirements have been identified earlier in this report. The financial implications are addressed in the Section headed *Estimating the Resources required to support the Land Registry*.

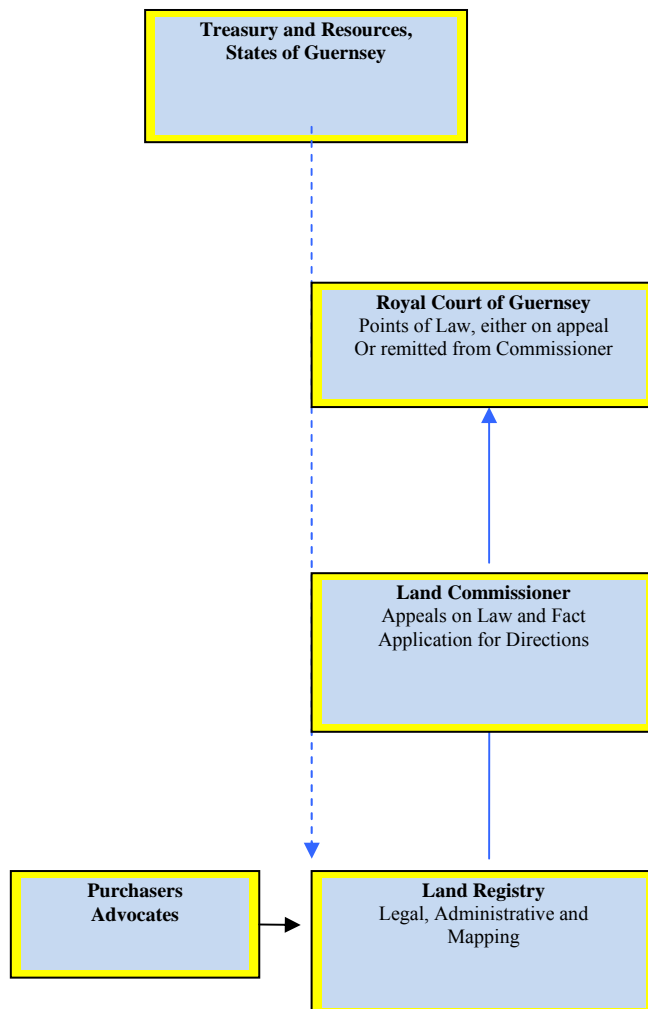
3.4 Structure and Accountability

The following table shows the proposed accountability and structure of the Land Registry. In terms of budgets, staffing and administrative matters (including the appointment of the Land Registrar) the Land Registrar will be accountable to Treasury and Resources Department.

However in respect to the way in which it exercises its legal, regulatory and other professional obligations the Land Registrar will not be directly accountable to Treasury and Resources Department or any other Department of the States, since it needs to be positioned outside the States so as to avoid conflicts of interests, especially since the States has a major property portfolio and the Land Registrar exercises a judicial or quasi judicial function.

It is proposed that The Land Registrar will therefore be accountable on matters of law and fact to a Land Commissioner. Any person aggrieved by any decision of the Land Registrar may appeal on a question of law and / or fact against any decision of the Land Registrar to the Land Commissioner. An aggrieved person or the Land Registrar himself may also apply to the Land Commissioner for directions as to how a particular matter should be dealt with. This process may be particularly of interest and use in relation to appeals over boundary positioning.

An appeal from the Land Commissioner will lie to the Royal Court and ultimately the Court of Appeal on a point of law. The Appeal process and the various other options are described in more detail below.



4. Appeals from the decision of the Land Registrar

4.1 Appeal Process

The Project Board considered that the Appeal Process could be either to a Land Tribunal, a Land Commissioner and/ or ultimately to the Royal Court of Guernsey.

However the most likely areas where judgment will be exercised by the Land Registrar and therefore subject to appeal will be:

- (a) When dealing with applications for first registration, amendments to the register, applications to register documents;
- (b) The Registrar seeking directions in relation to interpretation of the law or the interpretation of the documents submitted; or
- (c) In relation to a mistake in the register where rectification is required; and
- (d) Where matters of dispute arise between the Registrar and a party or between parties particularly over boundaries. These disputes may involve issues of fact and/or law.

In the United Kingdom prior to 2002, Her Majesty's Land Registry (HMLR) had a system whereby the Chief Land Registrar dealt with a large number of disputed matters. However The Land Registration Act 2002 created the office of Adjudicator which is now part of the UK's Tribunals Service.

The change occurred because it was felt that having the Land Registrar dealing with matters of dispute and determining those matters was not Human Rights compliant. It was believed that applicants should be entitled to have decisions made by an independent body so as to be consistent with rights under Article 6 (Right to a fair trial) of the Convention for the Protection of Human Rights and Fundamental Freedoms. For the final decision to be made by the Registrar would probably breach that rule, since the Registrar had an interest in the outcome of the process, because of the guaranteed title and the obligation to compensate those who had incurred a loss as a result of the registration process.

The UK Adjudicator's office deals with objections to applications in relation to the Land Register. It can also make any order that the High Court could make in relation to rectification or setting aside of a document which effects a qualifying disposition of a registered estate or charge, or is a contract to make such a disposition or effects a transfer of interest which is subject to notice in the register.

In general terms, a decision of the Adjudicator may then be appealed to the High Court. It is worth noting that to sit as an Adjudicator a person is required to be legally qualified for at least 10 years.

In Scotland a similar system exists. The Lands Tribunal deals with appeals on either fact or law on anything done or omitted to be done by the Keeper of the Registers. This was considered a cheaper and possibly more expeditious route than appeals to the Court.

However, the right to appeal to the Court was reserved if someone wished to bypass the Tribunal. Again, a decision of the Tribunal can be appealed to a higher court.

4.2 Land Commissioner

For Guernsey it is therefore proposed that the post of Land Commissioner (or Adjudicator) should be established to deal with all similar issues arising from the Guernsey Land Registry. This is by way of alternative to a Lands Tribunal which would be more costly to establish. It may also be difficult to find persons with the right skills and qualifications to serve on it. It is also not known how many cases would be referred to appeal in the early stages of the establishment of the Land Registry.

The Commissioner would be a professional person, ideally a lawyer or a chartered surveyor, who would sit and adjudicate on appeals of decisions made by the Registrar and any disputes arising from them. He would also be able to issue directions to the Registrar on an application by the Registrar or an interested person. It may be that the Commissioner would sit with suitably qualified or experienced lay persons on full hearings.

In the first instance, the Commissioner would deal with issues of fact and/or law. At this stage, issues of fact would be determined. Any points of law would then be able to be appealed to the Royal Court of Guernsey.

There will be an additional burden on the Royal Court's time but it is not thought to be significant and the work of the Commissioner would hopefully reduce cases that would otherwise find themselves in the Court. Once initial cases on the interpretation of legislation and procedural aspects have been determined, it is hoped that the number of opportunistic appeals on points of law would diminish.

There may also be opportunities to assign other duties to the post of Commissioner, such as determination of disputes or valuation issues arising under any new compulsory purchase legislation. Rent valuations and housing appeals might also fall within the remit of the post. The post of Commissioner could be funded on a case by case basis with the parties to the application paying fees so as to offset the costs, but this option will need some careful thought. If fees are set too high, those without the means may be denied access to justice.

There are a number of other considerations relating to appeals alone that will need to be detailed in the legislation. Is it intended that applicants will be legally assisted in their appearance before the Commissioner, and what will be the role of expert witnesses? It may however be an opportunity of establishing an informal process so as to make the process free of too much lawyer influence, but whilst at the same time deterring parties from frivolous applications without merit.

5. Costs of implementation and running the Land Registry

5.1 General

Whilst introducing a Land Registry in Guernsey is not just about the financial implications, it is most important that, to be viable, the Land Registry becomes self funding as quickly as possible.

The financial modelling carried out initially focussed primarily on second and subsequent property transactions, ensuring that a cautious approach to likely revenue streams could be adopted. However, it became clear to the Project Board that, given the initial set-up costs and the requirement to provide mapping and assessment work for up to 2000 property registrations per annum, it would be necessary to charge a fee for first registration.

The possibility of additional revenue streams outside of the formal conveyancing process, including for example a fee for voluntary first registration, have not been evaluated in any great detail, although a starting estimate of £50,000 per annum has been used in the simple loan repayment model detailed at Appendix 3 of this report, based in the main on current income streams.

What is clear however is that the costs of registration should match the perceived benefits to a property owner of having a registered title. The greater those benefits are perceived to be, the more justification there can be for the imposition of higher registration fees.

This paper has already alluded to the impact of the competition law on the fixed fee. Competition within the marketplace should have the effect of driving down legal costs with the Registry being a catalyst by way of simplification of the process but at the same time ensuring that the requirements of registration have been properly complied with and thereby giving protection to owners of property and their lenders.

However, there may be a period following the introduction of the Land Registry in which conveyancing fees are charged by practitioners at close to the current rate and the new registration fee is payable. The Project Board recognise that this issue will need to be addressed and will make proposals during the preparation of the detailed business case.

5.2 Estimating the resources required to support the Land Registry

The key States of Guernsey contributors to a Land Registry are likely to be:

- The States Cadastre: required by the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007 to maintain the Cadastre Register of Properties for taxation purposes;
- Guernsey Digimap Services (GDS): responsible for maintaining the States Digital Map and also supports the production and delivery of mapping data, required for the assessment and calculation of TRP unit values and categorisations;
- Client Services Section: provides TRP billing and income collection services;
- The Law Officers' Chambers: advising upon and drafting new legislation, together with providing legal advice in relation to the application of the legislation;
- The Greffe: existing registry for property transactions.

Both the States Cadastre and GDS are funded from General Revenue; although it is important to stress that both sections are net contributors to General Revenue through the collection of TRP and Digital Mapping Licence royalties. Both sections are staffed by Civil Servants, although additional contracted survey support is currently provided through the States' digital mapping partner and managed through the Digimap Management Board.

5.3 Cadastre and Tax on Real Property (TRP)

The role of the States Cadastre is to maintain the Cadastre Register of Properties by ensuring that all land and buildings are correctly assessed for TRP in accordance with the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007. The Cadastre also has a responsibility to maintain the Register of Properties to support the Parishes in the raising of parochial charges on properties and for use by Guernsey Water.

5.4 GDS and mapping licence revenues

In addition to supporting the assessment of properties for TRP purposes, the primary role of GDS is to maintain the States Digital Map in accordance with mapping licence agreements managed by the Digimap Management Board. GDS also maintain other States systems; such as the Corporate Address File and Building Permit Tracker System. The section also currently supports the Corporate Housing Programme's central data project.

Given the role of mapping in the assessment of TRP, the financial model adopted by the Land Registry would need to take due consideration of the current mapping licence agreement, managed by the Digimap Management Board.

5.5 Staffing support

The Cadastre and GDS consists of 7.41 FTE, plus a contract position. Additional survey support is currently funded via a Contracted Out Work budget. Compliance and service delivery support equating to one FTE is provided by Client Services, who also provide billing and account recovery services (the financial implications of the provision of billing and account recovery services has not been reflected in this paper). As was the case with the introduction of TRP, the introduction of a Land Registry would result in an element of overlap in the roles of the States Cadastre and GDS. To take Land Registry forward, and to make maximum use of the available resources, a single entity should be created.

5.6 Technical equipment requirements

Use of new measurement technology could reduce the requirement for qualified and part qualified surveyors/assessors; effectively making the technology do the work, thereby reducing staff costs. The development of technologies that reduce the need to employ, for example, potentially expensive qualified survey staff is an option worth further consideration. This particular technology has been trialled by GDS but would require capital expenditure or on-going funding, which would be explored as part of building a robust business case.

5.7 Information Technology system

The States already operates a computer system that manages a significant number of Land Registry related tasks. The Cadastre Land and Property Information System (LAPIS) maintains details of all land and buildings in Guernsey, Alderney and Herm. LAPIS is, effectively, the Cadastre Register of Property, which is maintained in accordance with the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007. In regard to any future computer system, the Land Registry would have the option to either enhance the current LAPIS system or a new system could be purchased or developed that could either integrate with or incorporate the Cadastre Register of Property and all other functionality currently

provided by the LAPIS system. The options would be explored as part of building a robust business case. This would also include the costs of scanning Greffe and other relevant records, for which a pilot project is already underway.

5.8 Insurance

Whilst the extent of the insurance options have not been examined by the Project Board as the requirements would very much depend on the model to be adopted and, in particular, the extent of the guarantee to be provided to property owners, the States' insurance advisors have been made aware of the review project and any formal consideration and approach to the insurance market would be explored as part of building a robust business case.

5.9 Estimating the financial impact

A lot of the focus of the data analysis has been on what is termed property re-conveyances; that is those properties that are bought and sold and which would already be recorded in the Land Registry. Data for the period 2003 to 2010 has been analysed, which, amongst other things, has helped to establish:

- The number, type and value of property conveyed;
- The number, type and value of property re-conveyed.

The estimated income and expenditure detailed at Appendix 3 takes account of the new Land Registry being responsible for the administration of:

- TRP;
- The States Digital Map;
- Corporate Address File;
- Corporate (Economic) Database;
- Digital mapping data support for the Corporate Housing Programme.

Ideally, further injections of revenue would, as was the case for the Registers of Scotland (one of the project's reference visits), enable the Land Registry to offer a greater number of services to the public, thereby giving the States the opportunity to increase revenues and therefore also reduce the cost of conveying property through the Land Registry (and also giving the opportunity to develop further the services offered by the Land Registry).

5.10 Estimated income and expenditure

Firstly, it is important to recognise the following:

- In regard to Income: Estimated Land Registry fees are based on historical property sales registered at the Greffe for the period 2003 to 2010. Whilst the Project Board examined a number of fee options, example fees have been calculated on the basis of two flat rate first registration fee options of £300 and £200 per transaction, with subsequent transactions attracting an additional 0.25% fee (based on the value of the transaction), plus the flat rate.
- In regard to Expenditure: Includes the estimated costs for a fully functioning, and 'mature' Land Registry (inclusive of estimated legal, mapping and administrative

support), but does not include the capital cost of a new/upgraded IT system, or the purchase of new equipment.

The model adopted assumes a loan from the Treasury and Resources Department to cover the initial operating costs which will be repaid from income received. Although a range of fee models have been explored by the Project Board, many of which could serve the Land Registry well going forward, Appendix 3 includes a simple loan repayment model based on the two fee options detailed above. The model adopted would need to be sufficiently flexible, certainly in the early years of the Land Registry and will be further developed in detail in the preparation of a robust business case.

Whilst the enclosed data requires more analysis and verification, indications are that the viability of the Land Registry is very much dependent on the extent of work required outside of the Land Registry and therefore the cost of this work. However, modelling carried out to date indicates that whilst there will inevitably be increased costs to implement a Land Registry, a lot of the building blocks are already in place.

Current mapping licence revenues are more than sufficient to cover the costs of running GDS and it is assumed that the costs of running the Cadastre will, as now, continue to be funded from General Revenue or would effectively form a charge to General Revenue for services provided by the Land Registry. Budgets are therefore effectively already in place to cover current operational commitments. Whilst not a revenue stream for the Land Registry, the primary purpose of the States Cadastre would, until such time as the States resolve otherwise, continue to be the assessment of properties for TRP purposes. However, TRP is so intrinsically linked to the States Digital Map the Cadastre would provide resources and expertise to the Land Registry (without compromising TRP).

The above estimates assume that property conveyances are running at approximately 2,000 per year (excluding leases), which would require additional resources. Resources would include staffing, equipment and IT system functionality, although obviously scaled according to the level of work and the extent of guarantee given.

Given the current economic climate in which the States operates, it is important for the long-term success of the project for the Land Registry to become revenue generating and self sufficient as soon as possible. From work undertaken by the Project Board to date, to promote the concept of a Land Registry, the States would need to provide an initial injection of funds, which could be in the form of a loan, to cover additional staffing, equipment and system costs (this was also the case with the Registers of Scotland and was most likely the case with H.M. Land Registry of England and Wales, although given that this was established in the early 20th Century, it is difficult to be certain of the funding arrangements).

A further option could be to outsource the Land Registry to an appropriate business partner, however should the States consider this as a viable option; this would be explored in detail as part of the preparation of a robust business case.

6. Specific Legal Issues

6.1 Leases

The introduction of a Land Registry represents a good opportunity for reviewing the role and status of leases within the Guernsey property system. In England and Wales leases are under the Law of Property Act 1925 a legal interest in land. This means that their status and enforceability are much closer to freehold interests, and the use of long leaseholds rather than freeholds in commercial property development particular is much more the norm and banks and other lending institutions are willing to lend against a leasehold interest.

The lease is at the heart of some of the more innovative forms of public project development in PFI and PPP developments. In Guernsey the position is somewhat less certain. The lease is personalty⁵ and is closer in nature to a contract rather than an interest in land and consequently real legal difficulties emerge where lending and enforceability is concerned. This hampers the ability of the law to allow more innovative forms of legal ownership of property such as partial ownership schemes in social housing.

If leases were to be registerable and the law changed to treat them as an interest in land it is considered that this would be of benefit and give more flexibility, particularly in commercial and public sector schemes. Further a purchaser of land would be able to ascertain easily which leases have been entered into in relation to that land and the details of them.

However a decision would need to be made as to what leases should be able to be registered. It is difficult to ascertain the volume of leasehold transactions but these would be significant with the inevitable resource implications. Clearly it would not be sensible to require every lease to be registered since these may last for a few weeks to a lengthy term of years. It is proposed that a good starting point would be that any lease which has a term of more than three years should be registered.

The effect of registration would be three fold. It would be entered against the freehold title out of which the lease is created, second it would have its own registered number and subject to the terms of the lease would be transferable in its own right and third, obligations and rights arising under the lease would be binding upon and enforceable by a purchaser of the freehold title (this would not be the case where a registerable lease was not registered).

6.2 Bonds

Currently bonds are registered against properties to secure the obligations of the owner of that land under a separate mortgage document. Consideration needs to be given as to whether this process should continue with the bond being registered against the property (in the charges register of the title) rather than under a separate bonds register as presently, or whether the mortgage or loan agreement itself should contain a property charging clause and so that it is the mortgage deed that becomes registerable against the title rather than a separate bond.

⁵ 'Personalty' is a legal term used to denote pure personal property unconnected with land. 'Realty' describes lands, tenements and hereditaments. The distinction between the two arose originally out of the legal remedies available to recover the asset. Leaseholds in England and Wales before the Law of Property Act 1925 were described as 'mixed personalty'.

6.3 Matrimonial Notices and other similar issues

Interests in land can arise by reason of a Court Order and those interests will need to be protected in a system where during the conveyancing process a buyer needs to be sure what interests affect the land he is buying. The establishment of a Land Registry will give an opportunity therefore for a spouse or civil partner or a person who has made a contribution to the purchase price but is not shown as a legal owner (such as a parent) who has a legal and tangible interest in the property to register the Court Order against the property. The effect of registration will be to give notice to the world at large that such an interest exists and that in any sale that interest must be dealt with before the sale is completed.

The Land Registration Law will also need to deal with the situation where a notice is lodged by a person wrongly, penalties for incorrect lodging of a notice and how the notice can be cleared off the Register in such a case.

A particular example of a notice being lodged to protect an interest arises in relation to the Legal Aid fund where the Legal Aid Administrator takes a charge over the property of a legally aided person whilst the debt to the legal aid fund is outstanding.

6.4 Insolvency notices and saisie.

Specific consideration of the impact of a Land Registry system in relation to insolvency and insolvency proceedings will need to be undertaken and it is inevitable that a change in the law will be needed to regulate the disposal of properties which are owned by insolvent persons or companies. A separate workstream into insolvency generally is understood to be taking place within Commerce & Employment and any proposal for the Land Registry will need to be consistent with proposals emerging from that review.

The same considerations as those identified in relation to an order of the Court in matrimonial cases above will need to be addressed but with the addition of further detailed consideration to the priorities of creditors and processes undertaken in Saisie proceedings.

If the status of leases is changed from being an interest in personalty to realty, *désastre* proceedings would not be affected directly since this is concerned only with personalty, but this whole area is one in which detailed consideration is needed to resolve any conflicts that might arise with current practice. Nevertheless it is not considered that this should be regarded as an obstacle to establishing a Land Registry, if it is thought appropriate to do so, but an area that will have to be addressed as a consequence of that decision, in the legislative changes required.

6.5 Sales and purchases by companies

Nothing in these proposals directly affects the sale and purchase of property by Companies or other incorporated bodies. The Land Register will contain details of the Company number, its address within the jurisdiction of Guernsey for service of notices or proceedings. Details of the directors or shareholders will not form part of the Land Registry entries. The certificate of title given by applicants will require an additional provision which warrants that the Company is lawfully and properly established with power to hold property within Guernsey and is not subject to winding up or other similar proceedings (as at the time of the application). Provision will need to be made for a notice of winding up or an appointment of

a receiver to be made on the Register (if a voluntary or compulsory winding up is commenced or a receiver is appointed) within say 14 days of that appointment or winding up being commenced.

6.6 Overriding interests⁶

As described above these seek to protect interests which have not been registered against the title and therefore might be seen as being given protection in the event of a seller seeking to dispose of the property to a buyer who does not have notice of them. These interests include leases for less than 3 years, persons in actual occupation, compulsory purchase orders, statutory notices. The buyer would generally raise a specific query of the Seller's advocates before committing himself to the purchase. The question of non registerable interests in registered land will need to be resolved as part of this project.

6.7 Rights, servitudes and wayleaves

A system of Land Registration should make it simpler to ascertain what rights are enjoyed by the property, what rights are exercised over the property (servitudes) and whether any wayleaves exist in relation to the property.

Rights will be noted in the property register and since the Register will operate by reference to a filed plan the route of any rights (of way or services) can be more readily identified by reference to colouring or other indication on the plan. Equally the ownership of the boundaries, currently undertaken by way of detailed description in the conveyance can be identified by reference to the plan. In England and Wales an owned boundary feature is denoted by a 'T' mark, and jointly owned boundaries by a 'T' mark placed on each side of the boundary.

If the right or servitude is not recorded on the register it will not exist as a legitimate right for the benefit of any land or person or as an obligation to be observed by the owner of land over which the right is exercisable. However an application to rectify an omission to register a legally granted right or servitude will be able to be made to the Land Registrar and that decision appealed if there are proper grounds for doing so.

A wayleave granted in favour of a statutory utility company will be registerable and the relevant legislation will need to be looked at to see if an amendment is required to grant the utility the power to register that wayleave against a third party's property in the event of the owner refusing to co-operate in the process.

6.8 Covenants

One of the additional benefits of a Land Registration system will be in the noting of covenants against the title. Although in the case of a part of the property being sold and made subject to covenants such as obligation to maintain a wall or not to use the property in a manner that will cause a nuisance, the real benefit will be in those cases where a large number of properties are made subject to the same schedule of covenants. It will be simpler to ensure that each property has the details of the covenants registered on its title rather than

⁶ Please see earlier comment on this subject on page 13

the practice favoured by the Guernsey Bar at present where one property has the covenants and subsequent conveyances refer to that conveyance.

There might be an opportunity of also reviewing the enforceability of covenants. Currently the law distinguishes between ‘positive’ i.e. a positive obligation to do something and ‘restrictive’ covenants i.e. an obligation not to do something. Whereas the burden of a positive obligation does not run with the land on a disposal, requiring a convoluted mechanism to ensure that a successor enters into a separate agreement to comply a negative covenant does run with the land. A review of this aspect of conveyancing may well be able to streamline the effects of covenants as they affect those with the benefit and the burden of them.

6.9 Horizontal Conveyancing

Horizontal conveyancing, where two freehold owners own properties which are wholly or partly supported on top of each other, otherwise known as a ‘flying freehold’ has been more readily accepted in Guernsey than in other jurisdictions and the concept has been given a statutory basis under the Real Property (Reform) (Guernsey) Law, 1987. The reluctance of banks and building societies in other jurisdictions to accept title based on freehold in these circumstances relate to the perceived increased legal difficulty in enforcing a freehold covenant than one based on a landlord and tenant relationship. However this is not in itself a problem with a transition to registered land. The relevant covenants will simply be recorded on both freehold titles. The issue, if it is in practice a problem, will be to look at the status of leases in Guernsey land law since they are not an ‘interest in land’ in Guernsey in the same manner as for example in the UK. It is this status that has enabled long leases to be used almost invariably in flat or other multi occupational conveyancing.

6.10 Partial ownership and other new models of conveyancing

There is a need particularly in the social housing market to develop more innovative ways in which a person can own a property. Partial ownership is a particular case in point where a percentage of the freehold may be owned by the occupier who also holds a lease of the property. That occupier can purchase tranches of the freehold (say in blocks of 20%) stair-casing to a maximum percentage. There is no reason why this could not be 100% and lead to a transfer of ownership although the schemes that have been launched in Guernsey provide that an occupier cannot acquire more than 80% of the freehold interest because of the shortage of available schemes. The benefit of these schemes are that it enables a person to build up an interest in their home, share in any increase in its value and receive a share of that value on sale. Therefore such schemes serve as a useful bridge between those in the rented market and a first time owner of property. A review of the leasehold law as part of a system of land registration will be a good opportunity to ensure that there are no disincentives to similar and new innovative schemes being developed.

7. Technology

The Land Registry must be supported by a robust ICT system that allows secure access for the Land Registry and States staff, advocates and members of the public.

Currently the ICT system that supports the States Cadastre includes data and functionality that will also be required for the Land Registry, such as information on land ownership that is

provided to businesses and members of the public. Options for a Land Registry System therefore include:

- A search for a commercial, off-the-shelf land registry package;
- The commissioning of a new, bespoke software solution;
- Upgrade of the existing bespoke Cadastre system.

Once the law has been drafted and functionality of the Land Registry agreed, the States will write an Output Based Specification for the Land Registry support system and undertake a full procurement exercise in line with the States Rules and Directives for Financial and Resource Management.

8. Legislation

The Project Board takes the view that any legislation required to implement a system of registered land should not have as its primary objective the making of changes to Guernsey's existing land law, except where necessary or convenient for the purposes of giving full effect to the system itself or to implement any of the modifications to Guernsey's system of land law indicated in this Report and approved by the States. It is hoped that rather, insofar as possible, registration will complement the current law whilst creating, over time, a more efficient system of conveying title to land and bringing other advantages as described earlier in this Paper. Nonetheless, it is recognised that a system of registered land will need to be established by means of legislation and that there will be a need to amend certain features of Guernsey land law in order to accommodate any new system. In particular, and by way of just one example, where registration is compulsory, it may be necessary to make provision which will abrogate the customary law principle (often referred to as *le mort saisie le vif*) which vests title to land in heirs immediately upon death of the owner, so that instead title will vest upon registration. There will be other amendments that will have to be made and the comprehensive research and consultation to establish the necessary additional amendments will be undertaken if the proposal in principle to establish a Land Registry is approved by the States.

The main necessary piece of legislation is expected to be a Land Registration Law which will make provision establishing the office of Land Registrar and the Guernsey Land Register. This part of any new legislative regime is likely to be modelled on precedents such as those establishing the Registrar of Companies under the Companies (Guernsey) Law, 2008 and the Office of the Registrar of Intellectual Property and the various registers of intellectual property under the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004.

Very briefly, it is anticipated that any Land Registration Law will also specify or provide for the following ancillary matters –

- (a) the functions of the Land Registrar including creation of powers for the Registrar to regulate the practices and procedures that must be followed upon registration, and when otherwise dealing with issues involving the Register, and enabling the raising of fees and charges,

- (b) appeals to the Land Commissioner against decisions of the Land Registrar and appeals to the Royal Court against decisions of the Commissioner,
- (c) the registration of land upon the Land Register (including the documents and plans to be provided to the Registrar for first registration of title), the effect of registration, the consequences of a failure to register and the types of registered title that will be available upon registration,
- (d) statutory covenants or warranties of title and other matters which will be given by the vendor of any registered land,
- (e) searches of the Land Register and the entries made upon specific registered titles and the creation of periods following search within which priority will be given to registrations and dealings,
- (f) dealings in registered land,
- (g) the registration of interests in land and arrangements or agreements that effect land (such as bonds, rights and servitudes, Court Orders, agreements to sell land etc.), the effect of registration and the consequences of a failure to register,
- (h) the extent of any guarantees to be enjoyed by owners of registered land and others dealing with registered land,
- (i) the powers of the Royal Court to order rectification of the Land Register,
- (j) powers to make orders declaring registration to be compulsory in any area of Guernsey described in the order,
- (k) necessary amendment and/or repeal of existing land law, and
- (l) necessary transitional and saving provisions.

9. Timescales and implementation

It is not possible to estimate when a Land Registry might finally ‘go live’ since there are a number of key issues that will need to be analysed and decided. Among these is of course the priority to be given to the drafting of the necessary legislation. The drafting of legislation is a major task and a conservative estimate from the approval of the business case is that it will take not less than two years to bring into Guernsey Law.

The immediate task therefore is to proceed with the preparation of a detailed business case which will be the Project Board’s next task if it is given approval to proceed and it is estimated that this will take about 12 months to complete.

10. Summary and Conclusions

The Land Registry project does represent an opportunity for the introduction of a modern system of property transfer and also for addressing some of the issues that hamper the ownership of property. By simplifying the system it is hoped that there will be a corresponding reduction in the cost of acquiring and disposing of property and also enable the process to be undertaken more quickly. Over time the access to a greater source of stored and digitised information should help to reduce the number of issues arising in relation to property ownership particularly in relation to boundaries and covenants.

Against that the task is in some respects daunting especially in the range of issues that will need to be carefully considered in seeking to amend a system which although expensive generally has worked well. Further it must be recognised that there will be a transition period which will have an effect both on costs and process and implementing the system once designed will be demanding.

This is not of itself sufficient reason not to proceed. The issue for the States is the respective priority that this project should receive, the costs of implementing the system and the inevitable further burden on Deputies and Officers time.

Appendix 1

Appendix 1 illustrates a possible electronically facilitated conveyancing process for a simple electronic transaction of a registered domestic property, financed with a Bond. All options for a solution will be considered as part of the solution procurement exercise.

Step	Observation
Seller's Advocate receives instructions from seller / agent	
Seller's Advocate obtains official copy entries of the registered title and the registered title plan from Land Registry	<p>Application form for official copies by email to the Land Registry or submitted via the Registry web site.</p> <p>Fee to be paid on line via account, by post or personal visit.</p> <p>Secure internet data room arrangements established.</p> <p>Buyer is given password access to the entries on line.</p> <p>Official date for entries (being the date at which the entries certified as corresponding with the register) entered on the copies to be downloaded by Seller's Advocate and Buyers Advocate</p>
Sellers Advocate prepares contract for sale (conditions) and submits this to Buyers Advocates with the registered title and plan /data room password.	<p>Buyers advocate will need their own authentication credentials (PIN) to allow them to access data rooms and to allow monitoring by LR of unauthorised use of data rooms.</p>
Buyers Advocate carries out searches and enquiries. <ul style="list-style-type: none"> • of property (inspect boundaries wayleaves etc) • of Seller (whether leases tenancies or legal arrangements in respect of the property, fixtures and fittings, woodworm guarantees etc) • Planning enquiries (check existence of planning consents building control notices, roads, new developments,) and other service suppliers water sewerage electricity etc • Condition Survey (where required) • Housing Licence/Right to Work 	<p>Usual searches in Cadastre and Greffe no longer necessary since the Land Registry will contain all relevant information either direct or by link to other databases.</p> <p>These databases include Environment Department for Planning and Building Regulation, Guernsey Electricity, Guernsey Water, Guernsey Gas, Cable and Wireless, Company Registry, Greffe and Cadastre scanned documents, TRP records.</p> <p>Searchable photographic records maintained of boundary or other survey features to complement the official survey on the filed plan.</p> <p>No separate Bond register since individual bonds are registerable against the property.</p>

<p>When all searches and enquiries complete, and buyer has secured purchase monies/ finance etc, proceed to sign contract conditions, and pay deposit.</p>	<p>The right to proceed by way of conditional contracts not affected, sale subject to finance, housing licence etc.</p> <p>Signing of contract conditions can be effected digitally but possibly against an Advocate's undertaking to put their signed copy of the contract in the post or delivered together with deposit payment again either dealt with electronically or by cheque.</p> <p>Buyer could register a notice against the property where a contract has been entered into, if completion is to be delayed for a significant period.</p> <p>Conditions of sale will include an indemnity from the seller to buyer against any changes (encumbrances) to the title from the date on the official registered entries and completion.</p> <p>Standard conditions of sale could be downloaded from the Land Registry website, so that contracts would incorporate those by reference, leaving only special conditions to be dealt with.</p> <p>Buyer's Advocate carries out pre completion search of the register which will give the Buyer a priority period within which to lodge a properly completed application for registration at Land Registry. Failure to lodge by that time or extend priority is at buyer's risk.</p>
<p>Following unconditional contracts, Buyer's Advocate drafts and prepares transfer for approval and submits to Sellers Advocates. Lenders Advocates prepare form of bond.</p>	<p>Transfer will be on standard forms downloaded from or accessed on the Land Registry website.</p> <p>Whilst it is possible for execution of the form to be undertaken using digital signatures and encryption to enable electronic completion, there are fraud risks and therefore the feasibility of this will have to be looked at. If not feasible the transfer will be signed by the Seller and in the case of a buyer entering into legal obligations such as new covenants easements or buying a property jointly, the Buyer will sign the transfer as well.</p>

	Any additional documents may be in paper form such as amendment to boundaries, deeds of variations etc and executed by the parties but these could be scanned and uploaded to the website or in the case of boundary changes recorded by means of surveyed amendments to the filed plan.
<p>Prior to completion (or Jurat authentication) Buyer carries out a search of the register to check whether there are any changes to the register from the date of the official copy and which would then carry a two week priority which would mean that no transactions could be registered against the property until the transaction which has received its priority listing has been completed.</p> <p>Completion. Original land certificate and transfer and other documents of title handed over. Purchase monies paid.</p> <p>Where there is a Bond the documents of title will be handed to lenders advocates for registration of both the transfer and the bond.</p>	<p>The search and the extension applications can be carried out electronically and an electronic record kept. However there will be a limit so as to allow extension of priority only if there is no subsequent application on that title lodged at the Registry.</p> <p>Merits of Contract Court set out above. The Jurat would authenticate the transfer at which point the matter is completed and the Jurat's authentication would be a pre-requisite to registration.</p>
<p>Transfer and Bond subject to document duty and other fees being paid within 14 days. Registration application form completed and submitted with the transfer and original land certificate, priority search certificates and other documents – marriage certificates death certificates etc. Pay Land registry fee.</p>	<p>The application form, transfer and other original documents would be lodged at the Greffe or at the Land Registry following the Court appearance if this is adopted. If not the application could be registered electronically. The document duty is paid at the same time as lodging the documents for registration.</p> <p>Same issues apply as to whether paper documents such as land certificates are generated following completion or whether the whole process could be done electronically. This will be examined. Fraud and confidence issues would suggest that having paper documents could be a useful check to prevent abuse.</p>
Notify Cadastre of transaction.	This should happen automatically on registration.
Land Registry issues Land Certificate following registration	

Results of the Consultation Exercise**1. Customer Experience**

Property conveyancing and registration should offer a customer experience that offers clarity and certainty in the transaction, whilst at the same time offering an efficient, value for money service. The process should result in the new owner's acquisition being robust, secure and as far as possible guaranteed against future problems.

Two separate questionnaires were directly aimed at the customer stakeholder groups. Initially a random sample of approximately 150 of Vendors and Purchasers were asked for their views.

In this first survey it was recognised that the survey would be biased towards customers who had successfully conveyed property.

The following results were extracted from the Vendors and Purchasers survey:-

- 71% claimed they knew how the current conveyancing system worked. However this response is not consistent with responses to question 8(a) where only 9% correctly identified the Vendor as guarantor in property purchases;
- 46% expressed satisfaction with the accuracy of the conveyance documentation in the current system with 16% dissatisfied and 38% neither satisfied nor dissatisfied;
- 68% believe their title deeds are clearly understandable with 19% stating they are not. This response is not consistent with the Advocates' response to a similarly themed question put to industry professionals "Do you believe the majority of property owners understand their title deeds?" where 87.5% of Advocates felt they did not;
- 50% felt the current system represents value for money. 13% felt it did not, with 37% undecided;
- 43% believed the Courts guarantee title for the property purchaser and 29% believe it is the Advocate. Only 9% identified the Vendor as the legal guarantor;
- 61% believed a States' guarantee would be beneficial with only 7% disagreeing and 32% undecided;
- 72% felt a system of registered property conveyancing would make the process of buying and selling more efficient with only 6% disagreeing;
- 76% would prefer a simpler method of conveyancing with only 1% disagreeing.
- 90% felt the island would benefit from a system of registered property conveyancing;
- 85% felt all conveyances would benefit by reference to accurate plans/maps.

A second survey was undertaken in an attempt to capture a random sample of public opinion without a bias towards a successful conclusion in the conveyancing process.

This was achieved via an online survey sent to 225 members of Treasury and Resources staff. 55 responses were received (24% response rate). It should be noted that no prequalification to

this survey was undertaken and it is therefore likely that a proportion of the recipients would not have had any property related dealings, so are unlikely to have responded.

The following results were extracted from the random survey:-

- 77% stated they had encountered issues regarding land ownership, rights of way and or problems with boundaries;
- 61% felt the problems they had encountered resulted from the existing conveyance process;
- 82% believed an accurate plan would have been beneficial;
- 87% believe the current system does not provide the customer with value for money;
- 47% claimed they understood their deeds with 43% stating they did not;
- Only 23% correctly identified the Vendor as the guarantor of property, 33% felt it was the advocate, 17% the court with 27% undecided. The results to this question contradict the 63% who claim they had received a satisfactory explanation of their deeds to them;
- 77% felt a States' guarantee of title would be beneficial with 10% disagreeing.

The customer experience is clearly not as healthy as ideally it should be, and there is a lot of confusion over key elements of the transaction. For most people, buying a house will be a daunting event, where they have to trust the professionals and authorities to look after their best interests, and yet the customer experience can be far from pleasant.

2. Government & Courts

The Government (Law and Courts) provide the legal and procedural framework to enable property conveyancing.

As part of the consultation process, the Jurats were invited to a private presentation, to demonstrate how some of the modern surveying, mapping and document management systems might be of advantage to a Land Registry. This was an interactive session and provided the consultation team with the views and opinions of the Jurats who oversee proceedings in the Contract Court.

The Jurats believe their primary role within the conveyancing process is to check that both parties understand and agree to the conveyance contract, to satisfy themselves that the Purchasers and Vendor, present in person are not acting under duress and appear mentally equipped to take a decision. This is achieved by an Advocate presenting his or her clients to a Jurat, and the Jurat asking a couple of questions of the Vendor and or Purchaser and in so doing assessing as best they can the demeanour of the parties. Traditionally the vendors and purchasers would nod in agreement.

Unfortunately a high proportion of the customers of this process are under the impression that this in some way underwrites a court guarantee as to the accuracy of the conveyance.

The Greffe then register the documents if they are subsequently presented to the Greffe for registration, which almost without exception they are. As with the Contract Court, customer confusion arises regarding what effect this process has in relation to guaranteeing property title, detail and rights.

Conveyancing clerks attend at the Greffe just prior to the 4.00 pm closing time when they have an opportunity to determine amongst themselves that there appears to have been no fraud, such as a Vendor selling on the same day real estate he has borrowed against the security of or has consented fraudulently to two separate sales of the same property. The Greffe registers the basic index attributes contained in the contract deed; i.e. names, dates, and values, collects the document duty and files the documents on public record. There is no secrecy about the document. The index is then updated to enable conveyances and bonds to be readily identified. No checks are made regarding the accuracy of the content in the documents and no guarantee is offered.

3. Property Professionals

The professionals offering services within the property conveyancing business arena do so on the basis that they provide their customers with a service that offers value for money, technical accuracy (legal and physical), and clarity in the documentation in a way that can be fully understood by the parties involved. The service should result in a legally robust, definitive, guaranteed proof of property ownership.

A questionnaire was targeted at industry professionals early in the consultation process following an exploratory presentation at the Vale Douzaine rooms. Over 100 questionnaires were sent out and 56 returned from the following 5 key groups;

- | | |
|----------------------------|--------------|
| • Advocates | 8 responses |
| • Conveyancing Clerks | 14 responses |
| • Mortgage providers | 8 responses |
| • Estate Agents | 15 responses |
| • Architects and Surveyors | 11 responses |

The objective of this questionnaire was to provide stakeholders with a means to express their initial opinions on the concept of a Land Registry and also to gather feedback in respect of the (efficiency and value of the) existing system of property conveyancing.

The results were analysed by the above stakeholder sub groups and demonstrated that there are differences of opinion within the professional disciplines, with Advocates and conveyancing clerks preferring the status quo.

However key areas of overall agreement amongst the professionals were:

- The current system is fit for purpose;
- Customers don't understand their contract deeds;
- Customers would prefer a simpler method of conveyancing;
- Fees should be reduced;
- A States guarantee would be beneficial;
- A system of registered land conveyancing would be more efficient;
- A system of registered land conveyancing would enhance the accuracy of the property records.

Areas where a consensus was not apparent included:-

- The existence of any title guarantee;
- Whether customers receive value for money;
- Whether current documentation is satisfactory;
- Whether conveyance plans are accurate.

4. Conclusions from the Consultation

- There would appear to be a considerable distance between the level of customer expectations of the conveyancing service provided, and that being delivered by the professionals working within the limits of the current system;
- There are no absolute guarantees to property ownership in our current system, which relies on the Vendor guaranteeing rights and title to the Purchaser;
- Opinion is split on the subject of any guarantees the process or professionals may offer;
- A guarantee underwritten by the States of Guernsey is desired by many;
- Customers want a cheaper more efficient system of property conveyancing, this is also likely to include a review of the levels of document duty applied and collected by the States;
- Customers need a simpler system that can be clearly understood by all parties;
- Accurate and definitive title plans and boundary positions are required, to aid clarity in documenting property attributes;
- A system of property registration using accurate plans and measurements is desired by most stakeholders;
- The conveyance court provides limited value to the process and restricts property conveyancing to just 2 days per week, although this was not considered to be a particular issue by the respondents to the survey.

Reference material

- A.1 Professionals questionnaire.
- A.2 Professionals questionnaire - Analysis of Results.
- A.3 Professionals questionnaire – Graphs.
- B.1 Vendors and purchasers.
- B.2 Vendors and purchasers - Analysis of Results.
- B.3 Vendors and purchasers – Graphs.
- C.1 Random T & R sample questionnaire.
- C.2 Random T & R sample questionnaire - Analysis of Results.
- C.3 Random T & R sample questionnaire – Graphs.
- D.1 Utilities.
- E.1 Jurats.
- F.1 Estate agents - 2nd consultation.
- G.1 States Housing Department.
- H Cadastre.
- I Guernsey Digimap services.
- J Law Officers.

LAND REGISTRY – ESTIMATED EXPENDITURE

In addition to Land Registry, to also deliver the following services:

1. Tax on Real Property.
2. Maintenance of the States Digital Map.
3. Maintenance of the Corporate Address File (CAF) and support to other States initiatives, such as the Corporate Housing Programme.

Item	Estimated Cost	FTE	Cost Element	Supporting Information and Assumptions	Financial Analysis
Staffing:					
Legal	450,000	4	Staffing – Legal	SG assessed additional legal resource requirement to be four qualified lawyers. Difficult to assess grade, so used broad ranges briefly covered during recent meetings (mainly for Registrar and Deputy Registrar).	Registrar - £150,000 p.a. Deputy Registrar - £120,000 p.a. Two further lawyers - £180,000 p.a. 170
Management	75,000	1	Staffing – management	SG assessed that combined Land Registry would require single management structure, but only once established and Laws and infrastructure are in place (i.e. live running). Responsible for non-legal aspects of the Registry, but would also be responsible for the provision of support to the Registrar and his/her team.	Manager (SO3/4) - £75,000 per annum
Technical	370,000	9	Staffing – mapping, inspections and survey	Effectively allows for four, two person teams, plus a qualified surveying resource. Until the extent of the services to be delivered by the Registry is known, it is difficult to accurately assess how many teams would be required. This does allow some flexibility for single man 'teams' for some Registry, TRP and CAF work as this would be appropriate in a number of scenarios. This could effectively double the number of inspections/surveys etc.	One qualified surveyor (EGV) - £55,000 p.a. Three map editors (EGI to EGIIV) - £130,000 p.a. Five survey/assessment staff - £185,000 p.a.

Administrative Support	155,000	4	Staffing – administration, customer support services, first-line support	Current (formal) staffing is less than 2 FTE. The move of Cadastre billing to Client Services during TRP has provided centralisation of those services. It is possible that additional resources, possibly up to a third, could be required, although this is likely to increase the budget requirement by approx £50,000 p.a. Assumes that account billing and debt recovery would continue to be carried out by T&R Client Services (although, if so, a level of service fee is likely to be required - this has not been factored in at this stage).	Office Manager (EGIII/IV) - £50,000 p.a. Supervisor (EGII - £41,000 p.a. Two Admin staff (AA1 to EGI) - £64,000 p.a.
Compliance	51,000	1	Staffing – compliance and controls	Based on current EGIII OR EGIV post (although budget transfer from Client Services required).	EGIII or EGIV - £51,000 p.a.
Staff Costs and FTE – Total Supplies and Services (Note)	1,101,000 287,000	19	Includes: Administration (postage, stationery etc.), telecommunications, system support contracts, (mapping) licensing, inspection visits etc.	Assessed budget based on increase in service provision and where possible assessing against individual cost elements. In addition, sense checked against proportionate increase in staffing (60% estimated increase in FTE). Additional budget included to cover cost of additional mapping licences as it is difficult at this stage to assess what additional mapping functionality would be required in the Land Registry.	2012 (requested) budget of £166,635 estimated to increase to £287,000. 1171
Supplies and Services - Total Premises	287,000 90,000		Includes: Office accommodation rental, office facilities and maintenance, utility costs, cleaning (supply and materials) etc.	Assumption at this stage is that the Land Registry would be accommodated at the Guernsey Tobacco factory. Whilst actual space has not been examined in detail, it is assumed that the required space would be available, based on the number of staff detailed above. It may also be the case that the Legal Team (or parts of) works from different offices to the operational and admin support staff, effectively removing them from the day-to-day, in which case it is anticipated that the GTF could accommodate what would equate to a further 3/4 staff. Does not include the cost of new office space, should this be necessary. Sense checked against proportionate increase in staffing.	2012 (requested) budget of £54,400 estimated to increase to £90,000.

Premises - Total		90,000							
TOTAL ESTIMATED LAND REGISTRY BUDGET AND FTE		1,478,000	19						
FUNDING OF CURRENT SERVICES									
Cadastre		421,755	6.41					2012 (requested) Budgets used.	
Guernsey Digimap Services		281,280	4.5					2012 (requested) Budgets used.	
Client Services		51,000	1					2012 (requested) Budgets used.	
CURRENT FUNDING		754,035	11.91						1172
NET BUDGET INCREASE REQUIRED TO SUPPORT A LAND REGISTRY		723,965	7.09						

Note: Does not include cost of three-yearly mapping flyovers or the costs of either upgrading current IT systems or procuring a new system. Also, assumes current IT and finance support infrastructure to remain in place.

RECOVERIES AND ROYALTIES									
Cadastre		-21,000					Recovery is offset against budget. Relates in the main to the charge out to the Parishes for Cadastre services in accordance with the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007. It is assumed that this recovery would either be offset against the new Land Registry budget, or would be retained by the Registry in its agency role, for example.	2012 budgeted recoveries used.	

Mapping Royalties	-300,000			As above, mapping royalties have historically been used to offset GDS expenditure. The £300,000 royalty is currently fixed by T&R. It is assumed that on the formation of a Land Registry, royalties would either be used to offset expenditure (as now), or would be retained by the Registry in its agency, or similar, status.	2011 budgeted royalties used.
TOTAL BUDGETTED 'RECOVERIES' TO GENERAL REVENUE	-321,000				

LAND REGISTRY – INCOME AND LOAN OPTIONS

Estimated Income has been calculated from property registration/conveyances, with income based on property conveyances registered at the Greffe between 2003 and 2010. Other fees include an estimated figure of £50,000 per year for non conveyances/registrations, such as access to data, searches, and bond fee. Inflationary increase of 2.5% applied annually.

OPTION 1

First registration, all property types, of £300, subsequent registrations, all property types, of £300, plus a quarter of one percent of the conveyed/registered value.

Year	Greffe conveyance	Registration fees from new conveyance £	Registration fees from re-conveyances £	Other fees £	Total fees £	Cumulative fees £
1	2003	455,700	51,474	50,000	557,174	557,174
2	2004	486,600	125,483	51,250	663,333	1,220,507
3	2005	429,300	377,104	52,531	858,935	2,079,442
4	2006	444,300	403,652	53,845	901,797	2,981,239
5	2007	398,700	590,234	55,191	1,044,125	4,025,364
6	2008	306,900	500,728	56,570	864,198	4,889,562
7	2009	259,800	626,945	57,985	944,730	5,834,292
8	2010	279,600	972,808	59,434	1,311,842	7,146,134

Loan repayment model

Year	Additional operating costs £	Income from Registrations £	Other income £	Total estimated income £	Balance of loan at year end £	Interest charge £	Balance of loan OR income surplus £
1	724,000	507,174	50,000	557,174	166,826	5,839	172,665
2	742,100	612,083	51,250	663,333	251,432	8,800	260,232
3	760,653	806,404	52,531	858,935	161,949	5,668	167,618
4	779,669	847,952	53,845	901,797	45,490	1,592	47,082
5	799,161	988,934	55,191	1,044,125	-197,882	0	-197,882
6	819,140	807,628	56,570	864,198	-242,941	0	-242,941
7	839,618	886,745	57,985	944,730	-348,053	0	-348,053
8	860,608	1,252,408	59,434	1,311,842	-799,286	0	-799,286
9	882,124	1,283,718	60,920	1,344,638	-1,239,748	0	-1,239,748
10	904,177	1,315,811	62,443	1,378,254	-1,713,826	0	-1,713,826
11	926,781	1,348,706	64,004	1,412,711	-2,199,755	0	-2,199,755
12	949,951	1,382,424	65,604	1,448,028	-2,697,833	0	-2,697,833
13	973,700	1,416,985	67,244	1,484,229	-3,208,362	0	-3,208,362
14	998,042	1,452,409	68,926	1,521,335	-3,731,655	0	-3,731,655
15	1,022,993	1,488,720	70,649	1,559,368	-4,268,030	0	-4,268,030
16	1,048,568	1,525,938	72,415	1,598,352	-4,817,815	0	-4,817,815
17	1,074,782	1,564,086	74,225	1,638,311	-5,381,344	0	-5,381,344
18	1,101,652	1,603,188	76,081	1,679,269	-5,958,962	0	-5,958,962
19	1,129,193	1,643,268	77,983	1,721,251	-6,551,019	0	-6,551,019
20	1,157,423	1,684,350	79,933	1,764,282	-7,157,879	0	-7,157,879

OPTION 2

First registration, all property types, of £200, subsequent registrations, all property types, of £200, plus a quarter of one percent of the conveyed/registered value.

Year	Greffe conveyance	Registration fees from new conveyance £	Registration fees from re-conveyances £	Other fees £	Total fees £	Cumulative fees £
1	2003	303,800	43,574	50,000	397,374	397,374
2	2004	324,400	107,983	51,250	483,633	881,007
3	2005	286,200	344,204	52,531	682,935	1,563,942
4	2006	296,200	360,352	53,845	710,397	2,274,339
5	2007	265,800	535,834	55,191	856,825	3,131,164
6	2008	204,600	447,928	56,570	709,098	3,840,262
7	2009	173,200	560,545	57,985	791,730	4,631,992
8	2010	186,400	886,408	59,434	1,132,242	5,764,234

Loan repayment model

Year	Additional operating costs £	Income from Registrations £	Other income £	Total estimated income £	Balance of loan at year end £	Interest charge £	Balance of loan <u>OR</u> income surplus £
1	724,000	347,374	50,000	397,374	326,626	11,432	338,058
2	742,100	432,383	51,250	483,633	596,525	20,878	617,403
3	760,653	630,404	52,531	682,935	695,121	24,329	719,450
4	779,669	656,552	53,845	710,397	788,722	27,605	816,327
5	799,161	801,634	55,191	856,825	758,663	26,553	785,216
6	819,140	652,528	56,570	709,098	895,258	31,334	926,592
7	839,618	733,745	57,985	791,730	974,480	34,107	1,008,587
8	860,608	1,072,808	59,434	1,132,242	736,953	25,793	762,746
9	882,124	1,099,628	60,920	1,160,548	484,322	16,951	501,273
10	904,177	1,127,119	62,443	1,189,562	215,888	7,556	223,444
11	926,781	1,155,297	64,004	1,219,301	-69,076	0	-69,076
12	949,951	1,184,179	65,604	1,249,784	-368,909	0	-368,909
13	973,700	1,213,784	67,244	1,281,028	-676,238	0	-676,238
14	998,042	1,244,128	68,926	1,313,054	-991,250	0	-991,250
15	1,022,993	1,275,232	70,649	1,345,880	-1,314,137	0	-1,314,137
16	1,048,568	1,307,112	72,415	1,379,527	-1,645,096	0	-1,645,096
17	1,074,782	1,339,790	74,225	1,414,015	-1,984,330	0	-1,984,330
18	1,101,652	1,373,285	76,081	1,449,366	-2,332,044	0	-2,332,044
19	1,129,193	1,407,617	77,983	1,485,600	-2,688,451	0	-2,688,451
20	1,157,423	1,442,807	79,933	1,522,740	-3,053,768	0	-3,053,768

Notes:

- 1 Does not take into account mapping royalties and Cadastre recoveries that are currently returned to General Revenue. This income would either be used to offset the cost of running the Land Registry, or would be retained by the Registry;*

- 2 *For explanatory purposes, interest on loan assessed at 3.5% - on balance at year end, other than year when outstanding loan recovered, for which a zero charge is shown. Costs subject to a 2.5% inflationary lift;*
- 3 *Revenue from Year 9 onwards based on previous year plus 2.5% inflationary increase in line with increase in costs;*
- 4 *Annual loan assess using estimated expenditure, less current funding (as this relates to the estimated shortfall). Gross expenditure has been used, but calculations would need to consider charge to T&R for the Land Registry administering the map and TRP;*
- 5 *Given that annual interest is calculated at the end of year, interest charge shown as zero for year 5 (Option 1) and year 11 (Option 2) as loan repaid, and it is not possible to say when income would be received and, therefore, the part period interest charge;*
- 6 *Document Duty not included in the above estimates;*

LOAN REPAYMENT SUMMARY

1. **Estimated Loan repayment would be in year 5 for Option 1 and year 11 for Option 2;**
2. **As an example, should non-conveyance/registration fee income double to £100,000 per annum, loan repayment would be in year 4 (Option 1) and year 9 (Option 2)**
3. **As an example, should non-conveyance/registration fee income triple to £150,000 per annum, loan repayment would be in year 3 (Option 1) and year 8 (Option 2).**

Glossary of Terms

‘Conveyance’ the document by which a property is transferred. It can be ‘for value’ where money is paid or ‘not for value’ for example by way of a gift.

‘Digital Map’ is the digitised map of the Island and the management and exploitation of which is subject to a joint venture between States of Guernsey and Digimap Limited. It is used extensively in property transactions by Advocates and other professionals.

‘Hereditament’ means freehold property which could have devolved to an heir on intestacy and makes it a form of ‘realty’.

‘Intestacy’ means the devolution of a person’s estate on death without a will.

‘Lease’ a contractual arrangement for the use of land but unlike in England and Wales is not technically an ‘interest in land’ but relates to personal obligations and therefore classed in Guernsey as ‘personalty’.

‘Personalty’ is a legal term used to denote pure personal property and rights unconnected with land.

‘Realty’ describes lands, tenements and hereditaments and approximates to freehold title in land. It differs from personalty in the nature of the remedies that were available to enforce them.

‘Saisie’ insolvency proceedings involving real property.

‘Servitude’ a right enjoyed over someone else’s property, such as a right of way.

‘Tenement’ is land which is held by virtue of the holding of an office or title.

‘Wayleave’ a right in the nature of a servitude but usually relating to those in favour of a public utility company for which a regular payment is made.

Assessment of the Data Protection Principles

The IT system should comply with the data protection principles set out in Schedule 1 of the Data Protection (Bailiwick of Guernsey) Law 2001 and summarized in relation to the Land Registry as follows:

1. Fair and lawful processing

Persons using the system should be made aware of the precise information that is required and whether the provision of such information is voluntary or required under an enactment;

2. Limited purposes

Users should be made aware of the precise purposes for which information will be processed and whether any secondary processing is anticipated;

3. Minimal information

The information processed should be adequate relevant and not excessive; accordingly the specification should define the minimum information needed to satisfy the overall objectives;

4. Accuracy and currency

The system should include functions to ensure that information is accurate and maintained sufficiently up to date in relation to the purposes for which it is processed;

5. Retention

Information should not be retained for longer than necessary, but must be retained in conformance with the overall system requirements;

6. Individuals' rights

The system should include facilities to enable individuals to have access to all the personal information about them and to have any inaccurate information corrected; any such access should ensure that the identity of the individual is validated;

7. Security

All information processed within the system, should be kept securely and appropriate measures included to protect against accidental or deliberate breaches of security; any potential breach should be logged and reported; confidential and sensitive data within the system should be protected by an appropriate level of encryption; backup and recovery functions should ensure that information cannot be lost or destroyed;

8. Transfers

Any data transfers from the system, especially to other countries or territories, should ensure adequate security and protection to ensure continued compliance with the Law.

(NB The Policy Council has no comment on the proposals.)

The States are asked to decide:-

VIII.- Whether, after consideration of the Report dated 21st December 2011, of the Treasury and Resources Department, they are of the opinion:-

1. To note the content and findings of the enclosed Report into the Establishment of a Land Registry in Guernsey.
2. To direct the Department to undertake a comprehensive business case review and to report back to the States within 15 months with detailed proposals to introduce a Land Registry in Guernsey.

TREASURY & RESOURCES DEPARTMENT

**AMENDMENTS TO INCOME TAX LEGISLATION
RELATING TO PENSION SCHEMES – ESTABLISHMENT
OF NEW CATEGORY OF SCHEME**

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

10th January 2012

Dear Sir

1. Executive Summary

- 1.1. This Report contains proposals to amend the Income Tax (Guernsey) Law, 1975, as amended (“the Law”) in respect of pension schemes, in order to protect and enhance Guernsey’s status as a major provider of services in the international pensions field, and in particular in respect of transfers from UK pension schemes (Qualifying Recognised Overseas Pension Schemes (“QROPS”) business).
- 1.2. The proposals stem from the need to accommodate significant changes proposed to UK legislation recently in respect of QROPS business, which if adopted in their present form, would have an effective date of 6 April 2012. There are currently no transitional provisions incorporated into the proposed changes to UK legislation which would assist administrators in Guernsey of QROPS to adapt to these proposed changes and so if the appropriate changes to the Law are not made, or are not made before 6 April 2012, there could be significant ramifications for this particular sector of Guernsey’s financial services industry.

2. Background

- 2.1. QROPS business flows from changes made to UK legislation in 2006 which, in summary, allowed more flexibility with regard to the transfer of pension funds overseas when a scheme member left the UK than had previously been available. It is understood that these changes were necessitated by the need for the UK to facilitate freedom of movement of capital within the European Union, although the changes did not specifically restrict transfers to EU Member States only.

- 2.2. Guernsey was well placed to offer facilities for such business, partly because of the expertise in international pensions which already existed in the island, but also because of the structure of the income tax legislation, including its system of taxation of personal income, and very quickly Guernsey became a major base for QROPS.
- 2.3. In 2008, it became evident that the UK tax authorities had concerns regarding the operation of QROPS in some jurisdictions, specifically with the apparent ability of some schemes to offer 100% commutation of pension benefits, so that the whole fund could be accessed by the member in one lump sum. This practice is contrary to what HMRC regards as the purpose of QROPS, namely to provide an income in retirement and support pension savings.
- 2.4. Although there was no evidence that Guernsey schemes were involved in what the UK authorities viewed as abuse of the QROPS rules, the Director of Income Tax (“the Director”) felt it was important to understand HMRC’s concerns, and he met with them in order to discuss matters. As a result, certain aspects of Guernsey’s tax regime, as it applied to non-resident members of Guernsey approved pension schemes, were amended, in particular to align the rules on benefits in respect of non-resident members with those applicable to resident members. This put it beyond doubt that a Guernsey approved scheme could not pay out 100% of the fund as a lump sum, except where full commutation is permitted on the grounds of triviality (i.e. where the value of a member’s aggregate pension does not exceed, currently, £30,000).
- 2.5. On that basis, Guernsey’s QROPS industry has continued to flourish, to the extent that there are approximately 200 people fully employed in the industry, with significant pension funds under management.
- 2.6. Under the Law, QROPS may be offered as occupational schemes approved under section 150, or as personal pension schemes approved under section 157A. In practice QROPS are usually offered as trust-based personal pension schemes, which also meet the conditions of section 157A.
- 2.7. It should be emphasised that the placing of a QROPS in Guernsey does not, of itself, create a tax advantage, nor does it facilitate tax avoidance in respect of UK tax.
- 2.8. This is perhaps best illustrated by an example. If a UK resident retires to Spain, and his pension fund remained in the UK, the operation of the UK/Spain Double Tax Arrangement would give Spain sole rights to tax that pension. Similarly, if the funds are transferred to a QROPS in Guernsey, it would also remain subject to Spanish taxing rules, because Guernsey’s system of taxation of personal income, bases liability to Guernsey tax on residence in Guernsey. In this example the individual is

resident in Spain, not Guernsey, and (as a consequence of sections 40(p) and 40(ee) of the Law) there is no liability to tax in Guernsey. Thus, the effect on UK tax revenues is the same, whether the fund is established in the UK or transferred to a QROPS in Guernsey or, indeed, Spain; the key factor is the place of residence of the individual at the time that individual receives pension benefits.

3. Recent Developments (including effect of loss of QROPS status)

- 3.1. On 6 December 2011, HMRC published draft Regulations for a limited consultation period, which imposed additional conditions on QROPS. Whilst most of the proposals presented no major difficulties for Guernsey based providers, one aspect created a significant threat to such schemes, to the extent that they will find it difficult to operate after 6 April 2012 in the present framework. This is a proposed new condition 4 within UK legislation entitled “The Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations, 2006” (which set out the criteria for qualification as a QROPS).
- 3.2. In effect, condition 4 would require that, for QROPS status to be maintained, an overseas pension scheme must, in addition to meeting the existing Regulation Requirements and Tax Recognition Requirements set out in the current version of the Regulations, be able to provide any exemption from tax in respect of benefits paid from the scheme to both resident and non-resident members of the scheme. At present, Guernsey residents are given relief on contributions and taxed on benefits paid out to them, whilst non-resident members are not given Guernsey tax relief on contributions (because, ordinarily, there would have been no income assessable to Guernsey tax from which the contributions are paid – the individual being non-resident at the time of the contribution) and benefits paid are exempt from Guernsey tax, as described at 2.8 above. Thus, unless Guernsey’s system of taxation of personal income is changed so that Guernsey residents and non-residents alike are either taxed or exempt from taxation in Guernsey, on benefits that they receive from a Guernsey established QROPS, the pension scheme would lose its status as a QROPS for UK tax purposes with effect from 6 April 2012.
- 3.3. According to HMRC Draft Guidance published on 20 December 2011, a scheme which was eligible to be a QROPS when it originally notified HMRC but no longer has that status will be removed from the published list of QROPS and will cease to be a QROPS. Transfers to such schemes made after the date on which the scheme ceased to be a QROPS will not be recognised transfers for UK tax purposes. Unrecognised transfers give rise to an unauthorised payments charge and a surcharge on the member, and to a scheme sanction charge on the scheme administrator. Because Guernsey’s system of personal taxation fails to meet condition 4, this would mean that most existing Guernsey based QROPS, which had non

resident members, established as retirement annuity trust schemes under section 157A of the Law would lose their QROPS status, thus threatening the whole future of this sector of Guernsey's financial services industry.

4. Proposals

4.1. There are three approaches open to Guernsey:

(1) Take no action.

This would mean that after 6 April 2012, Guernsey based QROPS would effectively be unable to operate, and this particular sector of industry would, in all probability, dissipate over a relatively short timescale.

(2) Extend taxation of pension benefits to non-residents.

At present, a non-resident will only be taxable on pension benefits if they were resident in Guernsey at the time of making contributions, or had performed service in Guernsey which led to the payment of such benefits.

By extending taxation to all non-residents, whilst this would ensure compliance with condition 4, it is clear that it would also have an adverse impact on the competitiveness of Guernsey's QROPS business, particularly if other jurisdictions are able to offer exemption.

It should be noted that as Guernsey does not have an extensive network of Double Tax Arrangements at present, the extent to which any Guernsey tax paid could be relieved in the jurisdiction of residence of the member is uncertain. Any Guernsey tax paid, therefore, becomes a potential cost to that member and therefore a disincentive to place their pensions savings in a Guernsey QROPS.

(3) Extend exemption of pension benefits to Guernsey residents.

At present, Guernsey resident members receive relief from contributions to pension schemes; the income of the scheme itself is exempt but any pension benefits paid are taxable as they arise.

To ensure compliance with condition 4 without a major loss of tax revenue, a new, and separate, pension regime could be put in place under which no relief would be given for contributions, and pension benefits would be exempt on receipt. This regime would operate in parallel to the existing regime within sections 150 and 157A of the Law, which would continue on the same basis as at present. Clearly this new regime will create a potential loss to States revenues

(because the investment growth element of any pension fund on retirement would be paid out tax-free) but the States will, to an extent, receive revenues earlier than they would otherwise have done in the form of withdrawal of relief from income which is used to fund contributions, so that contributions are then paid out of taxed income. If this option were adopted, therefore, it would be necessary to reduce potential tax leakage caused by the new regime by imposing the following rules:

- (a) No tax relief would be available for contributions to the proposed new pension schemes made by either members or their employers. There would be no limit on the amount of such contributions, however. Any contributions made by an employer would be taxable as a benefit in the hands of the employee.
- (b) Income of the scheme and all benefits would be exempt from liability to income tax in Guernsey.
- (c) Schemes must be established and properly administered, in Guernsey, under either contract or trust, by a person who is licensed to do so and, if under trust it must have either two individual trustees, or one if there is a corporate trustee in place and all administration including main decision-making should be carried on in Guernsey.
- (d) Benefits should not ordinarily be paid before age 55, except in case of ill health, but may commence at any age thereafter.
- (e) Any benefits paid by way of lump sum should not exceed 30% of the fund value at maturity.
- (f) Schemes which currently have approval under sections 150 and 157A of the Law may, with the approval of the Director, elect into the new regime, but if they do so any funds held by the scheme which are derived from contributions that have benefited from tax relief in Guernsey (including investment income arising on such contributions) would be subject to a tax charge at the individual standard rate of 20%. This charge would be paid by the trustees or other person having administration of the transferring scheme out of the relevant funds.
- (g) Transfers into schemes approved under the new regime would be possible only from schemes approved or recognised under the Law (subject to a tax charge at the individual standard rate-see (f) above - if a transfer is from a scheme approved under section 150 or 157A) or from pension schemes in the UK.

- 4.2. The Department believes that if it is wished to protect Guernsey's wider pension industry, including its contribution to the Bailiwick's economy and employment, the only viable option is the new, discrete regime set out at (3) above, and therefore proposes that the States agrees to adopt such a regime.

5. Principles of Good Governance

In preparing this Report, the Department has been mindful of the States Resolution to adopt the six core principles of good governance defined by the UK Independent Commission on Good Governance in Public Services (Billet IV of 2011). The Department believes that all of the proposals in this Report comply with those principles.

6. Legislation

- 6.1 Following Royal Assent to the Income Tax (Zero 10) (Guernsey) Law 2007, the Income Tax Law was amended to introduce section 208C, which permits the States to amend the Income Tax Law by Ordinance. This is the process which will be used to effect the amendments proposed in this Report.

- 6.2 The Law Officers have been consulted about these proposals.

7. Resource Implications

- 7.1. Although, under the proposals, pension benefits paid out would not be taxed, no tax relief will be given on contributions made to the scheme; this means that any loss of revenues to the States is limited to the tax which would otherwise have accrued on the investment growth of the fund when it is paid out as pension benefits.
- 7.2. In addition, these schemes are unlikely to be attractive to a large proportion of Guernsey resident taxpayers, as the lack of tax relief on contributions (especially for a contributing employer), the tax charge on transfer from existing schemes and the requirement for most of the funds to be paid out by way of income over a long period rather than one lump sum, will be deterring factors.
- 7.3. Although it is not possible to provide an accurate estimate of the potential loss of tax revenues, because this will depend on taxpayer behaviour, the Department is satisfied that, for the reasons set out at 7.2 above, the risk is significantly reduced.

8. Recommendations

The Department recommends the States to direct that legislation is enacted in order to amend the Law to provide for approval of a new type of pension arrangement with the following features:

- (1) Tax relief will not be available to the member on contributions made to the scheme by that individual or, if the individual is an employee, by their employer in respect of earnings to which benefits under the scheme relate.
- (2) All income of, and benefits paid from, the scheme would be specifically exempt from income tax and paid gross as being in respect of pension savings.
- (3) The scheme must be established and administered in Guernsey under either contract or trust by a person who is licensed to do so by the Guernsey Financial Services Commission under the relevant legislation, and, and, if under trust, there should be at least two individual trustees, although a corporate trustee may act alone. All administration of, including main decision making in relation to, such schemes should be carried on in Guernsey.
- (4) A separate approval regime will apply to the new pension scheme, similar in structure and administration to that currently applicable for section 150 and 157A schemes. Applying for, and being granted, approval, by the Director, under the new regime will confirm that the applicant scheme is identified as being of a type that can qualify for exemption from tax in respect of income of, and benefits paid from, that scheme
- (5) Benefits may commence at any age after 55, although they may commence earlier in the case of ill health of the member. Given that benefits will not be taxed on receipt, there would be no need to impose the requirement that benefits must be drawn by the age of 75, as is currently required under the Law for pensions generally.
- (6) The scheme's rules must provide that at least 70% of a member's tax-relieved scheme funds will be designated by the scheme manager for the purpose of providing the member with an income for life. Therefore, any lump sum paid by way of commutation of any annuity or pension should not exceed 30% of the fund value at maturity.
- (7) Any schemes currently having approval under other sections of the Law may, with the approval of the Director, elect to be approved under the new regime.

- (8) A consequence of any scheme making the election referred to in (7) above would be that the trustees, or other person having administration of the transferring scheme are required to deduct and pay to the Director income tax at the individual standard rate in respect of any funds which are transferred following such election and which are derived from contributions that have benefited from tax relief in Guernsey (including investment income arising on such contributions).
- (9) Transfers into such schemes could be made only from other Guernsey approved or recognised schemes (in which case a tax charge at the individual standard rate should apply to any funds so transferred if a transfer is from a scheme approved under section 150 or 157A as referred to in (8) above) or from funds which have been, or are derived from contributions that have been, subject to UK tax relief.

Yours faithfully

C N K PARKINSON
Minister

Deputy J Honeybill (Deputy Minister)
Deputy R Domaille
Deputy A Langlois
Deputy S Langlois

ANNEX**Proposed revisions to income tax legislation**

This Annex sets out information which:

1. contains information justifying the need for legislation;
2. confirms how funding will be provided to carry out functions required by the new legislation;
3. explains the risks and benefits associated with enacting/not enacting the legislation;
4. provides an estimated drafting time required to draw up the legislation.

1. The need for legislation

The proposals contained in the Report will provide support to Guernsey's financial services sector.

2. Funding

It is not anticipated that additional funding will be required.

3. Risk and benefits

If the legislation to implement the proposals is not enacted, it is likely that the ability of this particular aspect of Guernsey's financial services sector to expand or continue in existence might be inhibited .

4. Drafting time

Required drafting time for legislation is estimated to be one week.

(NB The Policy Council supports the proposals contained in this Report.)

The States are asked to decide:-

IX.- Whether, after consideration of the Report dated 10th January 2012, of the Treasury and Resources Department, they are of the opinion:-

1. To agree that legislation is enacted in order to amend the Income Tax (Guernsey) Law, 1975 to provide for approval of a new type of pension arrangement with the features set out in this report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

COMMERCE AND EMPLOYMENT DEPARTMENT**REVIEW OF THE MAXIMUM LEVEL OF FINES AVAILABLE UNDER THE
HEALTH AND SAFETY AT WORK (GENERAL) (GUERNSEY)
ORDINANCE, 1987**

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

13th December 2011

Dear Sir

1. Executive Summary

The Department has reviewed the maximum level of fines currently specified in the Health and Safety at Work (General) (Guernsey) Ordinance, 1987 ("the Ordinance") on summary conviction before the Magistrates Court and believes that for a number of reasons it should be increased. At present only serious health and safety offences tried on indictment before the Royal Court may be penalised by a high fine.

- 1.1 Failures to comply with the basic requirements of the Ordinance can have significant consequences in the event of accident or ill-health at work. There may be profound effects on the individual and their dependents. Also, since the current penalties under the Ordinance were drafted the maximum fines which the Magistrate Court can impose, where not laid down in legislation, have increased and other comparable legislation which provides for specific penalties provides for higher levels of fines on conviction before the Magistrates Court than is provided for in the Ordinance.
- 1.2 For these reasons, it is felt that there should be an increase in the penalties available to Guernsey's Magistrates Court. This will give greater assurance that there are meaningful consequences to duty holders for a failure to protect those for whose safety they are responsible. This should discourage re-offending and result in improved compliance and therefore working conditions.
- 1.3 The proposal in the Report increases the penalty currently available to the Magistrates Court from "Level 4" (currently £5,000) to a "maximum of twice level 5 on the uniform scale" (currently 2 x £10,000 = £20,000).

- 1.4 Section 5 of the enabling legislation, the Health and Safety at Work etc. (Guernsey) Law, 1979, allows the level of fines to be set by the States from time to time.

2. Introduction and Background

- 2.1 The Health and Safety Executive (HSE) aim is to protect the health, safety and welfare of people at work and to safeguard others, such as members of the public who may be affected by the risks arising from the work activities.
- 2.2 The Ordinance imposes responsibilities on duty holders and applies in Guernsey, Herm and Jethou. The Health and Safety at Work (Alderney) Ordinance, 2003 imposes those same duties in Alderney.
- 2.3 In addition to inspection of businesses, advising and providing information, the HSE must from time to time use its enforcement powers. As well as Improvement and Prohibition notices, which require a duty holder to address unacceptable risks within a given period, in the case of especially serious breaches of the Ordinance, and where both evidential and public interest tests are satisfied, the HSE will provide a file recommending the prosecution of duty holders to the Law Officers of the Crown, who take the final decision.
- 2.4 Currently, any duty-holder guilty of an offence under the Ordinance is liable, on summary conviction (Magistrates Court), to a fine “not exceeding level 4 on the Uniform Scale”.
- 2.5 The Uniform Scale of Fines (Bailiwick of Guernsey) (Amendment) Ordinance, 2006 currently sets level 4 at £5,000.

3. Considerations

3.1 The purpose and impact of fines in Health and Safety Cases.

- 3.1.1 Failures to comply with the basic requirement of the Ordinance can have serious consequences in the event of accident or ill-health at work. There may be profound effects on the individual and their dependents.
- 3.1.2 There is also a significant economic burden to the tax payer; an individual unable to work may require additional benefits [See Table 1], reductions in income tax and increased rent rebates on social housing.

Table 1. Annual Payment of Benefits Solely Related to Industrial Injury and Disease (2010)

Benefit Description	Total number claimants at year end 31.12.2010	New claims approved 2010	£
Industrial disablement benefit <i>Payable to a person who has suffered a personal injury caused by an industrial accident, or work related prescribed disease and has suffered a loss of physical or mental faculty.</i>	238	9	614,329
Industrial injury benefit <i>Payable to a person for personal injury caused by an accident at work, or who suffers from a disease prescribed in relation to their employment.</i>	15	544	233,229
Industrial medical benefit <i>Benefit that is used to pay for treatment connected with an accident at work or for treatment in connection with certain prescribed diseases or conditions related to work.</i>	n/a	1,053	122,471
TOTAL	253	1606	£970,029

Source: States of Guernsey. Guernsey Insurance Fund. Reports and Financial Statement 31/12/2010

3.2 Comparison with similar jurisdictions.

- 3.2.1 A comparison between the penalties available to the Guernsey Magistrate's Court and the jurisdictions of Alderney, Jersey, Isle of Man, UK and Northern Ireland for Health and Safety Offences is given in Appendix 2 and illustrates the comparatively low fine level available on summary conviction in the Guernsey Magistrates Court for offences under the 1987 Ordinance.
- 3.2.2 Equivalent legislation in these other jurisdictions provides for essentially the same legal duties as in Guernsey. The majority of offences that are prosecuted are for employers failing in their "General Duties" to employees and/or persons other than their employees. Cases heard in the Royal Court are invariably time consuming and expensive, placing a high burden on both Law Officer and Health and Safety Inspector resources and Court availability. As such, a conviction on indictment before the Royal Court is usually limited to circumstances such as where there is a fatality or very serious injury. It is therefore sensible to make available to the Magistrates Court increased sentencing powers that whilst substantial are commensurate with summary trial.

3.3 Sanctions for prosecutions must be meaningful and substantial enough to send a clear message to directors and shareholders that regulatory compliance must be improved.

3.3.1 The financial implications of failures in compliance must be seen as a real business risk, and for larger companies with greater resources, the current summary fines limit does not achieve this.

3.3.2 The proposed changes to the maximum penalties are not intended to be punitive or result in a company going out of business. UK Sentencing Guidelines (which Guernsey courts may refer to) specifically refer to Health and Safety offences and direct the court to take care that fines imposed on smaller companies are not beyond their capability to pay. HSE support this consideration.

3.3.3 The proposed higher level of fines would be available to the Magistrates Court and may be appropriate to impose when there are companies with larger turnover and profits, persistent offenders, or particularly serious cases when the matter does not warrant a Royal Court hearing.

3.4 Fines need to be able to take into account any economic gain from the offence. It must not be cheaper to offend than to take the required measures.

3.4.1 With fines in the Magistrates Court at their current levels, it is possible a duty-holder might, on the basis of corporate risk, decide not to comply with the legislation and choose to risk prosecution if the financial penalties are lower than the costs of the required measures.

3.4.2 Allowing for the fact that defendants who plead guilty at the earliest available opportunity may be given a discount from the current maximum fine of £5,000, it is foreseeable that this might be the case if the maximum penalty available to the Magistrates Court remains at Level 4.

4. Operational Considerations

4.1 Any amendment to the Ordinance will have minimal cost or resources implications for either the Commerce and Employment Department or to the Law Officers' Chambers. Breaches of the Ordinance will continue to be investigated in the same manner and given the same legal consideration by the Law Officers Chambers.

4.2 Reporting of higher fines will also have a positive influence on other businesses in the Bailiwick, who will view non-compliance as a genuine business risk and seek to implement the appropriate industry standards.

4.3 The risks of not implementing this change is that the safety and welfare of employees and others is not viewed with appropriate amount of gravity,

furthermore, *in extremis*, more unscrupulous businesses in the island could make a conscious decision to not put the necessary standards into practice (and hence increase the risk of death, major injury or ill-health of employees) on the basis of the fine being far lower than the cost of improving the standard of their business operation.

5. Conclusion

- 5.1 The most serious breaches in the Magistrates Court will often have resulted in severe injuries or exposure to health risks. There may also be serious economic costs to the individual and society.
- 5.2 An increase in the penalties available to Guernsey's Magistrates Court is required so that there are meaningful consequences to duty holders for these failures. This should discourage re-offending and result in improved compliance and therefore working conditions.
- 5.3 The HSE has recommended that, in order for available penalties on summary conviction to be commensurate with those available for comparable offences in Guernsey and health and safety offences in other jurisdictions so as to be a more effective sanction, the current level of fine available to the Magistrates Court should be revised upwards to a maximum of twice level 5 on the uniform scale [i.e. currently 2 x £10,000 making the maximum fine currently available £20,000].

6. Consultation

- 6.1 The Law Officers' Chambers has been consulted on the contents of this States Report and has advised the required amendment is a simple change with minimal resource requirement from a legal drafting perspective.
- 6.2 The Department believes that it has complied fully with the six principles of good governance in the preparation of this Report.

7. Resource Implications

- 7.1 The proposals have no resources implications for the Department.

8. Propositions

- 8.1 The Department recommends the States to:
 - a) Approve the proposal that the current maximum level of fine which may be imposed by the Magistrates Court under the Health and Safety at Work (General) (Guernsey) Ordinance, 1987, should be revised upwards to a maximum of twice level 5 on the uniform scale [i.e. currently 2 x £10,000 = £20,000].

- b) Direct the preparation of such legislation as may be necessary to give effect to the proposals.

Yours faithfully

C S McNulty Bauer
Minister

M Lainé
Deputy Minister

R Matthews
A Brouard
M Storey
States Members

P Mills
Non States Member

Appendix 1**DRAFTING OF LEGISLATION – PRIORITY RATING SCHEME
STATES REPORT HEALTH AND SAFETY AT WORK – MAXIMUM LEVEL
OF FINES****Criterion 1 – Need for legislation**

This amendment is required to increase the penalties, available on summary conviction (Magistrates Court), specified in the Health and Safety at Work (General) (Guernsey) Ordinance, 1987. This will give greater assurance that there are meaningful consequences for duty holders for a failure to protect those for whose safety they are responsible. This should discourage re-offending and result in improved compliance and therefore working conditions.

Criterion 2 – Funding

There is no funding implication arising from this proposal.

Criterion 3 – Risks and benefits associated with enacting/not enacting the legislation

Failure to enact this change will risk enforcement actions having an insufficiently strong incentive on duty holders to adequately plan for and protect the health and safety of those for whom they are responsible. The level of fines available on summary conviction will remain significantly below those in place in some comparable jurisdictions.

Criterion 4 – Estimated Drafting Time

The requirement for drafting time will be minimal.

CURRENT LEVEL OF FINES FOR COMPARABLE JURISDICTIONS

	Guernsey	Alderney	UK	Jersey	Isle of Man	Northern Ireland
Legislation	The Health and Safety at Work (General) (Guernsey) Ordinance, 1987	The Health and Safety at Work (Alderney) Ordinance, 2003	The Health and Safety at Work etc Act 1974	The Health and Safety at Work (Jersey) Law, 1989	The Health and Safety at Work Act, 1974 as applied to IoM by Health and Safety at Work Order 1998	The Health and Safety at Work (Northern Ireland) Order 1978
Maximum fine available to Magistrates Court for H&S offences	Level 4 [currently £5000]	Fine not exceeding Level 5 on the Alderney uniform scale [currently £10,000]	Fine not exceeding £20,000 or imprisonment for a term not exceeding 12 months, or both	Level 4 [currently £5000*]	Fine not exceeding £20,000 or imprisonment for a term not exceeding 12 months, or both	Fine not exceeding £20,000 or imprisonment for a term not exceeding 6 months, or both

*In practice, all but the most minor of Jersey Health and Safety Prosecutions are heard in the Royal Court, where unlimited fines are available

(NB The Treasury and Resources Department supports this States Report.)

(NB The Policy Council has no comment on the proposals.)

The States are asked to decide:-

X.- Whether, after consideration of the Report dated 13th December 2011, of the Commerce and Employment Department, they are of the opinion:-

1. To approve the proposal that the current maximum level of fine which may be imposed by the Magistrates Court under the Health and Safety at Work (General) (Guernsey) Ordinance, 1987, should be revised upwards to a maximum of twice level 5 on the uniform scale, [i.e. currently 2 x £10,000 = £20,000].
2. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.